



CITY OF BALCONES HEIGHTS

WIRELESS AND TRANSPORT FACILITIES PERMIT PACKAGE

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*Entire Code available at:

<https://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=balconesheightsset>



City of Balcones Heights

WIRELESS AND TRANSPORTATION FACILITIES PERMIT APPLICATION

BEFORE COMPLETING THIS APPLICATION, PLEASE REVIEW THE CITY OF BALCONES HEIGHTS DESIGN MANUAL

TYPES OF INSTALLATION:

NETWORK NODE ON NODE SUPPORT POLE:

NETWORK NODE ON CITY-OWNED POLE:

NUMBER (UP TO 5): _____

NEWORK NODE ON AN ELECTRIC OR TELEPHONE UTILITY POLE:

NUMBER (UP TO 5): _____

TRANSPORT FACILITY:

GPS COORDINATES FOR EACH INSTALLATION:

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____

PAPERWORK CHECK LIST: (The following MUST be submitted with this permit application)

Complete Sets of Plans (digital plans only)

RF Spectrum Analysis (ask for City frequencies)

CPS Energy Preliminary Site Survey

A copy of 811 Dig Test ticket (if excavating)

Copy of FCC License

Traffic Plans (if impacting street traffic)

CONTRACTOR INFO: (must be registered before a permit can be issued)

WIRELESS SERVICE PROVIDER: _____

INFRASTRUCTURE PROVIDER: _____

PROJECT CONTACT: _____

OFFICE PHONE: _____ CELL: _____

EMAIL: _____

DESCRIPTION/SCOPE OF WORK:

Will the work be within the street?	Yes	No	Will the work impact trees?	Yes	No
Will work interfere with the normal flow of traffic on streets, sidewalks or public ways?	Yes	No	Underground facilities?	Yes	No
	Yes	No	Ground Equipment?	Yes	No
I have read the City of Balcones Heights Design Manual and understand its requirements	Yes	No			

Must be signed by an authorized representative of the Network Provider.

Date of application: _____ Signature: _____

For Office Use Only Date Received: _____ Calculated Fee: _____

Shot Clocks

Completeness Review Due Date: _____ Approval / Denial Due Date: _____

Application Approved / Denied by: Building Inspector: _____ Date: _____

Application Approved / Denied by: City Engineer: _____ Date: _____

Application Approved / Denied by: Director of Community Development: _____ Date: _____

Application Approved / Denied by: City Administrator: _____ Date: _____

Reason for Denial:

NOTE: FAILURE TO OBTAIN A PERMIT PRIOR TO CONSTRUCTION WILL RESULT IN UNAUTHORIZED FACILITIES



City of Balcones Code of Ordinances

Title IX: General Regulations, Chapter 97: Streets and Sidewalks

WIRELESS INTERNET SERVICE AND RIGHT-OF-WAY NETWORK NODE REGULATIONS

§97.60 PURPOSE AND SCOPE.

(A) Purpose. The purpose of this subchapter is to establish policies and procedures for the placement of node support poles in the right-of-way and network nodes in the public right-of-way and on service poles within the city's jurisdiction, which will provide public benefits and will be consistent with the preservation of the integrity, safe usage, and visual qualities of the city public right-of-way and the city as a whole.

(B) Intent. In enacting this subchapter, the city is establishing uniform standards to address issues presented by network nodes, including without limitation, ensuring that network nodes or node support poles do not adversely affect:

- (1) Use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) Vehicular and pedestrian traffic;
- (3) The operation of facilities lawfully located in public right-of-way or public property;
- (4) The ability of the city to protect the environment, including the prevention of damage to trees;
- (5) The character of residential and historic areas, and city parks, in which network nodes may be installed; and
- (6) The rapid deployment of network nodes to provide the benefits of wireless services.

(C) Conflicts with other chapters. This subchapter supersedes all chapters, parts of chapters or rules adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(Ord. 2017-12, passed 8-28-17)

§97.61 DEFINITIONS.

All terms used in this subchapter, not specifically defined herein, have the meaning provided in chapter 284 of the Texas Local Government Code.

Applicable law. Chapter 284 of the Texas Local Government Code.

Applicant. Any person who submits an application and is a network provider.

Application. A request submitted by an applicant:

- (1) For a permit to collocate network nodes;
- (2) To install a transport facility; or
- (3) Approve the installation, replacement or modification of a pole.

City code. Those ordinance provisions relevant to use of the public right-of-way where compliant with applicable law.

Day. Calendar day.

Person. An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the city.

Routine maintenance.

