

ORDINANCE NO. 2017- 56

**AN ORDINANCE OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 74 OF THE CODE OF ORDINANCES TO ADD A NEW ARTICLE 7 TO PROVIDE A FRAMEWORK FOR THE DEPLOYMENT OF NETWORK NODES AND NODE SUPPORT POLES IN THE RIGHT-OF-WAY BY NETWORK PROVIDERS IN ACCORDANCE WITH SENATE BILL 1004 CODIFIED AS TEXAS LOCAL GOVERNMENT CODE CHAPTER 284; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. The City of San Marcos ("City") is charged with maintaining control of and access to the public rights-of-way to protect the health, safety and welfare of its citizens and visitors.
2. The Texas Legislature recently enacted Senate Bill 1004 codified as Chapter 284 of the Texas Local Government Code ("Chapter 284") which grants wireless network providers access to city right-of-way and the authority to construct, install, and operate network nodes (small cell antennas and related equipment) on municipally owned utility poles, city light poles, and city traffic signal poles, as well as their own poles, for the purpose of supporting network nodes.
3. The newly enacted Chapter 284 also regulates the type of information a municipality may require as part of the permitting process, establishes a fee structure, and sets deadlines that municipalities must follow as part of the permitting process.
4. It is the City Council's desire to exercise the maximum authority preserved to local governments following the creation of Chapter 284 by adopting a Design Manual for the installation and construction of network nodes and node support poles in the City's right-of-way.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, THAT:**

**SECTION 1.** Chapter 74 of the City Code titled Streets and Sidewalks is amended by adding a new Article 7 titled Network Nodes, Node Support Poles, and Related Facilities in the Public Right-of-Way as follows:

**Sec. 74.209 Definitions.**

In this article:

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

*Applicable codes* means the uniform building, fire, electrical, plumbing, and mechanical codes adopted by the city and adopted by a recognized national code organization and any local amendments to those codes.

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

*Design district* means an area that is zoned, or otherwise designated by the code, and for which the city maintains and enforces unique design and aesthetic standards.

*Designated area* means an area of the city designated as a historic district or a design district where the city may require reasonable design or concealment measures for new network nodes or new node support poles.

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

*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.

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

*Municipal park* means an area that is zoned or otherwise designated by the code 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 includes: 1) equipment associated with wireless communications, including, but not limited to, distributed antenna systems (DAS) and small cells; 2) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and 3) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation. The term does not include: 1) an electric generator; 2) a pole; or 3) a macro tower as defined by Section 284.002 of the Texas Local Government Code.

*Network Provider* means: 1) a wireless service provider, or 2) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider: a) network nodes; or b) node support poles or any other structure that supports or is capable of supporting a network node.

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

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

*Right-of-way* means property that is publicly owned or upon which a governmental entity has an express or implied property interest held for a public purpose. Examples of such public purpose

include, by way of example and not limitation highways, streets, sidewalks, drainage facilities, sewerage and water facilities.

*Service pole* means a pole, other than a municipally owned utility pole, owned or operated by the city and located in a right-of-way, including 1) a pole that supports traffic control functions; 2) a structure for signage; 3) a pole that supports lighting, other than a decorative pole; and 4) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

*Utility pole* means a pole that provides 1) electric distribution with a voltage rating of not more than 34.5 kolovolts; or 2) services of a telecommunications provider as defined in Section 51.002 of the Texas Utilities Code.

*Wireless facilities* means network nodes, node support poles, and related equipment.

*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.

**Sec. 74.210 Purpose.**

(a) The purpose of this article is to facilitate the use of public right-of-way for network node deployments in accordance with Chapter 284 of the Texas Local Government Code.

(b) A network provider may use the public right-of-way in the following circumstances upon receipt of a valid permit demonstrating compliance with the city design manual:

- (1) construct, modify, maintain, operate, relocate and remove a network node or node support pole;
- (2) modify or replace a utility pole or node support pole; and
- (3) collocate on a pole, subject to an agreement with the city.

(c) A network provider may use the public right-of-way in the following circumstances upon receipt of a valid permit demonstrating compliance with the city design manual:

- (1) Install its own transport facilities; or
- (2) Obtain transport service from a person that is paying fees to the city to occupy the right-of-way.

**Sec. 74.211 Design manual.**

(a) The City hereby adopts the Design Manual by the City of San Marcos, Texas for the Installation of Network Nodes and Node Support Poles ("Design Manual") which sets forth additional installation and construction requirements for wireless service facilities created to support network providers. Any amendments to the city wireless services design manual shall be adopted by the city council pursuant to an ordinance.

