

ORDINANCE NO. 33-2017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, CHAPTER 24, WIRELESS COMMUNICATION NETWORK NODES IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, Texas Local Government Code Chapter 284 governs deployment of wireless communication network nodes, poles and transport facilities in the public right-of-way; and

WHEREAS, Municipalities may regulate the installation of network nodes, poles and transport facilities, subject to Chapter 284; and

WHEREAS, by ordinance the City of Abilene may so regulate and manage access to the public right-of-way in a nondiscriminatory and competitively neutral manner.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS

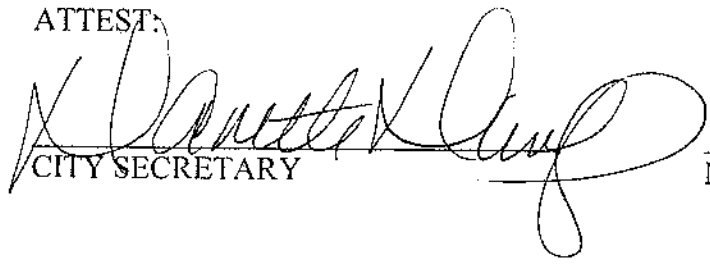
- PART 1:** That the City Council of the City of Abilene enact Chapter 24, Wireless Communication Network Nodes in the Right of Way, included as Exhibit "A" and Exhibit "B", attached hereto and made a part of this Ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this Ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

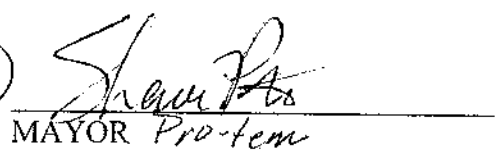
PASSED ON FIRST READING this 10th day of August, 2017.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 20th day of August, 2017, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 24th day of August, 2017, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 24th day of August, 2017.

ATTEST:


CITY SECRETARY


MAYOR Pro-tem

APPROVED:

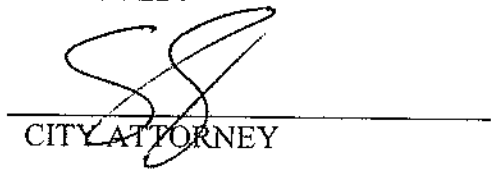

CITY ATTORNEY

Exhibit A

Chapter 24 Wireless Communication Network Nodes in the Right of Way

Sec. 24-1. Purpose.

The purpose of this Chapter shall be to:

- (a) establish a permit process for the installation of wireless communication network nodes in the right-of-way,
- (b) authorize the city secretary to maintain a design manual for wireless communication network nodes in the public right-of-way in accordance with Texas Local Government Code Chapter 284, and
- (c) manage access to the public right-of-way in a nondiscriminatory and competitively neutral manner.

Sec. 24-2. Definitions.

The City of Abilene hereby adopts the definitions found in Texas Local Government Code Chapter 284.

Sec. 24-3. Permits required.

It shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor or servant of any other person to install a wireless communication network node, node support pole or transport facility pursuant to Texas Local Government Code Chapter 284, without first obtaining a permit from the City of Abilene.

Sec. 24-4. Design Manual.

The Wireless Services Design Manual (hereinafter "design manual") for the installation and construction of network nodes, new node support poles and transport facilities in the public right-of-way shall be incorporated by reference into this Chapter. Each network node, node support pole or transport facility shall comply with the city's design manual. An application that does not comply with the city's design manual shall be denied.

Sec. 24-5. City Council Authority to Maintain Design Manual.

The design manual for the installation and construction of network nodes, new node support poles and transport facilities in the public right-of-way shall be approved by the city council and kept on file with the city secretary.

Sec. 24-6. Application procedure.

- (a) A network provider that wants to install a network node, network node support pole or transport facility in the public right-of-way shall file application with the public works department.

