

ORDINANCE NO. 652

**AN ORDINANCE OF THE CITY OF WEST COLUMBIA, TEXAS, AMENDING CHAPTER 16, "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES," OF THE CITY CODE OF ORDINANCES; REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF THE CITY'S RIGHTS-OF-WAY BY ALL USERS, INCLUDING TELECOMMUNICATIONS SERVICE AND WIRELESS NETWORK PROVIDERS; PROVIDING PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING PERMIT FEES AND PUBLIC RIGHTS-OF-WAY RENTAL RATES; REQUIRING LAND USE APPROVAL PRIOR TO PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN PARKS, RESIDENTIAL AREAS, AND DESIGN AREAS, AS APPLICABLE; ADOPTING A DESIGN MANUAL UNDER CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$2,000 PER VIOLATION; AND MAKING OTHER PROVISIONS RELATED TO THE SUBJECT.**

**WHEREAS**, the Texas Legislature recently enacted Chapter 284 of the Texas Local Government Code related to municipal regulation of wireless facilities in public rights-of-way; and

**WHEREAS**, the City of West Columbia ("City") desires to encourage the installation of wireless facilities in the public rights-of-way of the City; and

**WHEREAS**, the City Council finds that the regulations provided in this Ordinance are necessary to protect the health, safety and welfare of the public;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:**

Section 1. That Article I, "In General" of Chapter 16, "Streets, sidewalks and other public places," of the City of West Columbia Code of Ordinances ("City Code") is amended to read as follows.

## “ARTICLE I. IN GENERAL

### Sec. 16-1. – Definitions.

When used in this Chapter, the following terms, as well as their singulars, plurals and possessives, shall have the following definitions and meanings except where specifically defined otherwise by an Article of this Chapter.

*Access line:* A unit of measurement representing:

- i. each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer's premises within the municipality, that allows the delivery of local exchange telephone services within a municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale;
- ii. each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the city; or
- iii. each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the City, and in that instance, one path shall be counted for every 10 stations served.

An access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

*Antenna:* Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

*Cable service:* "Cable service" as defined in the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 532 et seq.

*City manager:* The City manager or designee of the City manager.

*Collocate and collocation:* The installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

*Consumer price index:* The annual revised Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics.

*Concealment:* Any wireless facility that is covered, blended, painted, disguised, camouflaged, or otherwise concealed such that the wireless facility blends into the surrounding environment and is visually unobtrusive. Concealment includes but is not limited to covering with a façade, designs that blend with the surrounding character of an area, paint that matches surrounding poles, disguising with landscaping, or locating underground.

*Decorative pole:* A streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments have been placed or are permitted to be placed according to City Code.

*Design area:* An area that is zoned, or otherwise designated by City Code, and for which the City maintains and enforces unique design and aesthetic standards.

*Design manual:* The design requirements in effect at the time of a construction permit application, or the commencement of work not required to obtain a permit, for specific types of structures, including any adopted design manuals, adopted construction codes and any other City requirements, as amended from time to time.

*Facilities:* Any and all of the network nodes, transport facilities, equipment cabinets, node support poles, duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures, plant, and appurtenances and all transmission media used for the provision of wireless service or telecommunication service.

*Federal Communications Commission or FCC:* The Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

*Highway right-of-way:* The right-of-way adjacent to a state or federal highway.

*Line fee:* A monthly fee to be applied to each access line for the calculation of the total amount to be paid to the City as a rights-of-way fee.

*Location:* The City-approved and lawfully permitted location for the Network Node.

*Macro tower:* A guyed or self-supported pole or monopole greater than the lesser of (i) 55 feet, or (ii) 10 feet higher than the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way and that supports or is capable of supporting antennas.

*Micro network node:* A network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

*Municipally owned utility pole:* A utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

*Park:* Any property dedicated or used as a park or for public park purposes or that may be dedicated or used as a park or for public park purposes within the City.

*Network node or node:* Equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes: (i) equipment associated with wireless communications; (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and does not include: (i) an electric generator; (ii) a pole; or (iii) a macro tower.

*New node support pole or new pole:* A new installation, including any extension or replacement of an existing pole where the replacement is not excepted from permit requirements under section 30-2 of this Chapter.

*Node support pole:* A pole installed by a network provider for the primary purpose of supporting a network node.

*Permit:* A written authorization for the use of the public right-of-way, including collocation on a service pole, required from the City before a provider may perform an action under this Chapter.

