

**CITY OF LAVON, TEXAS**  
**ORDINANCE NO. 2017-09-03**

**Right-of-Way Management Ordinance Amendment**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAVON TEXAS AMENDING ORDINANCE NO. 2002-01-02, "RIGHT-OF-WAY MANAGEMENT ORDINANCE" TO ADD "ARTICLE IIIA", TO BE ENTITLED "USE OF PUBLIC RIGHTS-OF-WAY BY NETWORK PROVIDERS" ADOPTING PROVISIONS REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS IN ACCORDANCE WITH CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; ADOPTING AND REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; AMENDING THE CITY'S COMPREHENSIVE FEE SCHEDULE TO ADOPT APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REQUIREMENTS RELATIVE TO REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR; PROVIDING FOR INSTALLATION AND INSPECTIONS; PROVIDING GENERAL PROVISIONS; PROVIDING REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lavon, Texas ("City") recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

**WHEREAS**, Chapter 284 of the Texas Local Government Code ("Chapter 284") became effective on September 1, 2017 and allows certain wireless network providers to install in the City's public rights-of-way their wireless facilities, described and defined in Section 284.002 of Chapter 284 as "Micro Network Nodes", "Network Nodes", and "Node Support Poles;" and

**WHEREAS**, as expressly allowed by Section 284.108 of Chapter 284 and pursuant to its police power authority reserved in Sec. 284.301 of Chapter 284, the City desires to adopt a *Design Manual for the Installation of Network Nodes and Node Support Poles* (“the Design Manual”) in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

**WHEREAS**, the City Council desires to regulate the installation of Network Nodes and Network Support Poles pursuant to Chapter 284 in a way that is fair, reasonable and nondiscriminatory; and

**WHEREAS**, the City Council having reviewed the regulations contained herein has determined that the adoption of this ordinance serves the public health, safety and welfare.

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

**SECTION 1: FINDINGS INCORPORATED.** The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 2: AMENDMENTS.** The Right-of-Way Management Ordinance as adopted by the City Council by Ordinance No. 2002-01-02 is hereby amended by the addition of Article IIIA, entitled “Use of Public Right-of-Way by Network Providers”, to read in its entirety as follows:

#### **DIVISION IIIA. USE OF PUBLIC RIGHT-OF-WAY BY NETWORK PROVIDERS**

##### **Sec. 2-1. Purpose.**

The purpose of this Division is to set forth the standards for the City’s regulation of the installation of Network Nodes and Network Support Poles pursuant to V.T.C.A., Local Government Code ch. 284 in a way that is fair, reasonable and nondiscriminatory in accordance with ch. 284 while managing the public right-of-way and balancing the interests of Network Providers with the health, safety, and welfare of the public and while acting on behalf of the state of Texas as the fiduciary trustee of public property under ch. 284. This Division shall be construed in accordance with ch. 284, to the extent no in conflict with the Constitution and laws of the United States or of the State of Texas.

##### **Sec. 2-2. Adoption of Design Manual.**

The City hereby adopts the *City of Lavon Design Manual for the Installation of Network Nodes and Node Support Poles* (“the Design Manual”) to V.T.C.A. Local Government Code Chapter 284. A copy of the Design Manual is available in the City administrator's office. The City

administrator, with approval of the Mayor, is authorized to administratively amend the Design Manual as necessary.

### **Sec. 2-3. Definitions.**

For the purpose of this Division, the definitions found in the Design Manual are hereby incorporated into this Division and shall apply unless the context clearly indicates or requires a different meaning. The definitions contained within the City's Right-of-Way Management Ordinance(s) currently in effect, and as amended, (the "General Definitions") shall be applicable to this Division to the extent that there is no conflict between the General Definitions and the definitions contained herein or the definitions in the Design Manual. In the event of a conflict between the definitions in this Division, the definitions in the Design Manual and the General Definitions, the definitions contained in this Division and the Design Manual shall control. The following definitions are specifically applicable to this Division:

*Applicable Codes* means:

- (A) the City adopted uniform or international building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes as adopted by the City to the extent not inconsistent with Chapter 284.

*City* means the City of Lavon, Texas or its lawful successor.