(b) A person shall comply with the wireless services design manual as a condition of approval of any application, permit, or other approval required by this article.

**Sec. 74.212 Designations; concealment requirement.**

(a) *Design Districts.* For the purposes of this article, the city herein designates the following areas as design districts:

(1) The area known as the Central Business Area.

(2) Areas zoned T5 and T5-D.

(3) The area of the Victory Gardens Subdivision where decorative light poles have been installed; specifically, Patton Street from the Interstate Highway 35 frontage road to Roosevelt Street, on Roosevelt Street from Patton Street to Guadalupe Street, and on Wavell Street from Patton Street toward the eastern dead-end in front of the HEB Park.

(b) *Municipal Parks.* For the purposes of this article, the city herein designates any land zoned as a municipal park for the purposes of recreational activity as a designated area.

(c) *Historic Districts.* For the purposes of this article, the city herein designates any area that is designated as a historic district pursuant to local, state or federal law as a historic district as a designated area.

(d) *Liberal construction.* Designations provided by this section shall be liberally construed. Additional areas may be designated at any time.

(e) *Concealment.* Concealment of network nodes and node support poles shall be required by the city in design districts and in historic districts pursuant to Chapter 284.105 of the Texas Local Government Code.

(1) It is the city's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

(2) 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 the city's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

**Sec. 74.213 Additional Permit Application Requirements.**

(a) *Permit Application.* A permit issued pursuant to this article is required to install a micro network node, network node, a node support pole, or a transport facility in the right-of-way and must be approved prior to excavation. The permit process to be followed is the same as the process

outlined in Section 74.154 of the City Code. In addition to the requirements set forth in this chapter and the city design manual, an application for a permit pursuant to this article shall include the following:

- (1) Detailed drawings, with calculations to show conformity to the limitations contained in Chapter 284, the city design manual including, but not limited to, descriptions of any required enclosures, the size of the network nodes, pole height, and visibility.
- (2) An analysis showing that the proposed wireless facility will not cause any interference with city public safety radio system or traffic signal light system.
- (3) A description of the proposed location, including whether such location will be within or adjacent to any of the following:
  - a. A residential development;
  - b. A designated municipal park;
  - c. A designated design district;
  - d. A designated historic district; or
  - e. An area that has undergrounding requirements.
- (4) A proposal to conceal or camouflage the network node, node support pole, related equipment, or any portion thereof, if applicable;
- (5) City pole identification information, if applicable;
- (6) Written consent from owners of non-city owned infrastructure; and
- (7) A certificate that the network node complies with all application regulations of the Federal Communications Commission.

(b) *Consolidated Permits.* A network provider submitting an application to install or collocate multiple network nodes may file a consolidated permit application for not more than thirty (30) network nodes.

(c) *Application Process Timeline.* Not later than the 30th day after the date the city receives an application for a permit for a network node or node support pole, or the 10th day after the date the city receives an application for a permit for a transport facility, the city shall determine whether the application is complete and notify the applicant of that determination.

(d) *Application Fee.* The city may charge an application fee as authorized by Section 284.156 of the Texas Local Government Code. The application fee is in addition to the annual public right-of-way rate which is currently set at \$250 per network node.

#### **Sec. 74.214 Installation and Inspections.**

(a) A network provider shall, at its own cost and expense, install the network node, network node facilities, node support poles and related ground equipment in a good and workmanlike manner in accordance with this article. All work done in connection with the installation, operation, maintenance, repair, modification, or replacement of the network node, network node facilities, node support poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the city, state and federal government.

(b) The City may perform visual inspections of any network node, network node, node support pole or related ground equipment located in the right-of-way as deemed appropriate without notice. If the inspection requires physical contact with the network node, node support poles or related ground equipment, the city shall provide written notice to the network provider within five business days of the planned inspection. The network provider may have a representative present during the inspection.

(c) After completion of the work within the right-of-way, the network provider shall provide to the city copies of maps and construction records of the permitted facilities as they are actually constructed in the right-of-way and shall provide additional copies of the maps and records to the city upon request.

#### **Sec. 74.215 Collocation.**

A network provider shall collocate network nodes on poles pursuant to an agreement with the City.

