

ORDINANCE NO. 2017-31

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 3, BY ADDING ARTICLE 3.21, "STREETS: PUBLIC RIGHT-OF-WAY MANAGEMENT" AND ADDING SECTIONS TO PROVIDE FOR DEFINITIONS, MUNICIPAL AUTHORIZATION, REGISTRATION, COMPENSATION AND FEES; PROVIDE FOR ADMINISTRATION AND ENFORCEMENT; PROVIDE FOR CONSTRUCTION OBLIGATIONS; PERMIT REQUIRED; PROVIDE FOR CONSTRUCTION OBLIGATIONS; PERMIT REQUIRED; PROVIDE FOR CONDITIONS OF PUBLIC RIGHT-OF-WAY OCCUPANCY; PROVIDE FOR INSURANCE REQUIREMENTS AND INDEMNITY; PROVIDING FOR IMPROPERLY INSTALLED FACILITIES; PROVIDE FOR RESTORATION OF PROPERTY; PROVIDE FOR REVOCATION OR DENIAL OF PERMIT; PROVIDE FOR APPEAL FROM DENIAL OF PERMIT; PROVIDE FOR INSPECTIONS; PROVIDE FOR ABANDONED FACILITIES; PROVIDE THAT UNDERGROUND INSTALLATION PREFERRED; PROVIDE FOR COURTESY AND PROPER PERFORMANCE; PROVIDE FOR SIGNAGE; PROVIDING FOR GRAFFITI ABATEMENT; PROVIDING FOR ALTERNATE MEANS OR METHOD; WAIVER; PROVIDE FOR LEGAL ACTION; PROVIDE FOR A DESIGN MANUAL; PROVIDE FOR PROHIBITED OR RESTRICTED AREAS FOR WIRELESS FACILITIES IN THE RIGHT-OF-WAY; PROVIDE FOR PREFERRED LOCATIONS; PROVIDE FOR ORDER OF PREFERENCE REGARDING ATTACHMENT TO EXISTING FACILITIES; PROVIDE FOR PLACEMENT REQUIREMENTS; PROVIDE FOR CONCEALMENT OR CAMOUFLAGE REQUIRED WHEN POSSIBLE; PROVIDE FOR GENERAL REQUIREMENTS; PROVIDE FOR ELECTRICAL SUPPLY; PROVIDE FOR INSTALLATION AND INSPECTIONS; PROVIDE FOR REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR; PROVIDE FOR REQUIREMENTS UPON ABANDONMENT; PROVIDE FOR GENERAL PROVISIONS; PROVIDE FOR INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS; PROVIDE FOR DESIGN MANUAL UPDATES; PROVIDE FOR ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, ENACTMENT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, AND PROPER NOTICE & MEETING.

WHEREAS, the City of Bastrop finds that the right-of-way, including but not limited to the streets, sidewalks, and utilities located therein are vital to the everyday life of its citizens, visitors and businesses; and

WHEREAS, the City of Bastrop finds that there is limited available space in the right-of-way for the many competing uses of said space; and

WHEREAS, the City of Bastrop is charged with conserving the limited physical capacity of the public rights-of-way which are held in public trust by the City for the benefit of its citizens, visitors, and businesses; and

WHEREAS, the following regulations are necessary to assist in the management of facilities placed in, or over the public rights-of-way and in order to minimize the congestion, inconvenience, visual impact and other adverse effects that can occur during construction in the rights-of-way, and to manage costs to the citizens resulting from the placement of facilities within the public rights-of-way; and to govern the use and occupancy of the public rights-of-way; and

WHEREAS, Chapter 284 states “to the extent this state has delegated its fiduciary responsibility to municipalities as managers of a valuable public asset, the public right-of-way, this state is acting in its role as a landowner in balancing the needs of the public and the needs of the network providers by allowing access to the public right-of-way to place network nodes in the public right-of-way strictly within the terms of this chapter”; and

WHEREAS, Chapter 284 states “[i]t is the policy of this state, subject to state law and strictly within the requirements and limitations prescribed by this chapter, that municipalities: (1) retain the authority to manage the public right-of-way to ensure the health, safety, and welfare of the public; and (2) receive from network providers fair and reasonable compensation for use of the public right-of-way and for collocation on poles”; and

WHEREAS, orderly use and management of the rights-of-way is required for economic development; and

WHEREAS, Chapter 284 allows the City to adopt a design manual to govern the installation and construction of network nodes and new node support poles in the public rights-of-way, which include additional installation and construction details that do not conflict with Chapter 283 (“Design Manual”); and

WHEREAS, network providers are required to comply with a Design Manual if it is in place on the date that a permit application is filed; and

WHEREAS, the following regulations are necessary to preserve and protect the health, safety and welfare of the City of Bastrop, Texas and its citizens, visitors, travelers, and businesses.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS THAT:

Section 1: The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 2: Chapter 3, Article 3.21 of the City of Bastrop Code of Ordinances is hereby amended, and after such amendment, shall read in accordance with *Attachment “A”*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

Section 3: To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any

provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

Section 4: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 5: The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

Section 6: This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

Section 7: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ and APPROVED on First Reading on the 12th day of December 2017.

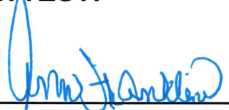
READ and ADOPTED on Second Reading on the 9th day of January 2018.

APPROVED:



Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

Bastrop Code of Ordinances

Chapter 3: Building Regulations

Article 3.21: Streets, Rights-of-Way and Public Property

Section 3: The Code of Ordinances of the City of Bastrop, Texas, is hereby amended by amending Chapter 3 titled "Business Regulations", to read as follows:

CHAPTER 3 – BUILDING REGULATIONS

ARTICLE 3.21.074 – STREETS, RIGHTS-OF-WAY AND PUBLIC PROPERTY

Sec. 3.21.074 – Authority; scope; governing law; venue.

- (a) This chapter applies to all users that place facilities in, on or over public rights-of-way; provided; however, that it does not apply to construction by the City of Bastrop.
- (b) This chapter shall be construed under and in accordance with the laws of the State of Texas and Code of Ordinances to the extent that such Code is not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in Bastrop County, Texas.

Sec. 3.21.075. - Definitions.

In this chapter the following words and phrases shall have the following meanings unless the context indicates otherwise.

AASHTO means American Association of State Highway and Transportation Officials.

Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by User in an unused or non-functioning condition for more than one-hundred-twenty (120) consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

ADA means Americans with Disabilities Act, as amended.

Alley shall have the same meaning as street or right-of-way, depending upon context.

Ancillary means secondary, supporting, or subordinate.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes means: (i) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and (ii) local amendments to those codes to the extent not inconsistent with this chapter

Applicant means a person submitting an application, proposal or notice to the City for a license, franchise, permit or notice to install facilities or equipment or work in the Right-of-Ways.

Application or *proposal* are synonymous for the purposes of this chapter. An "application" or "proposal" means the process by which the applicant submits a request and indicates a desire to be granted a license, permit or franchise for all, or a part, of the city. An "application" or "proposal" includes all written documentation, and official statements and representations, in whatever form, made by an applicant to the city. A casual inquiry by a company concerning right-of-way use will not be considered an application or proposal and submissions will not be considered an application or proposal unless they meet the requirements of this Chapter.

Assignment of an authorization or *transfer of an authorization* means any transaction or action which effectively or actually transfers the authorization or franchise or changes operational or managerial control from one (1) person or entity to another.

Authorization or *Agreement to use the Right-of-Way* means a grant of authority allowing a person to occupy any portion of a street, right-of-way, or easement owned or controlled by the City, and may be for a limited period of time or for a specific purpose.

Certificated telecommunications provider means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.

City means the City of Bastrop Texas. As used throughout, the term "city" also includes the designated agent of the city.

City Council or *Council/Franchising Authority* means the City Council for the City of Bastrop, Texas or its lawful successor.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to an existing pole, structure, device or appurtenance, as allowed by state or federal law, municipal authorization or other legal authorization.

Commission means the Public Utility Commission of Texas.

Communications network means a component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

Consumer price index means the annual revised consumer price index for all urban consumers for Texas, as published by the Federal Bureau of Labor Statistics.

Concealment or *Camouflaged* means any Wireless Facility or Pole that is covered, painted, disguised, or blended in to its environment or otherwise hidden or kept from sight such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to, hidden beneath a façade, blended with surrounding area, designed or painted to match the supporting area, or disguised with artificial tree branches.

DAS or Distributed Antenna System shall be included as a type of Network Node and have the same meaning as “Network Node.”

Decorative Pole or Decorative Streetlight means 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 nondiscriminatory municipal codes.

Decorative Traffic Signal Pole means a traffic signal pole other than standard galvanized supports, that is painted or powder coated with specially designed colors for aesthetic purposes and on which no appurtenance or attachments are allowed other than those necessary for traffic control and operations.