- (b) An application form shall be on file with the city secretary.
- (c) The city shall process applications in accordance with Texas Local Government Code Chapter 284.
- (d) Not later than the 30th day after the date the public works department receives an application for permit for a network node or node support pole, or the 10th day after the date the public works department receives an application for a permit for a transport facility, the city shall determine whether the application is complete. If the city determines that the application is not complete, the city shall specifically identify the missing information.
- (e) The city must approve or deny an application for a node support pole not later than the 150th day after the date the city receives the complete application.
- (f) The city must approve or deny an application for a network node not later than the 60th day after the date the city receives a complete application.
- (g) The city must approve or deny an application for a transport facility not later than the 21st day after the date the municipality receives a complete application.
- (h) Any application shall be deemed approved if it is not denied on or before the applicable date for approval or denial as prescribed by this section.
- (i) If an application is denied, the city must document the basis for the denial, including the specific code provision on which the denial is based. This documentation must be sent to the applicant by electronic mail on or before the date the city denies the application.
- (j) Not later than the 30th day after the city denies the application, the applicant may cure the deficiencies identified in the denial documentation and resubmit the application without paying an additional application fee. Thereafter, the city shall approve or deny the revised completed application not later than the 90th day after the date the city receives the completed revised application. The city's review of the revised application shall be limited to the deficiencies cited in the final documentation.

Sec. 24-7. Application fee.

The application fee shall be calculated in accordance with Texas Local Government Code Section 284.156. This fee may be adjusted annually and shall be part of the Fee Ordinance.

Sec. 24-8. Public right-of-way rate.

The city shall charge the rate established by and in accordance with Texas Local Government Code Section 284.053. This rate may be adjusted annually pursuant to Texas Local Government Code Section 284.054 and shall be part of the Fee Ordinance.

Sec. 24-9. Insurance.

The applicant for a permit shall furnish a certificate of insurance for public liability and property damage, issued by an insurance company of sound and adequate financial responsibility authorized to do business in the State of Texas, or evidence of self-insurance satisfactory to the city. All policies are subject to examination and approval by the city's Office of Risk Management.

Sec. 24-10. Removal or Relocation.

- a. A network provider shall remove, relocate or adjust a wireless communication network node, node support pole or transport facility at its own expense not later than one hundred twenty (120) days after receiving written notice that the removal, relocation or alteration of the facilities is necessary due to:
 1. Construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project or other public improvement project; or
 2. Maintenance, upgrade, expansion, replacement, removal or relocation of the City's pole or structure upon which Provider's network nodes are attached; or
 3. The network node or node support pole, or portion thereof, is adversely affecting proper operation of traffic signals, streetlights or other City property; or
 4. Closure of a street or sale of City property; or
 5. Projects and programs undertaken to protect or preserve the public health or safety; or
 6. Activities undertaken to eliminate a public nuisance; or
 7. Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its network nodes or node support poles; or
 8. Duty otherwise arising from applicable law.
- b. If the city manager reasonably determines that a wireless communication network node, node support pole or transport facility poses a health, safety and welfare of the public, then the City may provide written notice to the network provider, who shall remedy the danger to the health, safety and welfare of the public within 30 days or the City may do so and bill the network provider for the actual cost of repair, construction or relocation.
- c. If the city manager reasonably determines that wireless communication network node, node support pole or transport facility poses an imminent danger to the health, safety and welfare of the public, the City may immediately disconnect, remove, or relocate the applicable wireless communication network node, node support pole or transport facility and bill network provider for the actual cost of construction or relocation.

Sec. 24-11. Penalties.

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter after receiving written notice of same from the city manager or his or her designated representative shall be guilty of a misdemeanor, punishable as provided by section 1-9 of this Code.

Sec. 24-12. No waiver for nonenforcement.

No network provider shall be excused from complying with any of the terms and conditions of this chapter by any failure or omission of the city upon any one or more occasions to insist upon, enforce, or otherwise seek compliance with such terms and conditions.

Sec. 24-13. Other remedies.

Nothing in this article shall be construed as limiting any remedies that the city or a network provider may have at law or in equity for enforcement of this article.

Sec. 24-14. Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this chapter, or its application to any person is, for any reason declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Sec. 24-15. Reservation of rights.

The city hereby reserves to itself all rights, privileges, and interests which it has or may hereafter acquire, and nothing in this article shall be construed otherwise unless it is specifically set forth in this chapter.