#### **Sec. 74.216 Replacement, Maintenance and Repair.**

(a) A network provider shall provide the city with ten days advance written notice of the following activities in the right-of-way:

- (1) Routine maintenance that does not require excavation or the closing of sidewalks or vehicular lanes;
- (2) Replacement or upgrading a network node or pole with a network node or pole that is substantially similar in size or smaller and that does not require excavation or the closing of sidewalks or vehicular lanes; and
- (3) The installation, placement, maintenance, operation, or replacement of network nodes that are strung on cables between existing poles or node support poles in compliance with the National Electrical Safety Code.

(b) A network provider shall comply with the requirements of this chapter and all other applicable codes and ordinances, when installing, replacing, maintaining, repairing, upgrading, removing, relocating or operating network nodes, network node facilities, node support poles and related ground equipment.

**Sec. 74.217 Relocation.**

Except as provided in state and federal law, a network provider shall relocate or adjust network nodes in a public right-of-way, as determined by the city, within ninety days and without cost to the city.

**Sec. 74.218 Ownership.**

No part of a micro network node, network node, node support pole and related ground equipment erected or placed on the right-of-way by a network provider will become, or be considered by the city as being affixed to or a part of, the right-of-way. All portions of the micro network node, network node, node support pole and related ground equipment constructed, modified, erected, or placed by the network provider on the right-of-way will be and remain the property of the network provider and may be removed by the network provider at any time, provided the network provider shall notify the City Manager prior to any work in the right-of-way.

**Sec. 74.219 Signage.**

(a) A 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 the City Manager.

(b) Except as required by any local, state or federal law or by the utility pole owner, the 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.

**Sec. 74.220 Indemnity.**

To the extent authorized by law, the network provider shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found to be caused, or other harm for which recovery of damages is sought that is found to be caused by the negligent act, error, or omission of the user of the right-of-way, any agent, officer, director, representative, employee, directors, or representatives, while installing, repairing, or maintaining facilities in a right-of-way.

**Sec. 74.221 Graffiti Abatement.**

As soon as practical, but not later than fourteen (14) calendar days from the date the network provider receives notice, the 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 right-of-way. The foregoing shall not relieve the network provider from complying with any City graffiti or visual blight ordinance or regulation.

**Sec. 74.222 Restoration.**

The network provider shall repair any damage to the right-of-way, or any facilities located within the right-of-way, and the property of any third party resulting from the network provider's removal or relocation activities within ten calendar days following the date of such removal or relocation, at the service provider's sole cost and expense, including restoration of the right-of-way and such property to substantially the same condition as it was immediately before the date the network provider was granted a permit for the applicable location or did the work at such location (even if the 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 Manager.

**Sec. 74.223 Network Provider's Responsibility.**

The network provider shall be responsible and liable for the acts and omissions of its employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, and subcontractors in connection with the installation of any micro network node, network node, node support pole and related ground equipment, as if such acts or omissions were the network provider's acts or omissions.

**SECTION 2.** The City Council hereby approves the Design Manual of the City of San Marcos for the Installation of Network Nodes and Node Support Poles pursuant to Chapter 284 of the Texas Local Government Code which is attached hereto as Exhibit A.

**SECTION 3.** In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

**SECTION 4.** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 5.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 6.** This ordinance will take effect after its passage, approval and adoption on second reading.

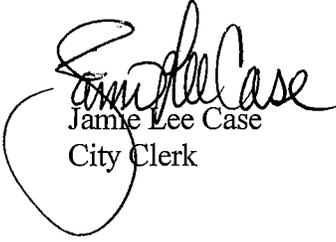
**PASSED AND APPROVED** on first reading on October 17, 2017.

**PASSED, APPROVED AND ADOPTED** on second reading on November 8, 2017.



John Thomaides  
Mayor

Attest:



Jamie Lee Case  
City Clerk

Approved:



Michael J. Cosentino  
City Attorney

# **City of San Marcos**

## **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 San Marcos (“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 San Marcos, Texas or its lawful successor.

*City Manager* shall mean City Manager 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.

*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.

*Public right-of-way management ordinance* means an ordinance 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 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 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 means 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 inside of the curb to the inside 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 shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. 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. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

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

2.4. 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 discouraged 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 discouraged 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 under Chapter 284.105 at any time.

2. Currently designated *Historic Districts* are:

- District. (a) Historic District Number 1 is the area referred to as Belvin Street Historic District.
- Historic District. (b) Historic District Number 2 is the area referred to as the Downtown Historic District.
- Historic District. (c) Historic District Number 3 is the area referred to as the San Antonio Street Historic District.
- Historic District. (d) Historic District Number 4 is the area referred to as the Lindsey-Rogers Historic District.
- District. (e) Historic District Number 5 is the area referred to as the Burleson Historic District.
- District. (f) Historic District Number 6 is the area referred to as the Dunbar Historic District.
- Historic District. (g) Historic District Number 7 is the area referred to as the Hopkins Street Historic District.