*Permit holder:* Any person that has applied for or been issued a permit pursuant to the terms of this Chapter.

*Provider:* A wireless network provider or telecommunication service provider.

*Pole:* A service pole, municipally owned utility pole, node support pole, or utility pole.

*Private easement:* An easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

*Public right-of-way or right-of-way:* The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include: (A) a private easement; or (B) the airwaves above a public right-of-way with regard to wireless telecommunications. This includes but is not limited to all present and future public streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, easements, bridges, and other such similar passageways, thoroughfares, and public ways within the City.

*Public utility:* A public utility as that term is used in the Public Utility Regulatory Act, V.T.C.A., Utilities Code § 11.004, including municipally owned and/or operated utilities.

*Rights-of-way fee:* The total amount paid to the City on a quarterly basis for access lines and on an annual basis for other facilities for the use and occupancy of the rights-of-way. For wireless network providers, this is the rental charge paid in accordance with Chapter 284 of the Texas Local Government Code.

*Service pole:* A pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including: a pole that supports traffic control functions; a structure for signage; a pole that supports lighting, other than a decorative pole; and a pole or similar structure owned or operated by a municipality and supporting only network nodes.

*Street:* The portion of the public right-of-way, including a highway, designed or used for vehicular traffic, including that part of the street marked or platted as a bicycle or public transit lane. Street width shall be the widest of the following measurements: (i) edge of pavement to edge of pavement, or (ii) curb to curb.

*Substantially similar:* Includes the following: (i) A replacement or upgrade that does not include replacement of an existing node support pole nor defeat existing concealment elements of a node support pole; and (ii) a new or upgraded network node, including the antenna or other equipment element, will not be more than 10 percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by the City's design manual; and the new or upgraded pole will not be more than 10 percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by the City's design manual.

*Telecommunications Service:* Any "local exchange telephone service," as defined by Section 51.002 of the Texas Utilities Code, or voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

*Telecommunications Service Provider:* Any "certificated telecommunications provider" as the term is defined by Section 283.002 of the Texas Local Government Code.

*Transmission media:* Any and all of the cables, fibers, wires or other physical devices owned, maintained or placed by a user to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, data or other purposes.

*Transport facility:* Each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

*Use and occupancy:* Acquisition, installation, construction, reconstruction, maintenance, repair, control, or operation of any facilities within the rights-of-way for any purpose whatsoever.

*User:* Any person that owns, controls, constructs, installs, repairs, maintains, upgrades or removes a structure in the right-of-way, including any contractor or subcontractor of a person who owns or controls a structure in the right-of-way.

*Utility pole:* A pole that provides: electric distribution with a voltage rating of not more than 34.5 kilovolts; or services of a wireless provider, as defined by Section 51.002, Utilities Code.

*Wireless service:* Any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

*Wireless Network provider:* A person that provides wireless service to the public; or a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a person that provides wireless service to the public: network nodes, node support poles, or any other structure that supports or is capable of supporting a network node.

## **Sec. 16-2. - Registration and construction permits.**

No person shall commence or continue with the construction or installation of any structure within the rights-of-way of the City except as provided by this Chapter, or as provided by other City permits or written agreements with the City. Registration and permits will be issued in the name of the person who will own the structures.

- (a) *Registration required.* All users of the right-of-way must register annually with the City. Registration shall include:
  - i. The name of the user of the right-of-way;
  - ii. The name, address, and telephone number of the user;
  - iii. The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
  - iv. The location, including exact coordinates, of all structures located in the rights-of-way; and
  - v. a description of each structure located in the rights-of-way.
- (b) *Construction permit required.* Unless otherwise provided by this Chapter, no person shall perform any construction or installation of structures in the right-of-way without first obtaining a construction permit. The permit must be completed and signed by

the owner or authorized representative of the owner of the proposed structures. Construction permits for proposed network nodes, node support poles, and transport facilities shall be processed in accordance with the timelines of Section 284.154 of the Texas Local Government Code.