Direction of the City means all ordinances, laws, rules, resolutions, and regulations of the city that are not inconsistent with this article and that are now in force or may hereafter be passed and adopted.

Disaster emergency or *disaster* or *emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city, state or federal governmental authorities.

Easement may include any public easement or private easement or other compatible use, depending upon usage, whether created by dedication or by other means, for uses which include electric, gas, telecommunications, cable or public utility purposes.

Facilities means any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, underground, and overhead passageways and other equipment, structures, plants, and appurtenances and all associated physical equipment placed in, on, or under the public rights-of-

way.

FCC or Federal Communications Commission means the Federal administrative agency, or lawful successor, authorized to regulate interstate communications by radio, television, wire, satellite, and cable on a national level.

Fiber Optic or Fiber Optic Cable means a communication transmission medium that uses light to send data, high quality video and sound.

Franchise or Franchise Agreement means the initial authorization, or subsequent renewal granted by the city in order for a person to construct, operate, and maintain a system in all, or part, of the city right-of-way.

Franchise expiration means the date of expiration, or the end of the term, of a franchised user, as provided under a franchise, permit or license agreement.

Franchise fee means the user fee or charge that the city requires as payment for using the streets, rights-of-way, public ways, and easements of the city.

Gross receipts means any and all compensation which is derived by the User from the operation of the system, and which is attributable to the systems operations within the city as allowed by law.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance

Local means within the geographical boundaries of the City of Bastrop, Texas.

Local exchange telephone service has the meaning assigned by Section 51.002, Texas Utilities Code.

Mayor means the Mayor for the City of Bastrop, Texas.

Macro Tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Texas Local Government Code Section 284.103 and that supports or is capable of supporting antennas.

Micro Network Node means a network node that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, not longer than eleven (11) inches.

Municipally Owned Utility Pole means 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.

Municipal Park means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

MUTCD means Manual of Uniform Traffic Control Devices

Network Node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term: (i) includes: (a) 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 (b) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and (ii) does not include: (a) an electric generator; (b) a pole; or (c) a macro tower.

Network Provider means: (i) a wireless service provider; or (ii) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider: (a) network nodes; or (b) node support poles or any other structure that supports or is capable of supporting a network node.

Node Support Pole means a pole as defined by Chapter 284 of the Texas Local Government Code.

Park has the same meaning as “Municipal Park.”

Permit means a document issued by the City authorizing installation, removal, modification and other work for User’s equipment or facilities in accordance with the approved plans and specifications.

Pole means a service pole, municipally owned pole, node support pole, or other utility pole, and shall include network node support pole.

PROWAG means the Public Rights of Way Accessibility Guidelines.

Person means a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity who owns or controls facilities. From context within sections of this Chapter, it refers to persons using, applying or seeking to use the right-of-way.

Provider has the same meaning as “Network Provider.”

Public rights-of-way means 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 the airwaves above a public right-of-way with regard to wireless telecommunications.

Public Right-of-Way Management Ordinance means this Article 3.21, of the City of Bastrop Code of Ordinances and includes all other ordinances that comply with Chapters 283 and 284 of the Texas Local Government Code or other state laws referencing Right-of-Way Management ordinances or regulations.

Service Pole means a pole, other than a Municipally Owned Utility Pole, owned or operated by a municipality and located in a Public Right-of-Way, including: (i) a pole that supports traffic control functions; (ii) a structure for signage; (ii) a pole that supports lighting, other than a Decorative Pole; and (iv) a pole or similar structure owned or operated by a municipality and supporting only Network Nodes.

Small Cell shall be included as a type of Network Node and have the same meaning as “Network Node.”

State means the State of Texas.

Street means only the portion of the right-of-way with a specially prepared surface used for vehicular travel, which surface may be concrete, asphalt or other material commonly used to prepare a surface for vehicular travel, and is limited to the area between the inside of the curb (when there is a curb) to the inside of the opposite curb, and does not include the curb area or the area between the two parallel edges of the surface used for vehicular travel where there is no curb. A Street is generally part of, but less than, or smaller in width than the size or width of the right-of-way. A Street does not include the curb, sidewalk, or ditch, if any is present either at time of permitting or if added later. Streets shall be understood to be synonymous with alleys and the definition includes alleys.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

Thoroughfare shall have the same meaning as “Street.”

TMUTCD means Texas Manual of Uniform Traffic Control Devices.

Traffic Signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport Facility means each transmission path physically within 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.

U.S.C. means United States Code.

User means a person or organization that owns, places or uses facilities occupying the whole or a part of a public street or right-of-way, depending on the context. User does not refer

to City unless specified.

Utility Pole means a pole that provides: (i) electric distribution with a voltage rating of not more than 34.5 kilovolts; or (ii) services of a telecommunications provider, as defined by section 51.002 of the Texas Utilities Code.

Visibility triangle or sight distance triangle means the triangular area adjacent to the intersection of any two or more public streets, public alleys or driveways within which no obstruction may be placed which would block the sight lines for vehicular, pedestrian or bicyclist traffic, as defined in the current edition of the AASHTO Policy on Geometric Design of Highways and Streets. The visibility triangle shall not contain any visual or physical impediments or obstructions to the vertical view up to seven feet in height above the adjacent roadway.

Voice service means 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).

Wireless Service means 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 Service Provider means a person that provides Wireless Service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code chapter 284.

Section 3.21.076 Municipal Parks

Municipal Parks designated for recreation and covered by this Ordinance include all parks and trails designated by the City Council in the Code of Ordinances including but not limited to:

- (a) Bark Park;
- (b) Bob Bryant Park;
- (c) Ferry Park;
- (d) Fisherman’s Park;
- (e) Hunter’s Crossing Park;
- (f) Jewell Hodges Park;
- (g) Kerr Community Park;
- (h) Mayfest Park;
- (i) June Hill Pape Riverwalk Trail; and
- (j) El Camino Real Paddling Trail.

Section 3.21.077 Review of Applications

- (a) Review of Applications. The City shall review applications for network nodes, node support poles and transport facilities in light of their conformity with applicable law and

City Code and shall issue such permits on nondiscriminatory terms and conditions subject to the following requirements:

- (1) Within 30 days of receiving an application for a network node or node support pole, or 10 days for a transport facility, the City shall determine and notify the Applicant whether the application is complete; or if incomplete, the City must specifically identify the missing information in such notification. There shall be no fee charged for completion and resubmittal of an application.
 - (2) The City shall make its final decision to approve or deny a complete application no later than (i) 21 days after receipt of a complete application for a transport facility, (ii) 60 days after receipt of a complete application for a network node; and (iii) 150 days after receipt of a completed application for a new node support pole.
 - (3) The City shall advise the Applicant in writing of its final decision, and, if denied, the basis for that denial, including specific provisions of City Code or applicable law on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the application. The Applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 90 days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.
 - (4) An applicant seeking to collocate network nodes may, at the Applicant's discretion, file a consolidated application and receive permits for up to 30 network nodes. Provided however, the City's denial of any node within a single application shall not affect other nodes submitted in the same application. The City shall grant permits for any and all nodes in a single application that it does not deny, subject to the requirements of this Section.
- (B) Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the City shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

Sections 3.21.078-3.21.082 – Reserved.

ARTICLE II. RIGHT-OF-WAY REQUIREMENTS

Sec. 3.21.083. - Municipal authorization required; Registration; Compensation and fees.

- (a) This article does not constitute or create authority to place, reconstruct, or alter facilities in, on, or over the public rights-of-way, and said authority must be obtained by separate instrument in accordance with this section or by operation of other laws.
- (b) Authorization Required

- (1) Municipal Authorization or Agreement shall be required, except when clearly preempted by state law. Any person with a current, unexpired consent, franchise, agreement or other authorization from the city (grant) to use the public rights-of-way that is in effect at the time this ordinance takes effect shall continue to operate under and comply with that grant until the grant expires or until it is terminated by mutual agreement of the city and the person, or is terminated as otherwise provided for in law.

(c) Registration Required

- (1) In order for the city to know which persons own facilities in the public rights-of-way within the city, each such person who owns facilities shall register with the city and provide the following information at a minimum:
 - (i) person's name,
 - (ii) the current name, address, and telephone number(s) of a contact employed by and with decision-making authority for the person and who is available twenty-four (24) hours per day,
 - (iii) furnish the city with a city planning department street map marked in such a manner as to evidence which streets the person has placed facilities. The information may be required to be furnished digitally,
 - (iv) insurance information as required by Section 3.21.087 "Insurance;" and
 - (v) any required bonds.
- (2) Registration shall be updated annually in accordance with section 3.21.083 "Municipal Authorization required; Registration; Compensation and fees."
- (3) Registration shall be a prerequisite to issuance of a construction permit. Each person shall update and keep current his/her registration with the city at all times.
- (4) Any person who does not maintain registration requirements with the City may not receive notices or updates, including any notices regarding abandonment of right-of-way.
- (5) Failure to maintain registration requirements. In addition to all other legal penalties, including criminal penalties, failure to register or to maintain and update registration information may result in removal of facilities.
- (6) Registration requirements may be met by fulfilling franchise requirements addressing the topics of this section.