*City Council* means the municipal governing body of the City of Lavon, Texas.

*City administrator* means the City administrator of the City of Lavon or his/her designee.

*City Owned Utility Pole* means a utility pole owned or operated by a City owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

*Chapter 284* means Texas Local Government Code, Chapter 284, as amended.

*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 a pole.

*Decorative pole* 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 City ordinances and Applicable Codes.

*Design District* means an area that is zoned, or otherwise designated by City's ordinances and Applicable Codes, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

*Easement* means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

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

*Highway right-of-way* means public 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 (municipal or county), statute, code, rule, regulation, order, or ordinance.

*Local* means within the geographical boundaries of the City.

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

*Macro Tower* means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 of Chapter 284 and that supports or is capable of supporting antennas.

*Mayor* means the mayor of the City of Luvon, Texas, or designee.

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

*Municipal park* means an area that is zoned or otherwise designated by the City or City ordinance as a public park for the purpose of recreational activity.

*Network node* means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower

*Network provider* means:

- (A) a wireless service provider; or
- (B) 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:

- (i) Network Nodes; or
- (ii) Node Support Poles or any other structure that supports or is capable of supporting a network node

*Node support pole* means a pole installed by a network provider for the primary purpose of supporting a Network Node.

*Permit* means a written authorization for the use of the public right-of-way or collocation on a service pole required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

*Pole* means a service pole, City-owned utility pole, node support pole, or utility pole.

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

*Provider* has the same meaning as “Network Provider.”

*Public right-of-way* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

*Right-of-Way Management Ordinance* means the right-of-way ordinance codified in the City of Lavon Code of Ordinances as Article 3.12, “Right of Way Management”, sections 3.12.001 through 3.12.100, as may be amended from time to time in the future, including amendments adopting additional sections.

*Service pole* means a pole, other than a City Owned Utility Pole, owned or operated by the City and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by the City and supporting only network nodes.

*Street* means only the paved portion of the Public Right-of-Way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire Public Right-of-Way, while a

Public Right-of-Way may include sidewalks and utility easements. A “Street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

*Traffic Signal* means any City owned or operated 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 a public right-of-way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for network nodes.

*User* means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or Public Right-of-Way, depending on the context.

*Utility pole* means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

*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.

#### **Sec. 2-4. Applicability; Use and Occupancy of Public Right-of-Way.**

**A. Applicability.** The terms of this Division shall apply to all Network Providers and Network Providers’ facilities used, in whole or part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of annexation or the date the City provides the company written notice, whichever date occurs later, within the public right of way, including without limitation the highway right-of-way as defined herein. The terms of the City’s Right-of-Way Management Ordinance (defined herein) apply to Network Providers to the extent that the terms of that ordinance do not conflict with the terms of this Division, the Design Manual, or with Chapter 284. In the event of a conflict, the terms of this Division, the Design Manual and Chapter 284 shall control.

**B. Use and Occupancy of Public Right of Way.** Pursuant to this Division and subject to Chapter 284, the Design Manual, applicable City ordinances, and Applicable Codes, a Network Provider has the nonexclusive right to use and occupy the public right-of-way in the City only for the purpose of:

(A) Conducting activities related to transport facilities for network nodes in the public right of way;

- (B) The activities of a network provider collocating network nodes in the public right of way; or
- (C) Installing, constructing, operating, modifying, replacing, and maintaining node support poles in a public right-of-way.

**Sec. 2-5. Compliance with Design Manual and Applicable Codes.**

All wireless network providers shall comply with the terms of all applicable Law, including without limitation, this Division 7, “Use of Public Right-of-Way By Network Providers”, the Right-of-Way Management Ordinance, other applicable City ordinances, Applicable Codes, and the City’s Design Manual.

**Sec. 2-6. General Construction and Maintenance Requirements.**

**A. Standards.** A network provider shall construct and maintain Network Nodes and Network Support Poles described in Chapter 284 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 City’s Design Manual; or
- (5) Violate the federal Americans with Disabilities Act of 1990 (ADA).

**B. Size of Network Nodes and Equipment Cabinets.** All Network Providers shall comply with the size limitations of network nodes and equipment cabinets as set forth in the Design Manual and Chapter 284.