- (1) Work in the public right-of-way 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 pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a

public right-of-way; or

(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 the public right-of-way.

Technical grounds. In light of prevailing industry and engineering standards, reasons of insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes consistent with applicable law and city code.

(Ord. 2017-12, passed 8-28-17)

§97.62 PERMITTED USE; APPLICATION AND FEES.

(A) Permitted use. Collocation of network nodes and the placement of node support poles, meeting the parameters set forth in [§97.64](#) below and in applicable law, shall be a permitted use. No zoning or land use review shall apply, subject to the requirements in [§97.64](#).

(B) Permit required. No person shall place a network node, transport facility or node support pole in the public right-of-way, without first filing a permit application and obtaining a permit therefor, except as otherwise provided in this subchapter.

(C) Permit application. All permit applications filed pursuant to this subchapter shall be on a form, paper or electronic, provided by the city. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.

(D) Application requirements. The permit application shall be made by the network provider or its duly authorized representative and shall contain the following:

- (1) The applicant’s name, address, telephone number, and e-mail address.
- (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
- (3) Construction and engineering drawings and information confirming that the construction will be consistent with city code.

(E) Routine maintenance and replacement. A permit application shall not be required for:

- (1) Routine maintenance; or
- (2) The replacement of a node with another node that is substantially similar.

(F) Information updates. Any amendment to information contained in a permit application shall be submitted in writing to the city within 30 days after the change necessitating the amendment.

(G) Application fees. All applications for permits pursuant to this subchapter shall be accompanied by a fee of \$500.00 for up to five network nodes addressed in the same application, \$250.00 for each additional node in the same application; and a fee of \$1,000.00 for each node support pole.

(Ord. 2017-12, passed 8-28-17)

§97.63 ACTION ON PERMIT APPLICATIONS.

(A) Review of applications. The city shall review applications for network nodes, node support poles and transport facilities in light of their conformity with applicable law and city code and shall issue such permits on nondiscriminatory terms and conditions subject to the following requirements:

- (1) Within 30 days of receiving an application for a network node or node support pole, or 10 days for a transport facility, the city shall determine and notify the applicant whether the application is complete; or if incomplete, the city must specifically identify the missing information in such notification. There shall be no fee charged for completion and resubmittal of an application.
- (2) The city shall make its final decision to approve or deny a complete application no later than:
 - (a) 21 days after receipt of a complete application for a transport facility;
 - (b) 60 days after receipt of a complete application for a network node; and

(c) 150 days after receipt of a completed application for a new node support pole.

(3) The city shall advise the applicant in writing of its final decision, and, if denied, the basis for that denial, including specific provisions of city code or applicable law on which the denial was based, and send the documentation to the applicant on or before the day the city denies the application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city shall approve or deny the revised application within 90 days of receipt of the amended application. The subsequent review by the city shall be limited to the deficiencies cited in the original denial.

(4) If the city fails to act on an application within the review period specified in this section, the application shall be deemed approved.

(5) An applicant seeking to collocate network nodes may, at the applicant's discretion, file a consolidated application and receive permits for up to 30 network nodes. Provided however, the city's denial of any node within a single application shall not affect other nodes submitted in the same application. The city shall grant permits for any and all nodes in a single application that it does not deny, subject to the requirements of this section.

(B) Review of eligible facilities requests. Notwithstanding any other provision of this subchapter, the city shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

(Ord. 2017-12, passed 8-28-17)

§97.64 NETWORK NODES IN THE PUBLIC RIGHT-OF-WAY; MAXIMUM HEIGHT; OTHER REQUIREMENTS.

(A) Maximum size of permitted use. Collocation of permitted use network nodes in the public right-of-way shall be subject to the size limitations specified in chapter 284.003 of the Local Government Code.

(B) Undergrounding provisions. A network provider shall comply with nondiscriminatory undergrounding requirements, including code sections 41-141(e) electrical, telephone and other lines, ch. 41, exhibit A, sec. 12(D)(2) Plum Creek PUD, sec. 38-111 - installation, repair of towers, posts, etc.; permit required, 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. This requirement or restriction shall not be interpreted to prohibit a network provider from replacing an existing structure.

(C) Historic areas and design districts. Subject to the permit application approval time frames in [§97.63](#), a network provider must obtain advance approval from the city before collocating new network nodes or installing new node support poles in any areas zoned or designated as a historic district or as a design district if the district has decorative poles. Such installations shall be subject to the design and aesthetic standards of such areas.