(d) Compensation and Fees

- (1) Municipal right-of-way use shall be compensated as required by the state constitution, state law, municipal authorization, franchise, license or other agreement.
- (2) The City may structure due dates on payments in such a manner so as to be administratively efficient.
- (3) Application fees, as allowed by state law, for work or installations in the right-of-way shall be the fees set by the City Council. Such fees may be set by ordinance, resolution, in the budget or by any other lawful means.

Failure to pay application fees, or failure of any payment to properly process shall result in the denial or withdrawal of a permit.

Sec. 3.21.084. - Administration and enforcement.

- (a) The City Secretary shall administer and enforce compliance with this article.
- (b) A person shall report information related to the use of the public rights-of-way that the City Secretary requires in the form and manner reasonably prescribed by the City Council.

Sec. 3.21.085. - Construction obligations; permit required.

- (a) Any person seeking to place facilities on, in or over the public rights-of-way shall first file an application for a building permit with the city and shall abide by the terms and provisions of this article pertaining to use of the public rights-of-way.
- (b) A person is subject to reasonable police power regulation of the city to manage its public rights-of-way in connection with the construction, expansion, reconstruction, maintenance, repair of facilities or other work in the public rights-of-way, pursuant to the city's rights as a custodian of public property, based upon the city's historic rights under state and federal laws. Such regulations include, but are not limited to, the following:
 - (1) At the city's request, a person shall furnish the city accurate and complete information relating to the construction, reconstruction, removal, maintenance, and repair of facilities performed by the person in the public rights-of-way.
 - (2) A person shall be required to place certain facilities within the public rights-of-way underground absent a compelling demonstration by the person that, in any specific instance, this requirement is not reasonable, feasible, or equally applicable to other similar users of the public rights-of-way.

- (3) A person shall perform excavations and other construction in the public rights-of-way in accordance with all applicable city requirements, including the engineering division detailed standards for public right-of-way construction (detailed standards), as may be revised from time to time in accordance with the city's police powers, and the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the public right-of-way. The city may waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information provided to the city by the person. All excavations and other construction in the public rights-of-way shall be conducted so as to minimize interference with the use of public and private property and all facilities placed underground shall be locatable with above ground instruments. A person shall follow all reasonable construction directions given by the city in order to minimize any such interference.
- (4) A person lawfully authorized to place facilities in the public rights-of-way must obtain a permit, as reasonably required by applicable city codes, prior to any excavation, construction, installation, expansion, repair, removal, relocation, or maintenance of the person's facilities. A construction permit is not required for routine maintenance so long as the work does not require excavation of the public rights-of-way or does not block traffic lanes or sidewalks; however, any construction standards in the detailed standards shall remain applicable regardless of whether or not a permit is required. A permit is not required when so provided by state law, but in such cases the provisions regarding required notice apply. An approved lane, sidewalk or trail closure plan is required if a traffic lane, sidewalk or trail will be closed due to right-of-way work, regardless of whether or not a permit is required. Once a permit is issued, person shall give to the city a minimum of 48 hours' notice (which could be at the time of the issuance of the permit) prior to undertaking any of the above listed activities on its facilities in, on, or under the public rights-of-way. The failure of the person to request and obtain a permit from the city prior to performing any of the above listed activities in, on, or over any public right-of-way, except in an emergency as provided for in subsection (11) below, will subject the person to a stop-work order from the city and enforcement action pursuant to this Code. If the person fails to act upon any permit within thirty (30) calendar days of issuance, the permit shall become invalid, and the person will be required to obtain another permit, unless extended for good cause by the city.
- (5) When a person completes construction, expansion, reconstruction, removal, excavation or other work, the person shall promptly restore the public rights-of-way in accordance with applicable city requirements. A person shall replace and properly relay and repair the surface, base, irrigation system, and landscape treatment of any public rights-of-way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the person's facilities within ten (10) calendar days after completion of the work in

accordance with existing standards of the city in effect at the time of the work, unless extended by the city for good cause.

- (6) Upon failure of a person to perform any such repair or replacement work, and five days after written notice has been given by the city to the person, and in the event repairs have not been initiated during such five-day (5) period, the city may repair such portion of the public rights-of-way as may have been disturbed by the person, its contractors, or agents. Upon receipt of an invoice from the city, the person will reimburse the city in accordance with the detailed standards within thirty (30) calendar days from the date of the city invoice.
- (7) Should the city reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system, or landscape treatment requires additional restoration work to meet standards at the time of the excavation of the city, a person shall perform such additional restoration work to the satisfaction of the city, subject to all city remedies as provided herein.
- (8) Notwithstanding the foregoing in subsection (7) above, if the city determines that the failure of a person to properly repair or restore the public rights-of-way constitutes a safety hazard to the public, the city may undertake emergency repairs and restoration efforts, after emergency notice has been provided, to the extent reasonable under the circumstances and the person failed to respond within the reasonable time specified by the city. A person shall promptly reimburse the city for all costs incurred by the city within thirty (30) calendar days from the date of the city invoice.
- (9) A person shall furnish the city with the application for the construction permits, construction plans and maps showing the location and proposed routing of new construction or reconstruction at least ten business days unless otherwise extended by the City before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the public rights-of-way by the city. A person may not begin construction until the location of new facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the city, which approval will not be unreasonably withheld or delayed, taking due consideration of the surrounding area and alternative locations for the facilities and routing.
- (10) If the Mayor declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of facilities, a person shall remove or abate the person's facilities by the deadline provided in the Mayor's request. The person and the city shall cooperate to the extent possible to assure continuity of service. If the person, after notice, fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the person, without paying compensation to the person and without the city incurring liability for damages.

- (11) Except in the case of customer service interruptions and imminent harm to property or person (emergency conditions), a person may not excavate the pavement of a street or public rights-of-way without first complying with city requirements. The Mayor shall be notified as promptly as possible regarding work performed under such emergency conditions, and the person shall comply with the requirements of city standards for the restoration of the public rights-of-way.
- (12) On an annual basis, no later than January 31 of each year, the user shall provide updates to the department or personnel designated by the Mayor showing any new facilities from the previous year in the format required by the City.
- (13) The City may require reasonable bonding requirements of a person, as are required of other entities that place facilities in the public rights-of-way. The Mayor may waive or reduce the bonding requirements in a nondiscriminatory, competitively neutral manner, taking into consideration both that the person has furnished the city with reasonable documentation to evidence adequate financial resources substantially greater than the bonding requirements, and has demonstrated in prior right-of-way construction activity, prompt resolution of any claims and substantial compliance with all required applicable building codes and ordinances.
- (14) In determining whether any requirement under this section is unreasonable or unfeasible, the Mayor shall consider, among other things, whether the requirement would subject the person or persons to an unreasonable increase in risk or service interruption, or to an unreasonable increase in liability for accidents, or to an unreasonable delay in construction or in availability of its services, or to any other unreasonable technical or economic burden or result in discriminatory treatment by a person.
- (15) For installation of any proposed pole applicant shall provide engineered drawings, geotechnical drawings, geotechnical study or studies, and evidence of ADA and PROWAG compliance, sectional detail showing depth of anchor, scaled dimensional drawings of the proposed pole, as well as any other proposed equipment associated with the proposed installation, and shall indicate spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances.
- (16) If requested by City, all applications shall include a current before and a proposed after street view image. The after-image needs to include any proposed poles and all proposed attachments, and any associated or ancillary equipment, whether attached or standalone. Once work is done or the installation is complete, photographs accurately depicting the location of the installation or the work shall be submitted to the City. This requirement may be waived for underground installation.