**Sec. 2-7. Permit Applications.**

**A. Permit Required.** Except as otherwise provided in Chapter 284, a Network Provider shall obtain one or more permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City Public Right-of-Way.

**B. Consolidated Permit Application.** A network provider requesting to install or collocate multiple Network Nodes inside the municipal limits of the City may file a consolidated permit application with the City for not more than thirty (30) Network Nodes, and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.

**C. Required Information.** The Network Provider shall provide the following information in its permit applications:

- (1) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City’s Design Manual and Applicable Codes;

- (2) Any additional information reasonably related to the Network Provider's use of the public rights-of-way to ensure compliance with the Design Manual, this Division and Chapter 284;
- (3) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission;
- (4) Certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not later than the sixtieth (60<sup>th</sup>) day after the date of construction and final testing of each Network Node is completed; and
- (5) A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage or other coverage the City deems acceptable.
- (6) An email address of the contact person for Network Provider with whom City may communicate regarding the application.

**D. Exemption from Permit.** As provided in Section 284.157 of Chapter 284, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:

- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) Replacing or upgrading a Network Node or Network Pole with a node or pole that is
  - (a) substantially similar (as set forth in Subsection "F", "Substantially Similar Node or Pole" below), in size or smaller; and
  - (b) that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
  - (c) the replacement or upgrade does not include replacement of an existing node support pole; and
  - (d) The replacement or upgrade does not defeat existing concealment elements of a node support pole; or
- (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code.
- (4) Notwithstanding the provisions of Subsection (D) of this Section:
  - (a) the network provider or its contractors shall notify the City at least twenty-four (24) hours in advance of work described in Subsection (D); and
  - (b) the network provider may replace or upgrade a pole only with the approval of the pole's owner; and
  - (c) the size limitations may not in any event exceed the parameters prescribed by Section 284.003 of Chapter 284 without the City's approval in accordance with Section 284.109 of Chapter 284, with the City acting on behalf of the State of Texas as fiduciary trustee of public property.

**E. Substantially Similar Node or Pole.** A network node or pole is considered to be "substantially similar" if:



- (1) the new or upgraded network node, including the antenna or other equipment element, will not be more than ten (10) percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by Section 284.003 of Chapter 284; and
- (2) the new or upgraded pole will not be more than ten (10) percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by Section 284.103 of Chapter 284.
- (3) The determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the network node or node support pole as approved by the City.

**G. Height and Distance Limitations – Exception.** Subject to Subchapter D of Chapter 284, a network provider may only construct, modify, or maintain in a public right-of-way a network node or node support pole that exceeds the height or distance limitations prescribed by Chapter 284 if the City approves the construction, modification, or maintenance subject to all applicable zoning or land use regulations, the Design Manual and Applicable Codes.

## **Sec. 2-8. Installation in Historic Districts or Design Districts**

**A. Installation.** A network provider shall obtain advance written consent from the City Council before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a Historic District or as a Design District if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements specified in the City’s Design Manual and as set forth in this Section. The City has the authority and discretion to designate new Historic Districts and Design Districts any time, including subsequent to the adoption of this Division.

**B. Concealment - Submission of Proposal for Camouflage.** Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105. All new node support poles shall be camouflaged as much as possible, except those in Locations that are zoned for predominantly industrial uses. Network Providers shall submit its proposal for camouflage with its permit application.

**C. Enclosure.** The Network Node facilities shall be concealed or enclosed as much as reasonably possible 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, in strict accordance with this Division and other applicable ordinances, except to the extent not consistent with Chapter 284.

**D. Color.** Colors in Historic Districts and Design Districts must be approved by the City administrator from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made by Network Provider for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other

installations of telecommunication providers in immediately adjacent areas that do violate this section or the Design Manual.