(1) *Permit information required.* The person requesting a permit will provide the City manager with documentation describing:

- i. The proposed, approximate location, route and type of all structures to be constructed, installed, or modified and the user's plan for right-of-way construction.
- ii. Engineering plans provided on a drawing scale not smaller than one (1) inch equals one hundred (100) feet unless otherwise approved by the City manager.
- iii. Description of all existing public and private utilities in close proximity to user's proposed route (within 300 feet).
- iv. Description of plans to remove and replace pavement or drainage works in streets. Plans submitted must conform to City of West Columbia standard construction requirements and any other applicable law.
- v. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth.
- vi. Two (2) sets of engineering plans.
- vii. The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way.
- viii. Proof of insurance.
- ix. The name and address of the person to whom notices are to be sent, a 24-hour per day contact number for the user in case of emergency.
- x. Location map that includes all other structures within 500 feet of the proposed location.
- xi. When a new pole is proposed, an industry standard pole load analysis certified by a licensed engineer.
- xii. A complete application and supporting documents for land use approval where required.
- xiii. Proof of payment of the construction permit fee and prorated rights-of-way fee for the remaining portion of the current calendar year.

(2) *Timeliness.* All work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time period, the permit holder may request an extension from the City manager.

(3) *Insurance and bonds.*

- i. A user must provide proof of liability insurance in the amount of two hundred thousand dollars (\$200,000.00).

- ii. The coverage provided shall be on an "occurrence" basis and shall include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion, and collapse hazards.
  - iii. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.
  - iv. The user shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.
- (c) *Cable service not authorized by permit.* A permit holder is not authorized to provide cable service as a cable operator in the City under this Chapter, but must first obtain a franchise agreement from the City for that purpose, under such terms and conditions as may be required by law. A permit for the installation, placement, maintenance, or operation of a network node or transport facility under this Chapter shall not confer authorization to provide cable service or video service, as defined by Section 66.002, Utilities Code, or information service as defined by 47 U.S.C. Section 153(24), or wireless service as defined by 47 U.S.C. Section 153(53), in the public right-of-way.
- (d) *Permit limited.* A permit provided under this Chapter does not provide authorization for attachment of network nodes on poles and other structures owned or operated by investor-owned electric utilities, as defined by Section 31.002, Utilities Code, electric cooperatives, telephone cooperatives, as defined by Section 162.003, Utilities Code, or wireless providers, as defined by Section 51.002, Utilities Code.
- (e) *Exception to construction permit and registration requirement.* The following activities shall not be required to obtain a permit under this Chapter.
- (1) *Emergencies.* Emergency responses related to existing structures may be undertaken without first obtaining a permit; however, the City manager must be notified in writing within two (2) business days of any construction related to an emergency response. A reasonably detailed description of the work performed in the right-of-way and an updated map of any structures moved shall be provided as soon as practicable.
  - (2) *Routine maintenance.* The following routine activities are not required to obtain a permit: routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; replacing or upgrading a network node or network pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung

on cables between existing poles or node support poles in compliance with the National Electrical Safety Code.

- (3) *Building permits.* The owner of driveways, streets, and other permanent structures constructed in the public right-of-way pursuant to a building permit obtained under the adopted construction codes of the City is not required to register the structures annually.

**Sec. 16-3. - Construction standards.**

- (a) *Conformance to other laws.* All construction shall be in conformance with all City codes and applicable local, state, and federal laws.
- (b) *Erosion Control.* Erosion control measures (*i.e.*, silt fence) and advance warning signs, markers, cones, and barricades must be in place before work begins. Permit holder may be required to show proof of EPA approved plans relating to storm water and erosion when applicable or a letter stating such plans are not required. User shall comply with City, state, and federal guidelines regulating storm water management erosion control. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing, or straw bales, as appropriate.
- (c) *Workmanship; notice of damage.* Users are responsible for the workmanship and any damages caused by a contractor or subcontractor. All users shall notify the City manager immediately of any damage to utilities or other structures, either City or privately owned.
- (d) *Design Manual.* All structures shall comply with the City's construction codes and the design manual, if applicable, as adopted at the time of the permit application.
- (e) *Prior approval required for street or sidewalk cut.* Except in the event of an emergency, prior approval must be obtained from the City manager when a street or sidewalk cut is required and all requirements of the City shall be followed. Repair of all street and sidewalk removals shall be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (f) *Interference prohibited.* Newly installed structures shall not interfere with facilities or structures of other users, in particular gravity dependent facilities.
- (g) *Plans of record.* Right-of-way users shall provide the City manager with "plans of record" within ten (10) days of completion of structures in the right-of-way. Submittal of "plans of record" should be in digital formatting as well as written or in any other format requested by the City manager.

- (h) *Requests for temporary moves.* Upon request, the permit holder shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the permit holder may require payment in advance. The permit holder shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangements.
- (i) *Tree trimming.* The permit holder, its contractors and agents have the right, permission and license to trim trees upon and overhanging the rights-of-way to prevent trees from coming in contact with the permit holder's structures.