- (17) If the project is within the State right-of-way or railroad right-of-way, the applicant must provide evidence of a permit or permission from the State or railroad.
- (18) If a City pole or poles or light structure or structures will be used or will be in the area of the proposed construction, the pole or poles or light structure or structures will be identified. No electric meter shall be mounted on a City pole or light structure unless the City grants written permission.
- (19) Provider / Applicant shall use a maximum two-hundred-forty (240) voltage when connecting to any City infrastructure and provide key to meter upon installation.
- (20) All plans shall reflect that no facilities to be installed will obstruct an existing or planned sidewalk, trail, walkway, bicycle lane or lane of vehicular traffic.
- (21) If requested by City, Engineering plans shall be provided with a maximum scale of one (1) inch equals forty (40) feet.
- (22) If requested by City, all plans shall include detail of the location of all right-of-way and utility easements which applicant plans to use.
- (23) If requested by City, all plans shall include detail of all existing city utilities in relationship to applicant's proposed route.
- (24) All plans shall include detail of what applicant proposes to install, such as network nodes, poles, pipes, size, number of inner-ducts, valves, or other facilities.
- (25) All plans shall include detail of plans to remove and replace asphalt or concrete in streets.
- (26) All plans shall include drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, network nodes, micro-network nodes, or other facilities, including depth located in public right-of-way.
- (27) All plans shall include details of handhole and/or manhole applicant plans to use or access.
- (28) All plans shall include complete legend of drawings submitted by applicant.
- (29) If paper copies are required, five (5) sets of engineering plans shall be submitted with permit application.
- (30) The application shall include the name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will

be available at all times during construction. Such information shall be required prior to the commencement of any work.

- (31) The application shall include 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, and the dates and times work will occur, all of which (methods, dates, times, and other applicable information) are subject to approval of the Mayor.
- (32) The application shall include a statement that the requirements of Sections 3.21.083 "Municipal Authorization required; Registration; Compensation and fees" and 3.21.087 "Insurance requirements" are met.
- (33) The applications shall include a traffic control plan designed to the latest edition of the TMUTCD, which shall specify the traffic control measures to be provided, and shall be required any time work will require traffic lane closures, bicycle lane closures, trail closures, or sidewalk closures, regardless of whether a permit is required. Said traffic control plan must be approved by the Mayor. If the traffic control plan is not approved, no lane closure is allowed.
- (34) The application may require a SWPPP, and a trench safety plan based on the proposed scope of work regardless of whether or not a permit is required.
- (35) The application shall show that no projecting attachments are less than eight (8) feet above the ground, if not projecting toward the street. If an attachment is projecting toward the street, the attachment shall be installed no less than sixteen (16) feet above the ground.
- (36) Any proposed work that involves the installation of facilities that will utilize radio frequencies shall not cause harmful interference with City public safety radio system, traffic signal light system, City traffic observation video cameras, or other City communications systems or components. The right-of-way user shall provide evidence that the proposed installation will be compatible with said City systems and will not cause any harmful interference with the City public safety radio system, traffic signal light system or other City communications systems or components. No installation shall be allowed to be installed or to remain in the right-of-way that causes any such interference.
- (37) The plans shall demonstrate that all federal and state laws and city ordinances will be obeyed, and that all sections of this Chapter, including Article II "Design Manual" will be complied with as applicable.
- (38) Information signs which shall be a minimum size of eighteen inches (18") by twenty-four inches (24") stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur forty-eight (48) hours prior

to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An informational sign will be posted on public right-of-way five hundred (500) feet before the construction location commences and each five hundred (500) feet thereafter, unless other posting arrangements are approved or required by the Mayor. Additionally, if the work to be permitted will require restricting access to private residences, or will affect adjacent and nearby residences (single family or multi-family) because of noise, odors, dust or other activity which may affect the peaceful enjoyment of residential properties, then User shall, not later than seventy-two (72) hours prior to the commencement of construction activity, notify all affected residents by letter or door hanger. Such notice shall be in a format approved by the Mayor.

- (39) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades and existing utility locate markers must be in place before work begins.
- (40) Permittee shall be responsible for storm water management erosion control that complies with city, state and federal guidelines. 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. Upon request permittee may be required to furnish documentation submitted or received from federal or state government.
- (41) Permittee or contractor or subcontractor will notify the Mayor immediately of any damage to other utilities, either city or privately owned.
- (42) Permittees are responsible for the workmanship and any damages by contractors or subcontractors. A responsible representative of the permittee will be available to City staff at all times during construction.
- (43) Installation of facilities must not interfere with city utilities, in particular gravity dependent facilities.
- (44) New facilities must be installed to a depth approved by the Mayor.
- (45) All directional boring shall have locator place bore marks and depths while bore is in progress. The boring method and bore pit locations shall be identified prior to the commencement of boring operations. Locator shall place mark at each stem with paint dot and depth at least every other stem.
- (46) Permittee will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the Mayor, permittee shall verify locations by pot holing, hand digging or other method approved by the Mayor prior to any excavation or boring.

- (47) Placement of all manholes and/or hand holes must be approved in advance by Mayor. Handholes or manholes will not be located in sidewalks, unless approved by the Mayor.
- (48) Locate flags shall not be removed from a location while facilities are being constructed.
- (49) Construction which requires pumping of water or mud shall be contained in accordance with City of Bastrop ordinances and federal and state law and the directives of the Mayor.
- (50) All facilities installed in the right-of-way shall be in colors that blend with the surroundings, or if on a Service Pole or Municipally owned Pole shall match the color and finish of the pole, and must be approved by the City.
- (51) All facilities installed in the right-of-way shall be capable of being identified through a GIS shape file or other means as acceptable to the Mayor. Said identification shall be provided at the time of application and shall be visible on the facilities when installed and must follow all applicable City ordinances.
- (52) Above ground wires shall be located on only one side of the right-of-way unless approved by the Mayor.
- (53) The right-of-way user or contractor must obtain any needed permits for electrical work and provide engineered drawings for conduit size, circuit size, calculations for Amperage, or any other required information. Provider shall be responsible for obtaining any required electrical power service to any installation. Any such electrical supply must be separately metered and must match City infrastructure voltage.
- (54) Right-of-way users shall complete construction as expeditiously as possible and lane closures or work that inconveniences the traveling public shall be minimized. Lane closures shall not be outside the hours of 9:00 A.M. to 3:30 P.M. on weekdays or last longer than four (4) hours, unless a different period of time is shown on the permit and approved by the City.
- (55) Right-of-way work shall be completed in the amount of time shown on the permit; but if no completion time is shown on the permit the work shall be complete in not more than thirty (30) calendar days.
- (56) All right-of-way work and facilities installed shall be done in a good workman like manner; shall meet all applicable codes; shall be maintained and kept in good repair and shall be aesthetically pleasing.

- (57) All efforts shall be made to avoid or minimize negative visual impact to the surrounding area and to enhance the safety requirement for vehicles and pedestrians, particularly in areas where children or other vulnerable members of the population may be located.
 - (58) Installations which require ancillary ground equipment with a footprint of twenty-five (25) square feet or more shall be spaced at least three-hundred (300) feet apart.
 - (59) All location/route markers setting out location of utilities shall be flush with the ground. Above ground location/route markers shall not be allowed.
 - (60) The plans shall demonstrate that all federal and state laws and city ordinances will be obeyed, and that all sections of this Chapter, including Article II “Design Manual” will be complied with as applicable. Construction in right-of-way adjacent to a school shall be required to follow all state law requirements, including the requirements in the Educational Code regarding work on school grounds, including but not limited to chapters 21 and 22, as applicable.
 - (61) All requirements for installation continue, as applicable, for as long as facilities remain in the right-of-way.
- (c) All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The City Secretary shall be provided access to the work and to such further information as he or she may reasonably require to ensure compliance with the permit.
 - (d) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Mayor or City Secretary at all times when construction or installation work is occurring.
 - (e) All construction or installation 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 periods, the permittee may request an extension from the Mayor. The Mayor will use best efforts to approve or disapprove a request for permit time extension as soon as possible.
 - (f) A copy of any permit or approval issued by federal or state authorities for work in federal or state or railroad right-of-way located in the City of Bastrop shall be required, if requested by the Mayor.
 - (g) A request for a permit must be submitted at least ten (10) working days before the proposed commencement of work in the request, unless waived by the Mayor.

- (h) Requests for permits will be approved or disapproved by the Mayor within a reasonable time upon receiving all the necessary information. The Mayor will use best efforts to approve or disapprove a request for permit as soon as possible.
- (i) The Mayor or the applicant can request a pre-construction meeting with the permittee and their construction contractor.
- (j) Permit applications are required for construction on new, replacement or upgrading of the company's facilities in the right-of-way either aerial or underground.
- (k) The failure of a person to request and obtain a permit from the City prior to performing any of the above listed activities in, or over any right-of-way, except in an emergency, will subject the person to a stop-work order from the City and enforcement action pursuant to the City's Code of Ordinances.
- (l) If the person receiving the permit fails to act upon the permit within thirty (30) days of issuance, the permit shall become invalid, and the person will be required to obtain another permit.
- (m) If the Applicant or User proposes any installation, maintenance, repair, replacement or any other work in the Right-of-Way that would result in a change as to the ADA or PROWAG requirements, the Applicant or User proposing such change is responsible for all costs, labor and other actions needed to maintain ADA and PROWAG compliance. If any Right-of-Way work will affect ADA or PROWAG requirements, a permit shall be required, even if not otherwise required. Applicant must certify that the Right-of-Way will be ADA compliant when the installation, maintenance, repair, replacement or other work is complete. If any action by Applicant will affect ADA or PROWAG requirements, Applicant or User must show how such work will be ADA or PROWAG compliant.
- (n) If State or Federal law provides that a permit is not required for certain work to be done, then a person proposing to do such work shall be required to provide notice two (2) working days prior to performing such work.