**Sec. 2-9. Installation in Municipal Parks and Residential Areas**

**A. Installation.** A Network Provider shall not install a new Node Support Pole in a public right-of-way without the City Council's discretionary written consent, which consent shall be nondiscriminatory, if the public right-of way:

- (1) Is in a municipal park; or
- (2) Is adjacent to a street or thoroughfare that is:
  - i. Not more than 50 feet wide; and
  - ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- (3) In addition to compliance with the requirements of the preceding Section, a Network Provider installing a Network Node or Node Support Pole in a public right-of way identified in this Section shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.
- (4) The Network Provider shall be further required to comply with guidelines set out in the City's Design Manual, applicable City Ordinances and Applicable Codes.

**B. Safety.** In order to minimize negative visual impact to the surrounding area, and 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 administrator may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within three hundred (300) feet already occupies a footprint of twenty-five (25) square feet or more.

**Sec. 2-10. City Review Process.**

**A. Determination of Application Completeness.** Upon receipt of a permit application, the City shall make a determination regarding whether the permit application is complete and shall notify the applicant of that determination as follows:

- (1) *For Network Nodes and Node Support Poles:* Notice shall be provided no later than thirty (30) days after the date the City received the permit application.
- (2) *For a Transport Facility:* Notice shall be provided no later than ten (10) days after the date the City received the permit application.

If City determines that an application is not complete, City shall identify the missing information necessary to complete the review of the application.

**B. Approval or Denial of Application:** The City shall approve or deny a completed application as follows:

- (1) *For Network Nodes:* No later than sixty (60) days after the date the City receives a complete application.

- (2) *For Network Support Poles:* No later than One hundred and fifty (150) days after the date the City receives a complete application.
- (3) *For Transport Facilities:* No later than twenty-one (21) days after the City receives a complete application.

- C. **Basis for Denial of Application:** If an application is denied by the City, it shall document the basis for the denial, including the specific Applicable Code provisions or other City ordinance, rule, regulation, or other law on which the denial is based and notify the applicant. The documentation for the denial will be sent by electronic mail to the person designated by applicant on or before the deadline for denial of the application as set forth above.
- D. **Deemed Approved.** An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied before the applicable date for such approval or denial.
- E. **Resubmission of Denied Application.** The applicant may cure the deficiencies identified in the denial notice from City without paying an additional application fee, other than a fee for actual costs incurred by the City, if within thirty (30) days from the date the City denies the completed application, the applicant cures the deficiencies identified in the denial documentation and resubmits the revised completed application.
- F. **Reconsideration of Denied Application.** After providing notice of denial in accordance with this Section, the City shall approve or deny the revised completed application no later than ninety (90) days after the City receives a revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.
- G. **Nondiscriminatory Review.** Each completed application shall be processed by the City on a nondiscriminatory basis.

#### **Sec. 2-11. Time of Installation.**

A network provider shall begin installation for which a permit is granted not later than six (6) months after final approval of the application and shall diligently pursue installation to completion. Notwithstanding the foregoing, the City administrator may in his/her sole discretion grant reasonable extensions of time for completion or grant reasonable extensions as requested by the Network Provider.

#### **Sec. 2-12. Applicable Fees and Rental Rates to the City.**

- A. As compensation for the Network Provider's use and occupancy of the City public rights-of-way, the Network Provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, public right-of-way permit, use, construction, street cut or inspection fee; or other public right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.

**B. Network Nodes:**

- (1) Application Fee: The application fee shall be \$100.00 for each Network Node for up to but not more than thirty (30) Network Nodes.
- (2) Annual Public Right-of-Way Rate Fee: The annual public right-of-way rate shall be \$250.00 per Network Node installed in the public right-of-way.
- (3) Public Right-of-Way Rate Adjustment: As provided in Section 284.054 of Chapter 284, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The City shall provide written notice to each Network Provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60<sup>th</sup> day following such written notice.

**C. Node Support Poles:**

- (1) The application fee for each Network Support Pole shall be \$100.00.

**D. Transfer Facilities:**

- (1) The application fee for each Transfer Facility shall be \$100.00.
- (2) The annual Transfer Facility rental rate shall be \$28.00 monthly for each Network Node site located in a public right-of-way. However, no rate is required if the Network Provider is already paying the City an amount equal to or greater than the amount of other City public right-of-way fees for access lines under Chapter 283 of Chapter 284 or cable franchise fees under Chapter 66 of the Texas Utility Code.