(D) Installation in municipal parks and residential areas. A network provider may not install a new node support pole in a public right-of-way without the city's discretionary, nondiscriminatory, written consent of the building department if the public right-of-way is located in a municipal park or is adjacent to a street or thoroughfare that is (1) not more than 50 feet wide; 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. A network provider shall comply with private deed restrictions and other private restrictions when installing network nodes in parks and residential areas.

(E) Zoning. A network provider seeking to construct, replace or modify a pole or node in the public right-of-way that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements.

(Ord. 2017-12, passed 8-28-17)

§97.65 EFFECT OF PERMIT.

(A) Authority granted. A permit from the city authorizes an applicant to undertake only certain activities in accordance with this subchapter, and does not create a property right or grant authority to the

applicant to impinge upon the rights of others who may already have an interest in the public right-of-way.

(B) Time of installation. A network provider shall begin the installation for which a permit is granted not later than six months after final approval and shall diligently pursue the installation to completion. Provided, however, the city may place a longer time limit on completion or grant reasonable extensions of time as requested by the network provider.

(C) Right to occupy. Once a network provider has collocated a network node or placed a node support pole pursuant to a permit, the provider shall be permitted to continue to maintain such collocation or such pole unless required to remove or relocate under the terms of this subchapter.

(D) Interference with network nodes. City will not grant a permit to any person to install any network node or other wireless facility if the city knows or has reason to know that such person's use of such network node or other wireless facility may in any way adversely affect or interfere with the use and operation of an existing and operational network node for which the city has previously issued a permit.

(Ord. 2017-12, passed 8-28-17)

§97.66 REMOVAL, RELOCATION OR MODIFICATION OF NETWORK NODES IN THE R-O-W.

(A) Notice. Within 90 days following written notice from the city, a network provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any network node or node support pole within the public right-of-way whenever the city has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement in or upon, or the operations of the city in or upon, the public right-of-way.

(B) Emergency removal or relocation of facilities. The city retains the right and privilege to disconnect or move any network node located within the public right-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall notify the network provider and allow the network provider an opportunity to move its own facilities prior to the city disconnecting or removing a facility and shall notify the network provider after disconnecting or removing a network node or node support pole.

(C) Abandonment of facilities. Upon abandonment of a network node or node support pole within the public right-of-way, the network provider shall notify the city within 90 days. Following receipt of such notice, the city may direct the network provider to remove all or any portion of a network node or node support pole if the city, or any of its departments, determines, subject to city code, that such removal is necessary to protect public health, safety and welfare.

(Ord. 2017-12, passed 8-28-17)

§97.67 PUBLIC RIGHT-OF-WAY RATE.

(A) Annual rate. Once a network provider has installed and made operational a network node in the public right-of-way, network provider shall pay to the city compensation for use of the public right-of-way in the amount of \$250.00 annually per node in the city public right-of-way as authorized by state law. If fee is increased by state law, this fee shall be adjusted to reflect state law.

(B) Cease payment. A network provider is authorized to remove its facilities at any time from the public right-of-way and cease paying the city compensation for use of the public right-of-way following removal and notification to the city of such removal.

(Ord. 2017-12, passed 8-28-17)

§97.68 ATTACHMENT TO SERVICE POLES IN THE PUBLIC RIGHT-OF-WAY.

A network provider shall be permitted to attach network nodes to city-owned service poles, consistent with applicable law and city code and subject to the requirements specified herein.

(1) Permits. A network provider shall obtain a permit, pursuant to the terms of this subchapter, prior to collocating network nodes on service poles.

(2) Make ready. Network provider shall be responsible for costs for make ready work on city service

poles to which provider seeks to place a network node.

(3) Technical limitations. In the event the city determines, based upon technical grounds, that inadequate space exists on a service pole to accommodate the proposed network node, such pole may be replaced by network provider, at the network provider's expense, with a service pole with adequate space to accommodate the proposed network node.

(4) Facilities rearrangements. If another provider would have to rearrange or adjust any of its facilities to accommodate a new network node, the city shall use reasonable efforts to work with the affected providers to coordinate such activity. All make ready work shall comply with NESC, and other applicable codes. The applicant shall not be responsible for any third-party costs, including those of other network providers, to adjust existing attachments that are noncompliant with the NESC and other applicable codes at the time of the application.

(5) Service pole attachment fee. The rate to collocate a network node on a service pole in the public right-of-way shall be \$20.00 per pole per year. Subject to the provisions of [§97.69](#), such compensation together with the application fee and the public right-of-way rate specified in [§97.67](#) shall be the sole compensation that the network provider shall be required to pay to the city.