Sec. 3.21.086. - Conditions of public rights-of-way occupancy.

- (a) In the exercise of governmental functions, the City has first priority over all other uses of the public rights-of-way. The City reserves the right to lay sewer, gas, water, and other pipe lines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in aerial facilities in, across, along, over, or under a public street, alley, or public rights-of-way occupied by a person, and to change the curb, sidewalks, or the grade of streets or rights-of-way.
- (b) The City shall assign the location in or over the public rights-of-way among competing users of the public rights-of-way with due consideration to the public health and safety considerations of each user type, and to the extent the City can demonstrate that there

is limited space available for additional users, may limit new users, as allowed under state or federal law.

- (c) If the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or public rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized user of the public rights-of-way. If the City closes or abandons a public right-of-way that contains a portion of a User's facilities, the City shall close or abandon such public right-of-way subject to the rights of the User, provided the User has a current registration.
- (d) If the City gives written notice, a Right-of-Way User shall, at its own expense, temporarily or permanently, remove, relocate, change, or alter the position of user's facilities that are in the public rights-of-way within one-hundred-twenty (120) days, unless a different schedule is approved by the Mayor. For projects expected by the City to take longer than 120 days to remove, change or relocate, the City will confer with the User before determining the alterations to be required and the timing thereof. The City shall give notice whenever the City has determined that removal, relocation, change, or alteration is reasonably necessary for the construction, operation, repair, maintenance, or installation of a city governmental public improvement in the public rights-of-way. This section shall not be construed to prevent a Right-of-Way User's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with the person.
- (e) If the User fails to relocate facilities in the time allowed by the City in this section, the User may be subject to liability to the City for such delay and as set forth in this Code, now or hereafter enacted. Additionally, the User may be denied any new permits until the relocation is complete.
- (f) Notwithstanding anything in subsection (d) above, the Mayor and a person may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.
- (g) Any right-of-way user trimming trees shall be required to remove trimmings within 24 hours; provided, however, if any trimmings affect right-of-way use, said trimmings must be removed immediately. If said trimmings are not removed, the City may remove the trimmings or have them removed, and upon receipt of a bill from the city, the person shall promptly reimburse the City for all costs incurred within thirty (30) calendar days. Users shall not be responsible for tree trimming or removal, except as to the work required to construct, maintain, or restore utility service.
- (h) Users shall temporarily remove, raise, or lower its aerial facilities to permit the moving of houses or other bulky structures, if the City gives written notice of not less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. The person may

require prepayment or prior posting of a bond from the party requesting the temporary move.

- (i) To the extent applicable, directions of the City shall be followed, including but not limited to "Standard Details" and "Standards for Right-of-Way Easement Construction" as those requirements currently exist or as may be amended, updated or supplemented from time to time.
- (j) To the extent applicable, all of the requirements or conditions for construction and occupancy of the right-of-way shall continue during the entire time that the installed facilities remain in the Right-of-Way.

Sec. 3.21.087. - Insurance requirements.

(a) Insurance required.

- (1) A person shall obtain and maintain insurance in the amounts reasonably prescribed by the City with an insurance company licensed to do business in the State of Texas reasonably acceptable to the city. As a condition of registration and prior to construction, an applicant must provide, and users must maintain, acceptable proof of liability insurance in the total amount of six million dollars (\$6,000,000); one million dollars (\$1,000,000) primary plus five million dollars (\$5,000,000) umbrella or other provisions as acceptable to the City Secretary. The City reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the City Secretary determines that changes in statutory law, court decisions, or the claims history of the industry or the person require adjustment of the coverage.
- (2) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards and Worker's Compensation as required by law.
- (3) 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.
- (4) For purposes of this section, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the person in those instances where the state does not issue such letters, which provide the same coverage as required herein. However, for the City to accept such letters, the person must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the city, based on financial information requested by and furnished to the city.

- (b) A person shall furnish, at no cost to the city, copies of certificates of insurance evidencing the coverage required by this section to the city, unless the City requires another form of legally binding proof of insurance. If the City requests a deletion, revision or modification, a person shall exercise reasonable efforts to pay for and to accomplish the change.
- (c) An insurance certificate shall contain the following required provisions:
 - (1) Name the City and its officers, employees, board members, and elected representatives as additional named insureds for all applicable coverage;
 - (2) Provide for 30 days' notice to the City for cancellation, nonrenewal, or material change; and
 - (3) Provide that notice of claims shall be provided to the Mayor by certified mail.
- (d) All persons utilizing the right-of-way shall file and maintain proof of insurance with the Mayor. An insurance certificate obtained in compliance with this section is subject to City approval. The City may require the certificate to be changed to reflect changing liability limits. A person shall immediately advise the city attorney of actual or potential litigation that may develop which may affect an existing carrier's obligation to defend and indemnify.
- (e) An insurer has no right of recovery against the city. The required insurance policies shall protect the person and the city. The insurance shall be primary coverage for losses covered by the policies.
- (f) The policy clause "other insurance" shall not apply to the City if the City is an insured under the policy.
- (g) Person shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by a person must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

Sec. 3.21.088. - Indemnity.

- (a) To the extent authorized by law, each person placing facilities in the public rights-of-way shall agree to, promptly defend, indemnify, and hold the City harmless from and against all damages, costs, losses, or expenses (i) for the repair, replacement, or restoration of city's property, equipment, materials, structures and facilities which are damaged, destroyed, or found to be defective as a result of the person's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any person (including, but not limited to the person, its agents, officers, employees, and subcontractors, city's

agents, officers, and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to the agents, officers, and employees of the person, person's subcontractors and city, and third parties), arising out of, incident to, concerning, or resulting from the negligent or willful act or omissions of the person, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

- (b) This indemnity provision shall not apply to any liability resulting from the negligence or willful misconduct of the city, its officers, employees, agents, contractors, or subcontractors.
- (c) The provisions of this indemnity are solely for the benefit of the City and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Sec. 3.21.089. - Improperly installed facilities.

- (a) Any person doing work in the City right-of-way shall properly install, repair, upgrade and maintain facilities.
- (b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
 - (1) The installation, repairs, upgrade or maintenance endangers people or property;
 - (2) The facilities do not meet the applicable City codes and ordinances;
 - (3) The facilities are not capable of being located using standard practices;
 - (4) Underground facilities that are installed less than twenty-four (24) inches in depth;
 - (5) Facilities, or construction in regard to placement of said facilities, that remains incomplete or hazardous after construction work is finished or time for completion has passed, including but not limited to holes in paved areas or ground, handholes or manholes that are improperly sealed, and broken equipment or any other incomplete or hazardous condition.
 - (6) The facilities are not located in the proper place at the time of construction in accordance with the approved permit or directions provided by the City Secretary;
 - (7) The facilities were not properly and timely relocated in accordance with the requirements of this Chapter; or

- (8) The facilities are unsightly, dangerous or in violation of any City adopted Codes.
- (c) Facilities will be considered improperly installed if said facilities cause any interference with City public safety radio system, traffic signal light system, City traffic observation video cameras or other communications components.

Sec. 3.21.090. - Restoration of property.

- (a) Users of the right-of-way shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the Mayor.
- (b) Restoration must be to the reasonable satisfaction of the Mayor and the property owner. The restoration shall include, but not be limited to:
 - (1) Replacing all ground cover with the type of ground cover damaged during work or better either by sodding or seeding, as directed by Mayor;
 - (2) Installation of all manholes and handholes, as required;
 - (3) Backfilling and compacting all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by the Mayor;
 - (4) Leveling of all trenches and backhoe lines;
 - (5) Restoration of excavation site to City specifications; and
 - (6) Restoration of all landscaping, ground cover, and sprinkler systems.
- (c) All locate flags and markings shall be removed during the clean-up progress by the permittee or contractor at the completion of the work.
- (d) Restoration must be made in a timely manner as specified by approved City schedules and to the satisfaction of Mayor. If restoration is not satisfactory and performed in a timely manner all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any permits not approved until all restoration is complete.
- (e) If a person fails to restore property as set out in this section, the City shall give five (5) days written notice to the person at the address shown on the permit. If the person does not initiate repairs during the five-day period, or fails to complete the repairs within thirty (30) days, thereafter the City may elect to repair such portion of the right-of-way as may have been disturbed by the person, its contractors, or agents at the cost

of the person performing the right-of-way work. These time periods may be shortened or waived in cases of a threat to public health, safety or welfare. Upon receipt of an invoice from the City, the person will reimburse the City for the costs so incurred no later than thirty (30) calendar days from the date of the City invoice.