**E. Micro Network Nodes:**

- (1) No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.

**F. Collocation of Network Nodes on Service Poles:**

- (1) Subject to execution of the City's Service Pole Agreement, the collocation of Network Nodes on City service poles shall be allowed be at a rate of \$20.00 per year per service pole or the maximum rate allowed by law.

**G. City-Owned Utility Poles:**

- (1) Annual Rate. A Network Provider shall pay an annual pole attachment rate for the collocation of a Network Node supported by or installed on a City-owned utility pole based upon the pole attachment rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis.

**H. In-Kind Services Prohibited.** The City may not seek or accept in-kind services unrelated to the installation or collocation for which a permit is sought, including in-kind contributions such

as reserving fiber, conduit, or pole space for the City, in lieu of or as additional payment or consideration from any Network Provider, as a condition for issuing a permit required under Chapter 284 for use of the public right-of-way.

### **Sec. 2-13. Indemnity.**

As provided in Section 284.302 of Chapter 284, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider accessing a public right of way under Chapter 284. The City and the Network Provider, as applicable, shall promptly notify each other in writing of any known claim or demand against the other related to or arising out of the Network Provider's use of the public right of way under Chapter 284. shall promptly notify the Network Provider After such notice, the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law. Further, the indemnification provided by Chapter 284 is solely for the benefit of the City and the Network Provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

### **Sec. 2-14. Requirements in Regard to Removal, Replacement, Maintenance and Repair**

#### **A. Removal or Relocation by Network Provider.**

- (1) Notice. In the event of removal or relocation of a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment by a Network Provider at its own discretion, Network Provider shall notify the City administrator 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) No Refunds. No refunds of any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed shall be due from City to Network Provider.

#### **B. Removal or Relocation Required for City Project.**

- (1) In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, 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 and without cost to the City of Lavon as manager of the public right-of-way.

- (2) City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Public Right-of-Way for City construction projects as allowed by Law, including the common-law without compensation.
- (3) Network Provider shall, at the City administrator's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, when the City administrator reasonably determines that the relocation or removal is required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the use of the public for travel and transportation.
- (4) 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 City administrator 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.
- (5) 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.

**C. Removal Required by City for Safety and Imminent Danger Reasons.**

- (1) Public Health and Safety. 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 City administrator if the City administrator 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 City administrator 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) Notice. The City administrator 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) Reimbursement. 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.

## **Sec. 2-15. Installation and Inspections**

### **A. Installation.**

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 City via the City administrator, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City administrator. 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 all applicable Laws.

### **B. Inspections.**

The City administrator, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Public Right-of-Way as the City administrator deems appropriate without notice to Network Provider. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City administrator 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. 2-16. Requirements Upon Abandonment of Obsolete Micro Network Node, Network Node, Node Support Pole and Related Ground Equipment.**

Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within

the earlier of ninety (90) days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within ninety (90) days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Public Right-of-Way, the Network Provider shall notify the City administrator in writing of such removal or Abandonment and shall file with the City administrator the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City administrator may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Public Right-of-Way.

## **Sec. 2-17. General Provisions.**

**A. As Built Maps and Records.** Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider shall provide additional maps to the City upon request.

**B. Courtesy and Proper Performance.** Network Provider shall make citizen satisfaction a priority in using the Public Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Public Right-of-Way. Network Provider'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 administrator or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

**C. Drug policy.** It is the policy of the City to achieve a drug-free workforce and environment. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City right-of-way is prohibited.

**D. Ownership.** No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Public Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Public 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 Public Right-of-Way shall 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 City administrator prior to any work in the Public Right-of-Way.



**E. Tree Maintenance.** Network Provider, its contractors, and agents shall obtain written permission from the City administrator before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City administrator, Network Provider shall trim under the supervision and direction of the member of City staff designated by the City administrator. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

**F. Signage.** Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node 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 by the City. Except as required by Law or by the Utility Pole owner, Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

**G. Graffiti Abatement.** As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Public Right of Way at Network Provider's sole cost and expense. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance, policy, or regulation.

**H. Restoration.** Network Provider shall repair any damage to the Public Right-of-Way, or any facilities located within the Public 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) days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Public Right-of-Way and such property shall be returned 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 City administrator.