**Sec. 16-4. - Restoration of property.**

- (a) *Restoration of affected property required.* Users of the right-of-way shall restore property affected by construction in the right-of-way to a condition that is equal to the condition of the property prior to the performance of the work. This includes, but is not limited to, replacing all natural ground cover with an equal or better type of ground cover damaged during work, either by sodding or seeding.
- (b) *Restoration requirements.* Restoration shall be to the reasonable satisfaction of the City manager. The restoration shall include, but not be limited to:
  - i. Installation of all manholes and handholes, as required;
  - ii. All bore pits, potholes, trenches, or any other holes shall be covered or barricaded daily;
  - iii. Leveling of all trenches and backhoe lines; and
  - iv. Restoration of excavation site to City specifications applicable to the site.
- (c) *Locator flags.* All locator flags shall be removed during the cleanup process by the permit holder or his/her contractor at the completion of the work.

**Sec. 16-5. - Relocation and removal of facilities.**

- (a) *City's right to relocate.* The City retains the right to move any structures within the rights-of-way to cure or otherwise address a public health or safety emergency. The City shall cooperate to the extent possible with the permit holder in such instances to assure continuity of service and to afford to the permit holder the opportunity to make such relocation.
- (b) *Expense and timelines for relocation.* Except as otherwise provided in state and federal law, upon 30 day advance written notice from the City, a user shall relocate or adjust its structures in a public right-of-way in a timely manner and without cost to the City managing the public right-of-way.

**Sec. 16-6. – Permit and Rights-of-way fees.**

- (a) *Construction permit fee.* The permit holder shall pay a construction permit fee as part of the construction permit application for work performed in the right-of-way shall be the lower of the amounts provided in the table below or the City’s adopted fee schedule, as applicable for the type of work being performed in the right-of-way.
- (b) *Rights-of-way fee.* The permit holder shall pay to the City a rights-of-way fee that is calculated in accordance with Chapter 283 of the Texas Local Government Code, a written agreement with the City, or the table below, as applicable. The rights-of-way fee for access lines shall be as proscribed by the Texas Public Utilities Commission. Rights-of-way fees for all facilities other than access lines shall be prorated for the first year in which a construction permit fee is paid, and shall be paid at the time of the permit application.

<b>Equipment Type</b>	<b>Construction Permit Fee</b>	<b>Rights-of-way Fee</b>
Transport Facilities	NA when application includes Network Nodes	\$28 per month per node <sup>3</sup>
Network Nodes	\$500 for first 5 nodes, \$250 for each additional node	\$250 per year per node <sup>1 2</sup>
Node Support Poles	\$1000 per pole	NA

<sup>1</sup> As adjusted by an amount equal to one-half the annual change, if any, in the consumer price index .The City shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60th day following the written notice.

<sup>2</sup> Collocated network nodes on City service poles shall also pay an annual collocation fee at a rate not greater than \$20 per year per service pole.

<sup>3</sup> A network provider may not install its own transport facilities unless the provider: (i) has a permit to use the public right-of-way; and (ii) pays to the City a monthly public right-of-way rate for transport facilities in an amount equal to \$28 multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the network provider's payment of fees to the City exceeds its monthly aggregate per-node compensation to the City. A network provider that wants to connect a network node to the network using the public right-of-way may: (i) install its own transport facilities as provided in this section; or (ii) obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month. A public right-of-way rate required by this section is in addition to any other public right-of-way rate required by the City.

- (c) *Timing of fee payment.* Permit holder shall remit the rights-of-way fees on an annual basis, unless otherwise proscribed by state law. Unless otherwise mandated by state law, the payment of rights-of-way fees shall be due on January 31<sup>st</sup> of each year following the year in which a construction permit fee and prorated rights-of-way fee was paid, and each subsequent year until (i) the facilities are removed from the right-of-way and written notice provided to the City, or (ii) the facilities are no longer owned by the permit holder and written

notice of the new owner's name, address, and phone number are provided to the City.

**Sec. 16-7. - Indemnification.**

To the extent allowed by law, the permit holder shall indemnify and hold the City harmless from all costs, expenses, and damages to persons or property arising directly or indirectly from the construction, maintenance, repair, or operation of the permit holder's facilities located within the rights-of-way found to be caused solely by the negligence of the permit holder. Expenses shall include any reasonable and necessary attorney's fees and court costs. The City shall give the permit holder prompt written notice of any claim for which the City seeks indemnification. This provision is not intended to create a cause of action or liability for the benefit of third parties, but rather this provision is solely for the benefit of the City.