- (f) Should the City reasonably determine, within two (2) years from the date of the completion of the repair work, that any of the said restoration work failed to meet the existing standards of the City, the person shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies.
- (g) Notwithstanding any of the above sections, if the City determines that the failure of the person to properly repair or restore the right-of-way constitutes a threat to the public health, safety or welfare, the City may undertake emergency repairs and restoration efforts. The City may attempt to provide emergency notice to the person responsible, but is not obligated to do so. The right-of-way user shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.

Sec. 3.21.091. - Revocation or denial of permit.

- (a) If any of the provisions of this Article are not followed, a permit may be revoked by the Mayor. If a person has not followed the terms and conditions of this article in work done pursuant to a prior permit, new permits may be denied or additional terms required.
- (b) If a permit is denied upon initial submission for incompleteness or for an issue which is capable of correction, the applicant may complete or correct the application and resubmit the application. Applications not resubmitted within thirty-one (31) calendar days shall be considered withdrawn.

Sec. 3.21.092. - Appeal from denial or revocation of permit.

- (a) An Applicant may appeal a denial or revocation of permit to the City Secretary. Appeal shall be filed with the city secretary within five (5) calendar days from the date of the decision being appealed.
- (b) A denial or revocation will be upheld unless a person can show that there is an error and that the person was following all of the requirements of this Article and all right-of-way engineering requirements.

Sec. 3.21.093. Inspections

The City may perform inspections of any right-of-way work, including installations, maintenance, modifications or any other right-of-way work, whether such work is subject to permit requirements or allowed to be done without a permit. The City may perform visual inspections of any right-of-way work located in the right-of-way as the City deems appropriate without notice. If the inspection requires physical contact with right-of-way work, the City may

provide the right-of-way user with notice prior to said inspection. Right-of-way user may have a representative present during such inspection. In the event of an emergency, the City may, but is not required to, notify the right-of-way user prior to the inspection. The City may take any needed action to remediate an emergency. The City shall notify the right-of-way user as soon as practical after said remediation.

Sec. 3.21.094. - Abandoned Facilities.

(a) Duty to Remove.

A person that has placed facilities in the right-of-way shall remove said facilities and related equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. If removal of facilities would cause damage, particularly in regard to underground facilities, this requirement may be waived by the City.

(b) Time for Removal

- (1) The City may notify the person that said facilities must be removed immediately when necessary to ensure public health, safety, and welfare.
- (2) If immediate removal is not required, the removal must be completed within the time set forth in the written Notice to Remove from the City and if no time is set out, then within ninety (90) days for the facilities and related equipment being Abandoned.
- (3) If the facilities are not removed after the ninety (90) day notice to remove, the City may remove the facilities thirty (30) days after notice of a final finding of abandonment.
- (4) When a person removes, or Abandons permanent structures in the Right-of-Way, the person shall notify the City Secretary in writing of such removal or Abandonment and shall file with the City Secretary the location and description of each facility and ground equipment removed or Abandoned.
- (5) The City Secretary may require the person to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.
- (6) If in the judgment of the City, removal of underground facilities would cause damage, this requirement may be waived

(c) Deemed Abandoned

Facilities may be deemed abandoned as set out in this Chapter. Additionally, facilities may be deemed abandoned if:

- (1) A person does not relocate facilities as set out in 3.21.086 "Conditions of public right-of-way occupancy."

- (2) A person does not correct or abate improperly installed facilities as set out in 3.21.089 “Improperly Installed Facilities.”
- (3) A person fails to maintain the registration requirements set forth in Section 3.21.083 “Municipal Authorization required; Registration; Compensation and fees.”
- (4) A person utilizing the right-of-way cannot be found or contacted.
- (5) A person utilizing the right-of-way fails to pay the required compensation.
- (6) A person utilizing the right-of-way fails to comply with the requirements of this Chapter after being given due notice of any deficiencies. The notice requirement shall only apply to persons who have maintained the required Registration as set out in 3.21.083 “Municipal Authorization; Registration; Compensation and fees” and are capable of being contacted.

Sec. 3.21.095. - Underground installation preferred.

- (a) The underground placement of Facilities is encouraged.
- (b) Facilities shall be installed underground where existing utilities are already underground.
- (c) Underground conduits and ducts shall be installed in the Public Rights-Of-Way between the adjacent property line and curb line unless otherwise directed by the City.
- (d) Conduits and ducts shall be installed parallel with the curb line and cross the Public Rights-of-Way perpendicular to the Public Rights-Of-Way centerline unless otherwise directed by the City.
- (e) Ducts and conduits shall be installed by trenchless excavation or directional boring whenever commercially economical and practical. Trenchless excavation shall be used to place Facilities under paved Public Rights-Of-Way centerline unless otherwise directed by the City.

Sec. 3.21.096. - Courtesy and Proper Performance.

User shall make citizen satisfaction a priority in using the Right-of-Way. User shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its facilities and related ground equipment in the Right-of-Way. User’s employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Secretary, User is not interacting in a positive and polite manner with citizens, the City Secretary may request User to take all remedial steps to conform to these standards.

Sec. 3.21.097. - Signage.

- (a) User shall post and maintain legible identification showing its name, location identifying information, and emergency telephone number in an area on a cabinet of a facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the Mayor.
- (b) Except as required by Laws or by the Utility Pole owner, User shall not post any other signage or advertising on the facilities or equipment.

Sec. 3.21.098. - Graffiti Abatement.

As soon as practical, but not later than fourteen (14) calendar days from the date User receives notice thereof, User shall remove all graffiti on any of its facilities and related ground equipment located in the Right of Way. The foregoing shall not relieve the User from complying with any City graffiti or visual blight ordinance or regulation.

Sec. 3.21.099. Alternate means or method; waiver.

- (a) A person may file a request with the City Council to use alternate means or methods in right-of-way construction or maintenance. In determining whether any requirement under this section may be waived or if an alternate method or means may be used, the City Council may consider all reasonable factors, including but not limited to:
 - (1) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in risk;
 - (2) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase of service interruption;
 - (3) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in potential for liability for accidents;
 - (4) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in construction;
 - (5) whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in availability of services; or
 - (6) to any other unreasonable technical or economic burden.
- (b) There shall be no right to receive permission to use an alternative means or method and denial by the City Council shall be final.

Sec. 3.21.100. - Legal action.

The City may institute all appropriate legal action to prohibit any person from knowingly using the public rights-of-way unless person has complied with the terms of this article.

Reserved- Section 3.21.101 through 3.21.171.

PART III. – DESIGN MANUAL

Sec. 3.21.172. – Purpose.

This Design Manual is for maintenance of, siting and criteria for the installation of Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment and applies to any and all maintenance, siting, installations, collocations, or other placement of, in, over or under the Public Rights-of-Way of Network Nodes, Node Support Poles, Micro Network Nodes, Distributed Antenna System(s), microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284 of the Local Government Code or installed pursuant to an Agreement to use the Right-of-Way or Authorization or installed as may otherwise be allowed by state law. The City enacts these design requirements and guidelines in order to meet its fiduciary duty to its citizens, and to give assistance and guidance to Network Providers in the safe, aesthetically pleasing, efficient, and timely installation of facilities.

Sec 3.21.173. - Prohibited or Restricted Areas for Wireless Facilities in the Right-of-Way.

(a) Prohibited: Municipal Parks and Residential Areas.

A Network Provider may not install a new Node Support Pole in the following locations:

- (1) in a Municipal Park, unless permission is given by the City Council; or
- (2) in right-of-way that:
 - (a) contains a street that is equal to or less than fifty (50) feet wide at average width, measuring vehicular traveled portion only as set out in the definition of “Street” and the measurement does not include intersection and refers only to the main traveled portion measured at mid-block or mid-point between intersections; and
 - (b) is adjacent to developed or undeveloped single-family residential lots, other multifamily residential area or land that is designated for residential use by zoning or deed restrictions.

(b) Restricted: Historic District

(1) A Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in an area of the City designated as a Historic District, as defined under Article 14.03 of the City Code.

(2) Concealment Required

(a) As a condition for approval of Network Nodes or Node Support Poles in a Historic District, Concealment measures are required for Network Nodes or Node Support Poles or related ground equipment or any portion of the Nodes, poles, or equipment, including but not limited to the possibility of concealing the nodes as lighting fixtures.

(b) Said Concealment measures shall minimize the impact to the aesthetics in a Historic District/

(3) Network Provider shall comply with and observe all applicable City, State, and federal laws and requirements, including historic preservation laws and requirements.