(6) Cease payment. A network provider is authorized to remove its facilities at any time from a service pole in the public right-of-way and cease paying the attachment fee to the city upon notification to the city that the facilities have been removed.

(Ord. 2017-12, passed 8-28-17)

§97.69 TRANSPORT FACILITIES.

Installation of transport facilities, including applicable compensation to the city for such facilities, shall be governed by chapter 284.055 of the Texas Local Government Code.

(Ord. 2017-12, passed 8-28-17)

§97.70 DESIGN MANUAL.

A network provider shall comply with the city's design manual, if any, in place on the date a permit application is filed in relation to work for which the city has approved a permit application. The city's design manual may not conflict with applicable law and must be competitively neutral.

(Ord. 2017-12, passed 8-28-17)

§97.99 PENALTY.

(A) Any violation of [§97.01](#) shall be punishable by a fine of not less than \$5.00 and not more than \$2,000.00 and each day that such violation persists shall be considered a separate violation. (Ord. 77-3, passed 4-11-77)

(B) Whoever violates any provision of [§97.10](#) shall be guilty of a misdemeanor, and upon conviction, the person, or persons found guilty shall be fined in any sum not more than \$500.00. Each day of violation shall constitute a separate offense. (Ord. 7-65, passed 7-12-65)

(C) Any owner, contractor or subcontractor guilty of the violation of [§97.11](#) shall be fined not less than \$10.00 and not more than \$500.00, and each day that a violation exists shall be considered a separate violation. (Ord. 6-77, passed 7-11-77)



CITY OF BALCONES HEIGHTS

Network Providers' Access to Public Rights-of-Way Fees

Colocation Fee for Network Nodes on Service Poles

Annual fee for each service pole \$20

Network Nodes Application Fee

For each application containing up to five (5) network nodes \$500

For each additional network node beyond five (5) \$250

Network Node Annual Site Rental Fee

For each network node site \$250

Note: Adjusted on an annual basis, by an amount equal to one-half of the annual change, if any, in the Consumer Price Index.

Node Support Pole Application Fee

For each node support pole \$1,000

Transport Facility Application Fee

For each application containing up to five (5) network nodes \$500

For each additional network node beyond five (5) \$250

Transport Facility Monthly Rental Fee

For each network node site \$28

Note: Not to exceed the monthly aggregate per-note fee



Design Manual

for the

Installation of Network Nodes and Node Support Poles

Pursuant to Tex. Loc. Gov. Code Chapter 284

SECTION 1. PURPOSE AND APPLICABILITY.

The City of Balcones Heights ("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. 284.3011, 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.

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 Balcones Heights, 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* means 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 facade, 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 non-discriminatory municipal codes.

Overlay 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 non-discriminatory 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.

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 macrotower.

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.

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 or public way or public right-of way or public rights-of way or rights-of way or right-of way means the surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by or under the control of the city, to which the city holds the property rights in regard to the use for utilities, excluding easements not intended for public works or public utility facilities but shall not include property of city which is not a dedicated

public right-of way, street, highway, or alley. Neither the inclusion of this definition nor the provisions hereof shall be construed to grant any right or privilege to utilize or occupy the city rights-of-way absent an expressed agreement of the city or by authority expressly granted by state law.

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, non-discriminatory, 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 Districts and Overlay 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 an Overlay District with Decorative Poles or in an area of the City zoned or otherwise designated as an Overlay District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Overlay 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 an Overlay District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City requests 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 Overlay Districts or in a 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 an Overlay District with Decorative Poles or in an area of the City zoned or otherwise designated as an Overlay 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 within 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 non-discriminatory 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 Overlay 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 an Overlay 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. 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.

E. 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 telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.
2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.
3. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.
4. *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.

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 non-discriminatory 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/hinder the ability to ascend or do maintenance work on the structure;
7. violate the National Electrical Safety Code provisions prohibiting placement within 10 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.

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 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 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.

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove 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 \$50 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 public right-of-way management ordinance, 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 non-discriminatory 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.

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.

(C) *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a)(2) 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.

3. *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 Administrator 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.

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.

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:

- (1) Be encased in a separate conduit than the traffic light electronics;
- (2) Have a separate electric power connection than the traffic signal structure; and
- (3) Have a separate access point than the traffic signal structure.

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.

SECTION 5. GENERAL AESTHETIC REQUIREMENTS

A. 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.

B. Allowed Colors.

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

SECTION 6. ELECTRICAL SUPPLY

A. Provider Responsible for Electricity. 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. Generators Prohibited. Network Provider shall not allow or install generators or backup 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 - 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.