**I. Network Provider's responsibility.** 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 in the Public Right-of-Way, as if such acts or omissions were Network Provider's acts or omissions.

## **Sec. 2-18. Effect on Other Utilities and Telecommunication Providers.**

Nothing in this Ordinance shall govern attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.

**SECTION 3: AMENDMENT TO CITY’S COMPREHENSIVE FEE SCHEDULE.** The City’s Comprehensive Fee Schedule, adopted by Ordinance No. 2014-05-01 and recently amended by Ordinance No. 2017-02-03, is amended by adding a new section entitled “Right of Way Management Fees” to read in its entirety as follows:

<b>RIGHT-OF-WAY MANAGEMENT FEES</b>	
<b>Network Providers</b>	
Network Node application fee*	\$100.00
Node Support application fee	\$100.00
Transfer Facilities application fee	\$100.00
Network Node annual public right-of-way rate fee (each node)+	\$250.00 yearly
Transfer Facilities annual public right-of-way rate fee (each node)**	\$28.00 monthly
Collection of Network Nodes on Service Poles (each pole)***	\$20.00 yearly
Network Nodes supported by or installed on a City Owned Utility Poles annual public right-of-way rate fee	Calculated using the rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis
*For each Network Node for up to but not more than thirty (30) Network Nodes. No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.	
+ City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI).	
**No rate required if the Network Provider is paying the City an amount equal to or greater than the amount of other City public right-of-way fees for access lines under Chapter 283 of Chapter 284 or cable franchise fees under Chapter 66 of the Texas Utility Code.	
***Or the maximum rate allowed by law.	

**SECTION 4: ADOPTION OF DESIGN MANUAL.** The City Council hereby adopts the “City of Lavon, Texas Design Manual for the Installation of Network Nodes and Node Support Poles Pursuant to Texas Local Government Code Chapter 284”, attached herein as Exhibit “A”.

**SECTION 5: SAVINGS/REPEALINGS.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 6: SEVERABILITY.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is

expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Lavon hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.


**SECTION 7: PENALTY.** It shall be unlawful for any person, corporation, or other entity to violate any provision of this Ordinance, and any person violating or failing to comply with any provision of this Ordinance shall be fined, upon conviction, not less than One Dollar (\$1.00) nor more than Five Hundred Dollars (\$500.00), unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

**SECTION 8. TEXAS OPEN MEETINGS ACT COMPLIANCE.** It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION 9. PUBLICATION.** The City Secretary of the City of Lavon is hereby directed to publish in the official newspaper of the City of Lavon the caption, penalty and effective date clause of this ordinance as required by state law and Charter.

**SECTION 10: EFFECTIVE DATE.** This Ordinance shall become effective on September 6, 2017.

**DULY PASSED AND APPROVED** by the City Council of the City of Lavon, Texas, on this 5<sup>th</sup> day of September, 2017.

  
\_\_\_\_\_  
Charles A. Teske, Jr., Mayor

**ATTEST:**

  
\_\_\_\_\_  
Kim Dobbs, City Administrator | City Secretary



**EXHIBIT “A”  
DESIGN MANUAL**

# **City of Lavon, Texas**

## **Design Manual**

*for the*

*Installation of Network Nodes and Node Support Poles*

*pursuant to Tex. Loc. Gov. Code, Chapter 284.*

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## **SECTION 1. PURPOSE AND APPLICABILITY.**

The City of Lavon ("City") recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

*Purpose:* Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as "Micro Network Nodes", "Network Nodes", and "Node Support Poles".

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301<sup>1</sup>, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

*Applicability:* This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

*City Rights-of-Way Management Ordinance:* A Network Provider shall comply with the City's Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

## **SECTION 2. DEFINITIONS.**

The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.<sup>2</sup>

*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 Provider in an unused or non-functioning condition for more than 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.

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

*Applicable codes* means:

- (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

*City* means the City of Lavon, Texas or its lawful successor.

*City Administrator* shall mean City Administrator or designee

*Chapter 284* means Tex. Loc. Gov. Code, Chapter 284.