**Sec. 16-8. - Conflicts with other requirements.**

In the event that a provision of this Chapter conflicts with another provision of City Code, the provision of this Chapter shall control. In the event a provision of this Chapter conflicts with a state or federal statute, the provision shall be construed to avoid such conflict, if possible. If a conflict is unavoidable, the conflicting state or federal statute shall control.”

Section 2. The Design Manual attached as Exhibit A to this Ordinance is adopted and incorporated by reference for all purposes. Exhibit A replaces any previously adopted versions of the Design Manual.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of West Columbia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

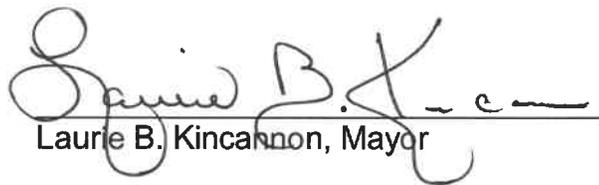
Section 4. This Ordinance shall be cumulative of all other ordinances and shall not repeal any of the provisions of said ordinances save and except those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at this time this Ordinance shall take effect and that are

inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim, or lawsuit that has been initiated or has arisen under or pursuant to any of the ordinances or sections thereof that have been specifically repealed on the date of adopting of this Ordinance shall continue to be governed by the provisions of such ordinance or section thereof and for that purpose the ordinance or section thereof shall remain in full force and effect.

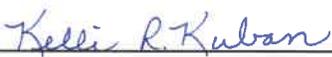
Section 5. Any person that violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day in which any violation occurs, or each occurrence of any violation, shall constitute a separate offense.

Section 6. This Ordinance, except Section 5, shall be effective immediately upon adoption. Section 5 of this ordinance shall be effect upon adoption and publication of this ordinance or a caption that summarizes the purpose of this ordinance and the penalty for violating this ordinance in every issue of the official newspaper for two days, or one issue of the newspaper if the official newspaper is a weekly paper, in accordance with Section 52.011 of the Texas Local Government Code.

PASSED, APPROVED, AND ADOPTED on this 25<sup>th</sup> day of September, 2017.

  
Laurie B. Kincannon, Mayor

ATTEST:

  
Kelli R. Kuban, City Secretary

## **EXHIBIT A - DESIGN MANUAL**

### **I. Design Requirements for all rights-of-way**

#### **A. Pole stability requirements**

Nodes, equipment cabinets, and poles shall be constructed based on an industry standard pole load analysis completed and submitted to the City indicating that the service pole or network support pole to which the network node is to be attached will safely support all proposed and existing equipment. Poles shall be constructed such that the foundation or anchoring mechanism is 1) sufficient for the type of soil in the proposed location, and 2) sufficient to withstand typical area wind loads as identified by the adopted construction codes of the City.

#### **B. Minimum placement height**

For the safety of pedestrians, network node equipment placed on new and existing poles shall be placed more than twelve (12) feet above ground level. If a network node or other equipment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

#### **C. Equipment size limitations**

All facilities shall be constructed and limited in size in accordance with Section 284.003 of the Texas Local Government Code.

#### **D. New pole locations and construction requirements**

New poles shall be located as close as possible to the outside edge of the right-of-way. New poles shall be spaced apart from existing poles by no less than 100 feet. New poles may not be located within three (3) feet of sidewalks, pedestrian paths or bicycle paths. New poles may not be located within ten (10) feet of driveways, streets, or highways.

#### **E. Installations near intersections**

A user shall not install structures within 100 feet of any intersection, as measured from the closest outside corner of the two intersecting streets.

#### **F. Installation near schools and parks**

For the safety of pedestrians, particularly small children, and to allow full line of sights near school property and Parks, a User shall not install ground equipment or new Poles within a Right-of-way inside the boundary line of school property or within 250 feet of the boundary line of school property. A User shall not install ground equipment within a Right-of-way inside the boundary line of a Park or within 250 feet of the boundary line of a Park.

#### **G. Installation of wires, conduits or cables**

Any structures that include wires, conduits, or cables may be located underground, except where the City manager identifies based on the Permit application that existing utility or other structures prevent the safe installation of the proposed structures

underground. Where wires, conduits, or cables are installed aboveground, they shall be attached to existing Poles where possible and must not hang lower than twelve (12) feet above ground level. New Poles installed to support aboveground wires, conduits, or cables shall comply with all location and construction requirements for new Poles.