EXHIBIT B

City of Abilene
Wireless Services Design
Manual

for the

*Installation of Network Nodes and Node Support Poles
pursuant to Tex. Loc. Gov. Code, Chapter 284.*

I. Purpose

- A. The City of Abilene encourages the deployment of state-of-the-art small cell wireless technology within the City for the many benefits it promises the citizens of Abilene including increased connectivity and reliable networks and services.
- B. The standards and procedures provided in this *Wireless Services Design Manual* (hereinafter "Design Manual") are adopted to protect the health, safety, and welfare of the public by minimizing and reducing impacts to public safety within the City's Right-of-Way and to minimize and reduce impacts to the City, its residents and visitors; and for the general health and welfare of the public.
- C. The City has adopted this *Design Manual* to provide technical criteria and details necessary for Providers seeking to install and construct network nodes and node support poles in the City's Right-of-Way, in compliance with Texas Local Government Code Chapter 284.
- D. Providers shall adhere to the requirements found in Chapter 24, City of Abilene Code of Ordinances, *Wireless Communication Network Nodes in the Right of Way*, all other City of Abilene Ordinances, this *Design Manual*, and Texas Local Government Code Chapter 284, for the placement of their facilities within the City's Right-of-Way.

II. Definitions

For purposes of this *Design Manual* the following terms shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

- A. "*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 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.
- B. "*City*" means the City of Abilene, Texas and the City's officers and employees.
- C. "*Design District*" means the City of Abilene design districts shall include but not be limited to the Corridor Overlay District (COR) and the Neighborhood Conservation Overlay District (NCO) as defined within the City of Abilene's Land Development Code.
- D. "*Distributed Antenna System*" shall be included as a type of "network node."

- E. “*Network node*” means Provider’s equipment as defined by Chapter 284 of the Texas Local Government Code.
- F. “*Node support pole*” means a pole as defined by Chapter 284 of the Texas Local Government Code.
- G. “*Park*” means the various properties under the direction, control and supervision of the City’s Director of Community Services pursuant to the authority granted by City Council and the City Code of Ordinances.
- H. “*Permit*” means a document issued by the City authorizing installation, removal, modification and other work for Provider’s network nodes or node support poles in accordance with the approved plans and specifications.
- I. “*Provider*” has the same meaning as “Network Provider” in Chapter 284.
- J. “*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 private easement or the airwaves above a public right-of-way with regard to wireless telecommunications.
- K. “*Small Cell*” shall be included as a type of “network node.”
- L. “*Traffic Signal*” means any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.
- M. “*Underground Utility District*” 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.

III. Permitting

3.1 Attachment to Existing Poles.

Prior to installation or modification of a network node or node support pole, Provider shall complete and submit to the City a Wireless Facilities Permit (hereinafter “Permit”) application, along with standard required documents and the following items:

- A. Permit fee.
- B. Aerial Map showing the location of the existing pole to which the network node is proposed to be attached, and a street view image.
- C. Plans and drawings prepared by a professional engineer licensed in the State of Texas that has evaluated the existing pole or infrastructure for structural stability to carry proposed network nodes and can bear the wind load without pole modification or whether the installation will require pole reinforcement. If pole reinforcement is necessary, Provider shall provide engineering design and specification drawings for the proposed alteration to the existing pole. Any pole reinforcement or replacement shall

be at Provider's sole cost. All reinforcement or replacement poles shall match the character of the pre-existing pole in order to blend into the surrounding environment and be visually unobtrusive. City reserves the right to deny a certain type of pole due to its differences.

- D. Scaled dimensioned drawings or pictures of the proposed attachments of the network node to the existing poles or structures as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, and other existing light poles and any other poles or appurtenances. This shall include a before-and-after image of the pole and all proposed attachments and associated standalone equipment.
- E. Scaled dimensioned construction plans indicating the current Right-of-Way line and showing the proposed underground conduit and equipment, and its spacing from existing utilities. The drawings shall also show a sectional profile of the Right-of-Way and identify all existing utilities and existing utility conflicts.
- F. The applicant 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 communications components. It shall be the responsibility of the Provider to evaluate, prior to making the application for the permit, the compatibility between the existing City infrastructure and the Provider's proposed infrastructure. 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.
- G. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work.
- H. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State.
- I. Notification to adjacent single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning, within 300 feet is required on all node attachments on infrastructure within the right-of-way.

The proposal shall comply with the following standards:

- J. Any facilities located off pole must remain in cabinetry or enclosed structure underground, except for the electric meter pedestal. Facilities on pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure.

- K. The electrical meter **shall not** be mounted on a City's metal pole or structure. Provider shall use 240 voltage when connecting to any City infrastructure and provide key to meter upon inspection.
- L. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway. All proposed projecting attachments to the pole shall provide a minimum vertical clearance of eight (8) feet. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.
- M. The color of the network nodes shall match the existing pole color such that the network nodes blend with the color of the pole to the extent possible. City reserves the right to deny a certain style of node due to its difference in color to pole.
- N. There shall be no other pole, with small cell attachments permitted/under application review, within 300 feet of the subject pole.