*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 a pole.

*Concealment or Camouflaged* means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. 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 design, painted to match the supporting area, or disguised with artificial tree branches.

*Decorative pole* 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.

*Design District* means an area that is zoned, or otherwise designated by municipal code, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

*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.

*Distributed Antenna System or DAS* shall be included as a type of "Network Node."

*Easement* means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.



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

*Highway right-of-way* 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; and a tract, lot or site upon which a Texas Historical Marker has been placed.

*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.

*Location* means the City approved and lawfully permitted location for the Network Node.

*Macro tower* means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

*Mayor* means the Mayor for the City.

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

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

*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.

*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:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

*Network provider* means:

- (A) a wireless service provider; or
- (B) 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:
  - (i) network nodes; or
  - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

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

*Permit* means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

*Pole* means a service pole, municipally owned utility pole, node support pole, or utility pole.

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

*Provider* has the same meaning as "Network Provider."

*Public right-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:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

*Right of Way Management Ordinance or Public right-of-way management ordinance* means an ordinance of the City that complies with Chapter 284, Subchapter C.

*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:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) 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."

*Street* means only the paved portion of the right-of-way used for vehicular travel, being the area between the back of the curb to the back of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A "Street" is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements, a "Street" does not. A "street" does not

include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

*SWPPP* shall mean Storm Water Pollution Prevention Plan.

*TAS* means Texas Accessibility Standards.

*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 a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

*Underground Requirement Area* shall mean an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

*User* means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

*Utility pole* means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

*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. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.**

#### **A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.**

1. *Municipal Parks and Residential Areas.* In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way

without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the back of the curb to the back of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

(2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1. In accordance with Chapter 284, Sec. 284.104 (b), 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.

Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. **Historic District and Design Districts.** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City requires reasonable design or Concealment measures that are equal to, or exceed the standard for such districts for the Network Nodes or Node Support Poles or related ground equipment. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. Network Provider shall comply with and observe all applicable City, State, and Federal historic preservation laws and requirements.

2.3. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

3. **Historic Landmarks.** A 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. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding

requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

#### **B. Least preferable locations.**

1. **Residential Areas and Parks.** A Network Provider is prohibited from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

2. **Historic Districts and Design Districts.** A Network Provider is prohibited from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

#### **C. Most preferable locations**

1. *Industrial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. *Highway Rights-of-Way* areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

#### **D. Designated Areas.**

1. The City Council may designate an area as a Historic District or a Design District.

2. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

3. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

#### **E. Exceptions**

The City by its discretionary consent and agreement may grant exception to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

#### **F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.**

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed on existing communication 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. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

##### *3. Municipal Service Poles:*

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal Service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

4. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

#### **SECTION 4. GUIDELINES ON PLACEMENT.**

##### **A. Generally.**

In accordance with Chapter 284.102, 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.).

**B. General Requirements and Information:**

1. *Size Limits.* Network Providers shall provide detailed engineering drawings signed, sealed and dated by a Professional Engineer licensed in the State of Texas, 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, Max. pole height, with each application and with each request for a permit for each location.<sup>3</sup>

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other City safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, 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 interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

4. *Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic including sight visibility triangles in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the construction plans approved by the City Administrator 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 promptly remove the Network Node facilities, Node Support Poles or ground equipment. Network provider assumes all liability for any network node facilities that impedes pedestrian and/or vehicular traffic caused by that network node facility, node or ground equipment.

**B. Underground Requirement Areas.**

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with

nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

### **C. Network Node facilities placement:**

1. *Right-of-Way:* Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way. Plans shall consider location of existing or proposed sidewalks and utilities in siting.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node 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.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

### **D. New Node Support Poles.**

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 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.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

(1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or

(2) 55 feet above ground level.

### **E. Ground Equipment.**



1. *Ground Equipment near street corners and intersections:* 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 250 feet of a street corner or a street intersection as measured from curb returns of pavement radius for streets without curbs.

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 250 feet of the boundary line of a Park, unless approved by the City Administrator in writing.