3. Currently designated *Design District* areas are:

- Area. (a) Design District Number 1 is the area referred to as the Central Business Area.
- (b) Design District Number 2 are the areas zoned T5 and T5-D.

4. 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.

**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 between existing utility poles.* Micro Network Nodes shall only be lashed on existing telephone 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 Service (secondary) Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment. Installation cannot hinder or impede the ability to ascend pole for repair or maintenance work on existing facilities.

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 primary pole* use is discouraged.

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

5. *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.).

6. obstruct or hinder the ability to ascend or do maintenance work on the structure.

7. violate the National Electrical Safety Code provision prohibiting placement within ten feet of energized conductors on existing utility service poles.

##### **B. General Requirements and Information:**

1. *Size Limits*. Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro

Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, 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 or SCADA 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, SCADA 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 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 plans approved by the City Manager 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.

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$XXXX per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

## **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.

3. Before commencing underground installation, 811 Tess must be called so that the area can be flagged for underground utilities.

#### **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.

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.

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 Manager and Parks Director in writing.

3. *Minimize Ground equipment density:*

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more.

4. *Water, Sewer and Storm Drainage Lines:*

Special precautions must be taken where underground fiber optic cable is installed in public street right-of-ways commonly used for utility corridors.

a. Underground utilities and service connections must be identified prior to excavation. "Dig Alert," "One Call," or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.

b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.

c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe to avoid future damage.

d. Existing Water Lines: No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.

e. Existing Sewer Lines: No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line. When crossing a sewer line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.

f. Existing Storm Drainage Lines: No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

5. Blocking streets, roads, alleys or lanes:

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction.

**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 an industry standard pole 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. All installations must comply with the National Electrical Safety Code provision prohibiting placement within ten feet of energized conductors on existing utility service poles.

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.

4. *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

5. *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; and,
- iii. Have a separate access point than the signage structure.

6. *Restoration of City facilities and private property:* The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original condition.

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

### **A. Concealment.**

1. 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.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

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

4. 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. Minimize Ground Equipment Concentration.**

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's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

**D. 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, codes or policies, except to the extent not consistent with Chapter 284.

Colors in Historic Districts and Design Districts must be approved by the City Manager 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 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 the immediately adjacent areas.

**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, codes and policies, 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, 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, codes and policies, except to the extent not consistent with Chapter 284

2. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 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.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

#### **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, codes and policies, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

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 municipality managing the public right-of-way

2. Network Provider understands and acknowledges that the 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 Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

3. Network Provider shall, at the City Manager'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, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes: 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 traveling public's use 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 Manager within 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 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. 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 Manager if the City Manager 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 Manager 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, codes and policies, except to the extent not consistent with Chapter 284.

3. 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 Manager if the City Manager 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 Manager 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.

4. The City Manager shall provide 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.

5. 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 30 days of receiving the invoice from the City.

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

### **A. INSTALLATION.**

1. Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and

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

2. 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 Manager, 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 Manager. 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, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

#### **B. INSPECTIONS.**

1. The City Manager, 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, codes and policies, except to the extent not consistent with Chapter 284.

2. The City Manager, 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 as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

#### **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.

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 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager and City Manager in writing of such removal or Abandonment and shall file with the City Manager and City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related

ground equipment removed or Abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

## **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, codes and policies, except to the extent not consistent with Chapter 284.

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 will provide additional maps to the City upon request.

**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.

Network Provider shall make citizen satisfaction a priority in using the 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 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 Manager 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.

**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, codes and policies, except to the extent not consistent with Chapter 284.

It is the policy of the City to achieve a drug-free workforce and workplace. 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 rights-of-way is prohibited.

**4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE.** The City has appropriated no funds 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.

**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, codes and policies, except to the extent not consistent with Chapter 284.

No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the

Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

**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.

Network Provider, its contractors, and agents shall obtain written permission from the City Manager 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 Manager, Network Provider shall trim under the supervision and direction of the Parks Director. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

**7. Signage.** Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

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 the City Manager.

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.

**8. Graffiti Abatement.** Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, codes and policies, except to the extent not consistent with Chapter 284.

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 Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

**9. Restoration.**

Network Provider shall restore and repair of the rights-of-way 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 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.

Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within

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

**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.

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.

**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

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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

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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.

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<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;
    - (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;
    - (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 28 cubic feet in volume; 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.