3.2 **Installation of New Poles.**

Prior to installation or modification of a node support pole, Provider shall complete and submit to the City a Commercial Building Permit application for the new pole, as well as a Right-of-Way Wireless Facilities Permit application. Along with standard required documents, the following items will also be required for the Permit application:

- A. Permit fee.
- B. Map showing intended location of the node support pole. Aerial Map showing the location of the proposed new pole, and a street view image.
- C. The applicant will need to provide analysis showing that the proposed new node support pole is spaced at least three hundred (300) linear feet from another existing pole that is supporting network nodes along the proposed location, unless otherwise approved by the City in writing.
- D. Scaled dimensioned drawings or pictures of the proposed node support pole as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances. This shall include a before-and-after street view image. The after-image needs to include the proposed pole and all proposed attachments and associated standalone equipment.
- E. Scaled dimensioned construction plans indicating the current Right-of-Way line and showing the proposed underground conduit and equipment, its spacing from existing lines. The drawings shall also show a sectional profile of the Right-of-Way and identify all existing utilities and existing utility conflicts.

- F. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work.
- G. The applicant 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 communications components. It shall be the responsibility of Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed infrastructure. 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.
- H. If the project lies within the State Right-of-Way, the applicant must provide evidence of a permit from the State.
- I. Notification to adjacent single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning, within 300 feet is required on all node support poles owned by provider.

The proposal shall comply with the following standards:

- J. Any facilities located off pole must remain in cabinetry or enclosed structure underground. Facilities on pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure. Shroud poles are encouraged.
- K. The electrical meter shall not be mounted on City's poles or structures. Provider shall use 240 voltage when connecting to any City infrastructure and provide key to meter upon inspection.
- L. The pole and all attachments to the pole that are projecting, or any equipment or appurtenance mounted on the ground shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway. All proposed projecting attachments to the pole shall provide a minimum vertical clearance of eight (8) feet. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.
- M. All attachments for the network nodes shall also match the color of the network support pole. All network support poles shall match the existing poles in the surrounding block or district in which the network support pole is located in order to blend into the surrounding environment and be visually unobtrusive. City reserves the right to deny a certain type of pole due to its differences.
- N. Upon approval of the permit, the Provider shall call for locates. If City of Abilene Water Utility locates are needed, Provider is required to contact Abilene Water Utilities.

3.3. **Electrical Permit.**

- A. Provider shall be responsible for obtaining any required electrical power service to the network nodes and node support poles or structures. Provider's electrical supply shall be separately metered from the City and must match City infrastructure voltage.
- B. Provider shall provide City with the electrical permit and provide sealed engineered drawings for conduit size, circuit size, calculations for Amp, distances running, etc.

IV. **Network Node and Node Support Pole Requirements**

4.1. **Installation.**

Provider shall, at its own cost and expense, install the network nodes and node support poles in a good and workmanlike manner and in accordance with the requirements promulgated by the *Wireless Services Design Manual*, and all other applicable laws, ordinances, codes, rules and regulations of the City, the state, and the United States ("Laws"), as such may be amended from time to time. Provider's work shall be subject to the regulation, control and direction of the City. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the network nodes and node support poles shall be in compliance with all applicable Laws.

4.2. **Inspections.**

The City may perform visual inspections of any network nodes and node support poles located in the Right-of-Way as the City deems appropriate without notice. If the inspection requires physical contact with the network nodes or node support poles, the City shall provide written notice to the Provider within five business days of the planned inspection. Provider may have a representative present during such inspection.

In the event of an emergency situation, the City may, but is not required to, notify Provider of an inspection. The City may take action necessary to remediate the emergency situation, and the City shall notify Provider as soon as practically possible after remediation is complete.

4.3. **Placement.**

- A. *Parks.* Placement of network nodes and node support poles in any Parks, Park roads, sidewalk, or property is prohibited unless such falls within the definition of Public Right-of-Way in Chapter 284 of the Texas Local Government Code and the placement complies with applicable Laws, private deed restrictions, and other public or private restrictions on the use of the Park.
- B. *City Infrastructure.* Provider shall neither allow nor install network nodes or node support poles on any City property that falls outside the definition of Public Right-of-Way in Chapter 284 of the Texas Local Government Code.