#### **F. Municipal Service Poles:**

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have a site specific industry standard pole and foundation load analysis completed 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, in accordance with Chapter 284.108. Load analysis shall be completed, signed, sealed and dated by a Professional Engineer licensed in the State of Texas. Foundation analysis shall include a site specific geotechnical recommendation. Generic designs will not be accepted.

3. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node 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.

3. *Installations on Traffic Signals:* Installations on all Traffic signal 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 an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). 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; and
- iii. Have a separate access point than the traffic signal structure; and

Load analysis shall be completed, signed, sealed and dated by a Professional Engineer licensed in the State of Texas. Installations that interfere with future enhancements or replacements of signals, or signal appurtenances on signs shall be relocated by the Network Provider.

4. *Installations on Street signage:* 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. 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; and
- iv. In the event signals or signs are removed, the Network Provider shall promptly remove the equipment within 30-days written notice.

Installations that interfere with future enhancements or replacements of signals, or signal appurtenances on signs shall be relocated by the Network Provider.

## **SECTION 5. GENERAL AESTHETIC REQUIREMENTS**

### **A. Concealment.**

The Network Node facilities shall be concealed or enclosed as much as possible 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, except to the extent not consistent with Chapter 284.

### **B. New Node Support Pole Spacing.**

New node support poles shall be at a minimum 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.

### **C. Allowed Colors.**

Colors in Historic Districts and Design Districts must be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

## **SECTION 6. 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 in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

#### **SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.**

1. Insurance, 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 Chapter 284.

2. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

#### **SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR**

##### **A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.**

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, 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 Chapter 284.

2. All damage caused by the Network Provider to City facilities shall be repaired at the time equipment is removed. All ground equipment removed shall have the remaining surface restored to same or better than surrounding ground.

##### **B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.**

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project 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 Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

##### **C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.**

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 City Administrator if the City Administrator 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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Administrator 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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

## **SECTION 9. INSTALLATION AND INSPECTIONS**

### **A. INSTALLATION.**

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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

### **B. INSPECTIONS.**

The City Administrator, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

## **SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.**

Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

## **SECTION 11. GENERAL PROVISIONS.**

**1. As Built Maps and Records.** Network Provider's as built maps and records 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 Chapter 284.

**2. Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider's personnel, and contractors 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 Chapter 284.

**3. Drug Policy.** Drug policy of Network provider's personnel, and contractors in the rights-of-way 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 Chapter 284.

**4. Allocation of Funds for Removal and Storage.** The City has appropriated \$0 to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article, and no other funds are allocated.

**5. Ownership.** Ownership of Network Node and related equipment 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 Chapter 284.

**6. Tree Maintenance.** Tree maintenance 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 Chapter 284.

**7. Signage.** Signage 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 Chapter 284.

**8. Graffiti Abatement.** Graffiti abatement 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 Chapter 284.

**9. Restoration.**

Network Provider shall restore and repair the rights-of-way and City owned signals, signal poles, cabinets, sign posts and the alike from 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 installation, removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**10. Network provider's responsibility.**

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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**SECTION 12-19 RESERVED**

**SECTION 20. 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 is approved and as amended from time to time.

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<sup>1</sup> Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

<sup>2</sup> The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

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

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "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 a pole.

(4) "Decorative pole" 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.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

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

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "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.

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

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

(B) 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:

(i) network nodes; or

(ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-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:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(21) "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:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "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.

(25) "Wireless service provider" means a person that provides wireless service to the public.

<sup>3</sup> Sec. 284.002. DEFINITIONS (8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:

- (A) must be located inside an enclosure of not more than six cubic feet in volume including void space;
- (B) may not exceed a height of three feet above the existing structure or pole; and
- (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:

- (A) must fit within an imaginary enclosure of not more than six cubic feet including void space;
- (B) may not exceed a height of three feet above the existing structure or pole; and
- (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:

- (A) be more than 24 cubic feet in volume including void space; or
- (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;

(4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and

(5) pole-mounted enclosures may not be taller than five feet.

(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):

- (1) electric meters;
- (2) concealment elements;
- (3) telecommunications demarcation boxes;
- (4) grounding equipment;
- (5) power transfer switches;
- (6) cut-off switches; and
- (7) vertical cable runs for the connection of power and other services.

(c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

(d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.