(d) Collocation will not be allowed on decorative traffic signal poles or decorative poles/ decorative streetlight poles in any area of the City.

(e) Historic Landmarks.

Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, State or Federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit.

(f) Designated Areas

(1) The City Council may designate an area as a Historic District at any time.

(2) Historic District

Any area that meets the definition of Historic District under Article 14.03 of the City Code shall be considered to be a Historic District. An area does not need to be designated by this Ordinance to be considered to be within a Historic District. Such designation does not require a zoning case. Any area declared to be a Historic District by City Council or any area that meets the definition of Historic District shall be subject to all requirements and protections for a Historic District.

(g) Defense

- (1) It shall be a defense to any of the above requirements prohibiting or restricting location of facilities in a Park, Residential area, Historic District, or collocating on a decorative pole that the Network Provider obtained advance written approval or waiver of restrictions from the City before collocating new Network Nodes or installing new Node Support Poles or ground equipment in a prohibited or restricted location. In any prosecution for such prohibition or violation of any restrictions, it shall be an affirmative defense to have an Agreement with the City that approved such location or waived the applicable restriction.
- (2) If an Agreement is granted to locate in a prohibited location, the Network Provider shall be required, as a condition for approval of new Network Nodes or new Node Support Poles in a prohibited location, to install reasonable design or concealment measures for the new Network Nodes or new Node Support Poles. Therefore, any request for installations in a prohibited location, must be accompanied with concealment measures in the permit applications.
- (3) The City requests that a Network Provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in all locations of the City. In particular, the City would like the nodes to be concealed as lighting fixtures, when feasible.

(h) Private Deed Restrictions and Property Owners Association Rules.

A Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

- (i) Each Permit Application shall designate if the requested area for installation is within a Residential area, a Municipal Park, or a Historic District.
- (ji) No interference with traffic.

Nodes will not be allowed to be installed in the area for vehicular or pedestrian travel or in a manner that will interfere with vehicle traffic or pedestrian travel.

Sec. 3.21.174. - Preferred Location.

The following locations, in the order listed, are the preferred locations for installation of poles or wireless facilities:

- (1) Industrial areas;

- (2) Areas designated by the City as a Highway Rights-of-Way Area, provided that such areas are not adjacent to a Municipal Park, Residential Area, Historic District, or any prohibited area set out above.
- (3) Retail and Commercial areas, provided such areas are not in a prohibited location, such as a Historic District.

Sec. 3.21.175. - Order of Preference regarding attachment to facilities.

- (a) The following shall be the order of preference for the attachment of Network Nodes to existing facilities, beginning with most preferred location and ending with least preferred location. In addition to the preference set out by the City, existing facilities may be owned by third parties and may not be available for attachment of facilities or may require authorization from other parties.
- (b) Order of preference from most preferable to least preferable.
 - (1) Most preferable - Existing telephone or electrical lines between existing utility poles. Micro Network Nodes may only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.
 - (2) Preferable - Existing Utility Poles (electric poles or telephones poles), or non-decorative utility owned street light poles shall be the preferred support facility for Network Nodes and related ground equipment.
 - (3) Less preferable - New Node Support Poles. Though adding new poles is not desirable, collocation on existing Municipal Poles shall generally be less preferred over new poles. New poles shall not be installed in prohibited areas and shall only be allowed in restricted areas to the extent all requirements are followed or a waiver is granted. Any new poles shall be camouflaged to the extent allowed by law as set out in this Chapter.
 - (4) Least preferable - Municipal Service Poles, which shall require an Agreement with the City. Municipal Service Poles includes (in order of preference):
 - (a) Non-decorative City street lights. Micro Network Nodes shall:
 - (i) Be encased in a separate conduit than the street light cables;
 - (ii) Have an electric power connection separate than the street lights
 - (iii) Have a separate access point than the street light structure;

- (iv) Be attached in a City approved manner; and
 - (v) Follow all requirements in the Agreement with the City and as required by the City.
 - (b) Non-decorative Traffic signal structures – Network Nodes may only be attached to traffic signal structures when such installation will not interfere with the integrity of the facility and will not interfere with the safety of the public. Any installation of Network Node facilities on any traffic signal structures shall:
 - (i) Be encased in a separate conduit than the traffic light electronics.
 - (ii) Have a separate electric power connection than the traffic signal structure;
 - (iii) Have a separate access point than the traffic signal structure
 - (iv) Not be placed on traffic signal mast arms;
 - (v) Not be placed in an area where the view of traffic from a traffic video camera could be obstructed;
 - (vi) Be placed on the side of the signal pole that does not face the direction of traffic for which the traffic signal faces;
 - (vii) Be attached in a City approved manner; and
 - (viii) Follow all requirements in the Agreement with the City and as required by the City
 - (c) Other municipal service pole use is discouraged and the use of decorative street light poles or decorative traffic signal structures is prohibited.
 - (c) Ground equipment should be minimal and the least intrusive.
- Ground equipment must not block existing or future pedestrian travel ways or be within visibility angles.

Sec. 3.21.176. - Placement Requirements.

- (a) A Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

- (1) obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
 - (2) obstruct the legal use of a public right-of-way by other utility providers;
 - (3) violate nondiscriminatory applicable codes;
 - (4) violate or conflict with the municipality's publicly disclosed public right-of-way management ordinance or this Design Manual.
 - (5) violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) or the Public Rights of Way Accessibility Guidelines (PROWAG).
- (b) Network Node facilities shall be installed in accordance with section 3.21.083 and all other applicable requirements of this Chapter.
 - (c) Right-of-Way.

Sec. 3.21.177. - Design, Concealment or Camouflage Required.

- (a) Reasonable Design, Concealment, or Camouflage is required by the City when Wireless facilities are allowed, as set forth above, in Historic Districts.
- (b) It is the City's preference that all new node support poles be concealed or camouflaged, except those located in an area zoned or predominantly industrial.
- (c) Companies shall submit their proposal for camouflage with the permit application.

Sec. 3.21.178. - General Requirements.

- (a) Confirmation of non-interference with City Safety Communication Networks.
 - (1) The Network Provider shall provide analysis that the proposed network node shall not cause any harmful interference with City public safety radio system, traffic signal light system, or other City safety communications components.
 - (2) It shall be the ongoing responsibility of the Network Provider to evaluate, prior to making application for permit and while Network Nodes remain in the Right-of-Way, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any harmful interference.
 - (3) Network Nodes shall not be allowed on City's public safety radio infrastructure.
- (b) Size Limits. Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but

not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, maximum pole height, with each application and with each request for a permit for each location.

- (i) Micro Network Node dimensions – Maximum Length: 24 inches (24"); Maximum Width fifteen (15) inches (15"); Maximum Height twelve (12) inches (12").
- (ii) Network Node: three feet (3') in height, two feet (2') in width and one foot (1') in depth.
- (iii) Pole Height Not higher than ten feet (10') above the average height of utility poles within 500 linear feet of a new pole or fifty-five feet (55'), whichever is least.
- (iv) Ground equipment, separate from the pole, may not be higher than three feet six inches (3'6") from grade, wider than three feet six inches (3'6").
- (v) When not otherwise set out in this ordinance or in a Municipal Authorization, the size limits shall not be greater than size limits set forth for structures or equipment in Chapter 284 of the Local Government Code, where applicable. These size limits shall not be exceeded unless specific City permission has been granted through a franchise or license or specific authorization is claimed through a different state statute.
- (vi) Size limits may be reduced when necessary for public health, safety or welfare.

If Chapter 284 of the Texas Local Government Code is found to be repealed, struck down, pre-empted or invalid, in whole or in part, then the standards required by the City, either in the Municipal Authorization or an amendment to the Municipal Authorization or the directives of the City or this Article shall apply.

(c) Concealment.

The Network Node facilities shall be concealed or enclosed in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

(d) New Node Support Pole Spacing and Placement.

- (1) New node support poles shall be at a minimum three-hundred (300) feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area, unless a lesser distance is approved by the Mayor.
- (2) New poles shall be placed a minimum of five (5) feet from a street curb or travel lane and eighteen (18) inches from a sidewalk to minimize the potential of being struck by a motor vehicle or bicycle.

- (3) New poles shall be placed on breakaway anchor bolt supports or bases to minimize the impact severity to motor vehicles that strike the pole.

- (e) Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment already occupies a footprint of twenty-five (25) square feet or more.

- (f) Allowed Colors.

Colors shall meet the requirements set out in Section 3.21.085 (b)(50) .

- (g) If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the Mayor and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall remove the Network Node facilities, Node Support Poles or ground equipment.

- (h) If Chapter 284 of the Texas Local Government Code is found to be repealed, struck down, pre-empted or invalid, in whole or in part, then the standards required by the City, either in the Municipal Authorization or an amendment to the Municipal Authorization or the directives of the City or this Article shall apply.