- C. *Residential Streets.* Provider shall neither allow nor install network nodes or node support poles in Right-of-Way that is adjacent to a street or thoroughfare that is not more than 50 feet wide and adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- D. *Decorative Poles.* Provider shall neither allow nor install network nodes on a Decorative Pole as defined by Chapter 284 of the Texas Local Government Code, unless approved by the City in writing. This standard shall be applicable to all decorative poles in the Design Districts as the City has designated at the time of the Permit application. The City may only entertain nodes on decorative poles if they comply with Section 4.9 Concealment.
- E. *Poles.* Wireless Facilities on node support poles shall be installed at least eight (8) feet above the ground. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.
- F. *Right-of-Way.* Node support poles and ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line. Node support poles and ground equipment or network nodes shall not impede pedestrian or vehicular traffic in the Right-of-Way. If a node support pole and ground equipment or network node is installed in a location that is not in accordance with the plans approved by the City and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the ADA and TAS, then Provider shall remove the node support poles, ground equipment or network nodes.

4.4 **Fiber Connection.**

Provider shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its node support poles or network nodes.

4.5 **Generators.**

Provider shall not allow or install generators or back-up generators in the Right-of-Way.

4.6 **Equipment Dimensions.**

Provider's node support poles and network nodes shall comply with the dimensions set forth in Chapter 284 of the Texas Local Government Code.

4.7 **Tree Maintenance.**

Provider, its contractors, and agents shall obtain written permission from the City before trimming trees hanging over its node support poles and network nodes to prevent branches of such trees

from contacting node support poles and network nodes. The City shall not be liable for any damages, injuries, or claims arising from Provider's actions under this section.

4.8 Signage.

- A. Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the node support poles and network nodes 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.
- B. Except as required by Laws or by the utility pole owner, Provider shall not post any other signage or advertising on the node support poles and network nodes, or utility pole.

4.9 Concealment.

- A. 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 and in the right-of-way adjacent to Historic Overlay Zoning.
- B. 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.
- C. 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.

4.10 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.

4.11 Allowed Colors.

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.

4.12 Repair.

Whenever the installation, placement, attachment, repair, modification, removal, operation, use, or relocation of the node support poles or network nodes, or any portion thereof is required and such installation, placement, attachment, repair, modification, removal, operation, use, or relocation causes any property of the City to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Laws, Provider, at its sole cost and expense, shall promptly repair and return such property to its original condition. If Provider does not repair such property or perform such work as described in this paragraph, then the City shall have the option, upon 15 days prior written notice to Provider or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Provider and to charge Provider for the reasonable and actual costs incurred by the City. Provider shall reimburse the City for the costs.

4.13 Inventory

Provider shall maintain a list of its network nodes and node support poles and provide City an Inventory of locations within ten (10) days of installation. The Inventory of network nodes and node support poles shall include GIS coordinates, date of installation, City pole ID number (if applicable), type of pole used for installation, pole owner, and description/type of installation for each network node and node support pole installation.

Upon City's written request, Provider shall provide a cumulative Inventory within thirty (30) days of City's request. Concerning network nodes and node support poles that become inactive, the Inventory shall include the same information as active installations in addition to the date the network node and/or node support pole was deactivated and the date the network node and/or node support pole was removed from the Right-of-Way. City may compare the Inventory to its records to identify any discrepancies.

4.14 Reservation of Rights.

- A. The City reserves the right to install, and permit others to install, utility facilities in the Rights-of-Way. In permitting such work to be done by others, the City shall not be liable to Provider for any damage caused by those persons or entities.
- B. The City reserves the right to locate, operate, maintain, and remove City traffic signal poles in the manner that best enables the operation of its traffic signal system and protect public safety.
- C. The City reserves the right to locate, operate, maintain, and remove any City pole or structure located within the right-of-way in the manner that best enables the City's operations.

4.15 Coordination of Traffic Signal Maintenance Activities and Emergency Response

Provider will provide City a key to each meter box at the time of inspection and have the ability to temporarily cut-off electricity to its facilities for the safety of maintenance personnel. In the event of failure of components of the traffic signal system for whatever reason, including

damage resulting from vehicular collisions, weather related events, or malicious attacks, City will respond to restore traffic signal operations as a matter of public safety. Should the events that result in damage or failure of the traffic signal system also affect Provider's network nodes, Provider shall have the sole responsibility to repair or replace its network nodes and shall coordinate its own emergency efforts with the City.