#### **H. Installations in utility easements**

Structures may be installed in utility easements where i) the installation will not interfere with existing or planned utilities, and ii) the underlying property owner grants written authorization, except where installation of facilities does not require installation of any ground equipment.

#### **I. Height limitation**

A user shall ensure that the vertical height of a structure installed in a public right-of-way does not exceed the lesser of:

- i. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- ii. 55 feet above ground level.

#### **J. Electrical supply**

Users shall be responsible for obtaining any required electrical power service to the structures. Users shall not allow or install generators or back-up generators in the rights-of-way.

### **II. Designated areas**

Providers are not required to obtain land use approvals for location in City rights-of-way, except as specified in this section. In addition to the requirements of Section I of this design manual, the following requirements shall apply to network nodes, node support poles and ground equipment to be located in designated areas as described by this Section. A land use approval is in addition to any other permit required by City Code.

#### **A. Design Areas with decorative poles**

A user must obtain advance written consent from the City Council before installing structures in an area of the City that has been designated as a design area with decorative poles. The City may designate new design areas at a future date. As a condition for approval of structures in design areas with decorative poles, the City shall require concealment measures for any above ground structures. Any request for installations in designated areas must be accompanied with proposed concealment measures that are similar to an existing structure that is 1) within the area, 2) within 1000 feet of the proposed location, and 3) is not a nonconforming structure. Facilities shall comply with and observe all City, state, and federal historic preservation laws and requirements.

## **B. Parks / residential areas**

(1) *Land use approval required.* A user may not install a new pole in a public right-of-way without City council's written consent in accordance with Section II. C. if the public right-of way is in a park or is adjacent to a street or thoroughfare that is:

- i. Not more than 50 feet wide; and
- ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

(2) *Deed restrictions.* In addition, a provider installing a node support pole shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

## **C. Land Use Approval process**

The following shall constitute the process for obtaining advance written consent of City Council for installation of any structures required to obtain approval by this section.

(1) *Application.* The user shall submit an application for land use approval, in addition to any other permits required for construction of structures and use of the public rights-of-way. This permit application shall include documentation for the following:

- i. plans or design specifications compliant with specific design criteria for an area;
- ii. a specific use permit fee, provided the total fees paid by the provider for a facility do not exceed the maximum allowed construction permit fee in Chapter 30, Chapter V of the City Code;
- iii. the locations of all other buildings, structures, facilities and poles located within 1000 feet of the proposed location; and
- iv. at least one photo of the nearest pole to the proposed location.

(2) *Evaluation criteria.* Land use approval applications for facilities shall be evaluated using only the following criteria:

- i. alternative locations available within 1000 feet for the specific type of facility being requested;
- ii. concealment measures proposed for minimizing the impact of the proposed facilities on surrounding land uses; and
- iii. conditions to the permit requested by landowners within 200 feet of the proposed location.

(3) *Evaluation by staff.* Complete applications for land use approval may be reviewed, denied or approved by the city manager in accordance with this section. Approval by the city manager shall constitute advance written approval of the city council.

### **III. Administrative hearing**

Should a User desire to deviate from any of the standards set forth in this Design Manual, to appeal an interpretation by City staff of the City regulations applicable to structures located in the Rights-of-way, or allege a specific provision of this Design Manual is inconsistent with State or Federal Law as applied specifically to that User, the User may request an administrative hearing before a board of appeals. The City Council shall act as the board of appeals for a request for variance or appeal of administrative decision.

## Sample Permit Application

**Legal Name of Applicant:** \_\_\_\_\_

**Address of applicant:** \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**Emergency Contact** name and phone number (must be available at all times):

**Type of facility: (select all that apply)**

Network node     Antenna tower     Macro tower     Transport facility

Node support pole     Access Line(s)     Other \_\_\_\_\_

**Work to be completed:**     Installation     modification     replacement

**Location:** (include street, cross street and distance/direction from each street or other landmark)

**GPS coordinates:** \_\_\_\_\_

**Check all that apply to location:**

Highway right-of-way     Historic area     Design area     park

Underground area     Residential area     school

I certify that the above statements are true to the best of my knowledge. I acknowledge, on behalf of the applicant, that I am an authorized agent of the applicant and that if the above information is found to be incorrect, the applicant shall be required to modify its facilities to comply with any additional requirements of a location. The applicant shall bear all expense and liability for these modifications.

Name (printed): \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_