- (i) Ground Equipment.

- (1) Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within two-hundred-fifty 250 feet of a street corner or a street intersection.

- (2) Ground Equipment near Municipal Parks. For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within two-hundred-fifty (250) feet of the boundary line of a Park, unless approved by the Mayor.

- (3) In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider

installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of twenty-five (25) square feet or more.

- (4) Ground equipment shall not be installed in such a manner as to interfere with a visibility triangle.
- (5) Ground equipment must not block existing or future pedestrian travel ways, sidewalks, or trails

(j) Municipal Service Poles

- (1) An Agreement shall be required for all installations on Municipal Service Poles and all such installations shall be in accordance with the Agreement.
- (2) Installations on all Service Poles shall have an industry standard individual pole load analysis, including wind loads, completed by a Professional Engineer registered in Texas and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load. All applications for permits to collocate or attach to any Service Pole must have included in its permit application a completed industry standard pole load analysis performed and sealed by an engineer licensed by the State of Texas that indicates that the Service Pole to which the network node is to be attached will safely support the load. Such analysis shall also address safety of pole and attachments in regard to wind loads, collision with motor vehicle, supporting weight of the Node, interference with City communications systems, and all other pertinent information.
- (3) Height of attachments:
 - (i) All attachments on all Service Poles shall be at least eight 8 feet above grade; and
 - (ii) If an attachment 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; and
 - (ii) Meet all applicable requirements of State law and this Chapter.
- (4) Installations on any Traffic signal structure must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the agreement with the City. Installation of Network Node facilities on any traffic signal structures shall:
 - (i) Be encased in a separate conduit than the traffic signal light electronics;

- (ii) Be placed on the side of the signal pole that does not face the direction of traffic that the signal is controlling.
 - (iii) Have a separate electric power connection from the traffic signal structure;
 - (iv) Be placed a minimum of two feet (2') from any signal system device;
 - (v) Have a separate access point than the traffic signal structure;
 - (vi) Be attached in a City approved manner;
 - (vii) Follow all requirements in the Agreement with the City and all other requirements by City; and
 - (viii) Meet all other requirements of State law and this Chapter;
- (5) Installations on Street signage structures: Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the Agreement with the City. Installation of Network Node facilities on any street signage structures that has electrics shall:
- (i) Be encased in a separate conduit than any City signage electronics;
 - (ii) Have a separate electric power connection than the signage structure;
 - (iii) Have a separate access point than the signage structure;
 - (iv) Be attached in a City approved manner;
 - (v) Follow all requirements in the Agreement with the City and all other requirements of the City; and
 - (vi) Meet all other requirements of State law and this Chapter.

(k) Certification

- (1) Application: Network Node provider will furnish a certification that the proposed Network Node will be placed into active commercial service by or for a Network Provider not later than the 60th day after the date the construction and final testing of the Network Node is completed.
- (2) Within sixty (60) days after construction is complete, Network Node provider will furnish a certification that the proposed Network Node is in active commercial service by or for a Network Provider and will furnish such certification with its Registration as required by section 3.21.083, annually thereafter.

Sec. 3.21.179. - Electrical Supply.

- (a) Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.
- (b) Network Provider shall not allow or install generators or back-up generators in the Right-of-Way.

Sec. 3.21.180. - Installation and Inspections.

- (a) Installation
 - (1) Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the Mayor, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the Mayor.
 - (2) All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with any Agreement with the City as applicable and all applicable laws, ordinances, codes, rules and regulations of the City, County, State, and the United States ("Laws").

- (b) Standard Pole Load Analysis on Attachments to a Service Pole

All applications for permits to collocate and or attach to any Service Pole must have included in its permit application a completed industry standard pole load analysis indicating that the Service Pole to which the network node is to be attached will safely support the load.

- (c) Inspections

The Mayor may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the Mayor deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the Mayor

shall provide written notice to the Network Provider within five (5) business days of the planned inspection. Network Provider may have a representative present during such inspection.

Sec. 3.21.181. - Requirements in Regard to Removal, Replacement, Maintenance and Repair.

(a) Removal or Relocation by Network Provider

- (1) If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the Mayor in writing not less than ten (10) business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.
- (2) The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.
- (3) Any abandoned or obsolete Micro Network Node, Network Node, Node Support Pole or other related equipment shall be removed in strict accordance with this Chapter and all other applicable ordinances and state law.
- (4) Network Provider shall remove Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment when such facilities are Abandoned regardless of whether or not notice is received from the City. Such removal must occur within ninety (90) days from the date of Abandonment, unless additional time is allowed by the City. The Network Provider shall provide advance written notice of such removal which must be received by the City at least two (2) working days prior to the removal, except in case of emergency. Such notice shall specify the location and description of each Micro Network Node, Network Node, Node Support Pole or related ground equipment or other facilities to be removed.
- (5) The Mayor may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of any City facilities and the Right-of-Way.

(b) Removal or Relocation Required for City Project

- (1) A Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner in accordance with section 3.21.086 "Conditions of Public Rights-of-Way Occupancy" subsection (D) and without cost to the municipality managing the public right-of-way

- (2) Pursuant to state law and as a condition for occupancy of the right-of-way, the Network Provider may be required by the City to remove or relocate any of its facilities, including but not limited to, its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way, and Network Provider shall, at the Mayor's direction, remove or relocate the same at Network Provider's sole cost and expense, whenever the Mayor reasonably determines that the relocation or removal is needed as set out in Section 3.21.086 "Conditions of Public Right-of-Way Occupancy."
- (c) If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the Mayor within ninety (90) days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider, and Network Provider shall, within thirty (30) days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.
- (d) Removal Required by City for Safety or Due to Imminent Danger; or for Improper Permitting or Licensing
 - (1) Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the Mayor if the Mayor reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the Mayor reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.
 - (2) The Mayor shall provide ninety (90) days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

- (3) Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within thirty (30) days of receiving the invoice from the City.

(e) Restoration

Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within ten (10) calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Mayor.

(f) Network Provider Responsible

Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

Sec. 3.21.182. - Requirements Upon Abandonment.

- (a) Upon Abandonment or upon being deemed abandoned, Network Provider has a duty to promptly remove its facilities from the right-of-way. Notice from the City is not a prerequisite to the requirement for removal.
- (b) If the Network Provider does not promptly remove its facilities removal procedures as set out in section 3.21.094 "Abandoned Facilities" may be followed.

Sec. 3.21.183. - General Provisions.

- (a) All requirements of this Chapter shall be met as applicable.
- (b) No City Allocation of Funds for Removal and Storage

All costs of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article, shall be the responsibility of the Network Provider and the City is not required to expend funds to meet the requirements of the Network Providers. Any funds expended by the City due to an emergency or failure of a Person to abide by these requirements shall be reimbursed to the City.

(c) Ownership.

No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the Mayor prior to any work in the Right-of-Way.

(d) Size Limits.

Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Texas Local Government Code Chapter 284 with each application and request for a permit for each location; provided, however, where possible Providers are encouraged to reduce the size of installed facilities.

(e) If Chapter 284 of the Local Government Code is found to be repealed, struck down, preempted or invalid, in whole or in part, then the standards required by the City, either in the Municipal Authorization or an amendment to the Municipal Authorization or the directives of the City or this Article shall apply.

Sec. 3.21.184. - Indemnity, Bonding and Security Deposits.

Indemnity, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with state law.

Sec. 3.21.185. - Design Manual – Updates.

Placement or Modification of Micro Network Node, Network Node, Node Support Pole and related ground equipment shall comply with the City's Design Manual at the time the Permit for Installation or Modification, and as said Design Manual may be approved or amended from time to time.

Reserved 3.21.185 through 3.21.220.

PART IV – EXEMPTION PROCESS

Sec. 3.21.221. Administrative Hearing – Request for Exemption.

(a) Should any person utilizing or proposing to utilize the right-of-way desire to request an exemption from a specific standard set forth in this Chapter, and section 3.21.099 "Alternate means or method; waiver" is not applicable, the person may request an

Administrative Hearing before a Board of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption under this Chapter.

- (b) Any person requesting an exemption from any of the requirements shall file such a request with the Mayor within fifteen (15) calendar days from the time that need for an exemption arose. If an exemption is requested prior to construction, the request should be submitted prior to filing for a permit.
- (c) An exemption shall only be granted if:
 - (1) Such exemption is not contrary to the public interest;
 - (2) Such exemption will not increase the burden on the right-of-way or other right-of-way users;
 - (3) Such exemption shall not increase the right-of-way management or administrative duties for city staff;
 - (4) The exemption shall fit within the spirit of this Article; and
 - (5) The application of the ordinance in the particular circumstances would create an unnecessary hardship.
- (d) It shall take an affirmative vote of four (4) members of the Board to grant the exemption.