V. Interference with Operations

5.1 No Liability

- A. The City shall not be liable to Provider for any damage caused by other Providers with Wireless Facilities sharing the same pole or for failure of Provider's network nodes for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks.
- B. The City shall not be liable to Provider by reason of inconvenience, annoyance or injury to the network nodes or node support poles or activities conducted by Provider therefrom, arising from the necessity of repairing any portion of the Right-of-Way, or from the making of any necessary alteration or improvements, in, or to, any portion of the Right-of-Way, or in, or to, City's fixtures, appurtenances or equipment. The City will use reasonable efforts not to cause material interference to Provider's operation of its network nodes or node support poles.

5.2 Signal Interference with City's Communications Infrastructure Prohibited.

- A. No interference. In the event that Provider's network nodes interferes with the City's traffic signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Provider shall promptly cease operation of the network nodes causing said interference upon receiving notice from the City and refrain from operating. Provider shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice.
- B. Protocol for Responding to Event of Interference. The protocol for responding to events of interference will require Provider to provide the City an Interference Remediation Report that includes the following items:
 - 1. Remediation Plan. Devise a remediation plan to stop the event of inference;
 - 2. Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and
 - 3. Additional Information. Include any additional information relevant to the execution of the remediation plan.

In the event that interference with City facilities cannot be eliminated, Provider shall shut down the network nodes and remove or relocate the network node that is the source of the interference as soon as possible to a suitable alternative location made available by City.

- C. Following installation or modification of a network node, the City may require Provider to test the network node's radio frequency and other functions to confirm it does not interfere with the City's Operations.

VI. Abandonment, Relocation and Removal

6.1 Abandonment of Obsolete Network Nodes and Node Support Poles

Provider shall remove network nodes and node support poles 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 network nodes and node support poles being abandoned or within 90 days of receipt of written notice from the City. When Provider removes or abandons permanent structures in the Right-of-Way, the Provider shall notify the City in writing of such removal or abandonment and shall file with the City the location and description of each network node or node support pole removed or abandoned. The City may require the Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

6.2 Relocation and Removal at Provider's Expense

- A. Provider shall remove and relocate its network nodes and node support poles at its own expense to an alternative location not later than one hundred twenty (120) days after receiving written notice that removal, relocation, and/or alteration of the network nodes and/or node support poles is necessary due to:
 - 1. Construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project or other public improvement project; or
 - 2. Maintenance, upgrade, expansion, replacement, removal or relocation of the City's pole or structure upon which Provider's network nodes are attached; or
 - 3. The network node or node support pole, or portion thereof, is adversely affecting proper operation of traffic signals, streetlights or other City property;
 - 4. Closure of a street or sale of City property; or
 - 5. Projects and programs undertaken to protect or preserve the public health or safety; or
 - 6. Activities undertaken to eliminate a public nuisance; or
 - 7. Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its network nodes or node support poles; or
 - 8. Duty otherwise arising from applicable law.

- B Provider's duty to remove and relocate its network nodes and node support poles at its expense is not contingent on the availability of an alternative location acceptable for relocation. City will make reasonable efforts to provide an alternative location within the Right-of-Way for relocation, but regardless of the availability of an alternative site acceptable to Provider, Provider shall comply with the notice to remove its network nodes and node support poles as instructed.
- C. The City may remove the network node and/or node support pole if Provider does not remove such within one hundred twenty (120) days. In such case, Provider shall reimburse City for the City's actual cost of removal of its network nodes and node support poles within 30 days of receiving the invoice from the City.

6.3 Removal or Relocation by Provider

- A. If the Provider removes or relocates at its own discretion, it shall notify the City in writing not less than 10 business days prior to removal or relocation. Provider shall obtain all Permits required for relocation or removal of its network nodes and node support poles prior to relocation or removal.
- B. The City shall not issue any refunds for any amounts paid by Provider for network nodes and node support poles that have been removed.

6.4 Restoration

Provider shall repair any damage to the Right-of-Way, and the property of any third party resulting from Provider's removal or relocation activities (or any other of Provider's activities hereunder) within 10 days following the date of such removal or relocation, at 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 Provider was granted a Permit for the applicable location, 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.

6.5 Provider Responsible

Provider shall be responsible and liable for the acts and omissions of Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub lessees, and subcontractors in connection with the performance of activities within the City's right-of-way, as if such acts or omissions were Provider's acts or omissions.