

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Planning and Inspections Department

AGENDA DATE: August 22, 2017

CONTACT PERSON: Elizabeth Triggs, (915) 212-1500,
TriggsEK@elpasotexas.gov

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

A resolution that the City Council of the City of El Paso adopts this Service Pole Collocation Attachment License Agreement (“Agreement”), a master license agreement, authorizing the collocation of Network Nodes and related Wireless Facilities by Network Providers or Licensees on City Service Poles located in the public Rights-of-Way and further detailing the terms and conditions of attachments of wireless Network Nodes to and on City Service Poles pursuant to Texas Local Government Code, Chapter 284; and that the City Manager be authorized to sign this Agreement by and between the City of El Paso, Texas, a home-rule municipal corporation of the State of Texas, and any interested Network Provider or Licensee.

BACKGROUND / DISCUSSION:

This resolution is a response to the recently approved State Senate Bill, S.B. 1004, which establishes Chapter 284 (Deployment of Network Nodes in Public Right-of-Way) of the Texas Local Government Code, effective September 1st, 2017. Pursuant to Chapter 284, § 284.056 and § 284.101 (a) (3), the City is authorized to enter into an agreement with an network provider to allow for the collocation of network nodes and related wireless facilities on City-owned Service Poles such as street lights.

This resolution adopts a master Service Pole Collocation Attachment License Agreement and authorizes the City Manager to administratively execute the pre-approved agreement between the City and any network provider wishing to collocate network nodes on City-owned service poles (e.g. street lights, traffic lights, etc.). Execution of this agreement is a precondition to receiving a permit to collocate a network node on a municipally-owned service pole located in the public right-of-way. The purpose of the agreement is to lay out the responsibilities of the City and the Network Provider with respect to installation, use, repair and maintenance of wireless facilities located on City-owned service poles.

This resolution is being heard in conjunction with a proposed ordinance which creates a new chapter in Title 15 (Public Services) of the El Paso Municipal Code to establish guidelines, procedures and a design manual governing the deployment of small cell antennas (i.e. network nodes) and related facilities in the public right-of-way (i.e. streets and sidewalks) by network providers.

Attachments:

Resolution
Proposed Service Pole Collocation Attachment License Agreement
Presentation Summarizing Related Ordinance & Agreement

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD:

Larry F. Nichols, Director
Planning and Inspections Department

RESOLUTION

A resolution that the City Council of the City of El Paso adopts this Service Pole Collocation Attachment License Agreement (“Agreement”), a master license agreement, authorizing the collocation of Network Nodes and related Wireless Facilities by Network Providers or Licensees on City Service Poles located in the public Rights-of-Way and further detailing the terms and conditions of attachments of wireless Network Nodes to and on City Service Poles pursuant to Texas Local Government Code, Chapter 284; and that the City Manager be authorized to sign this Agreement by and between the City of El Paso, Texas, a home-rule municipal corporation of the State of Texas, and any interested Network Provider or Licensee.

ADOPTED this _____ day of _____, 2017.

ATTEST:

CITY OF EL PASO

Laura D. Prine
Interim City Clerk

Dee Margo
Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Karla M. Nieman
Senior Assistant City Attorney

Larry Nichols
Planning and Inspections Director

WHEREAS, the Licensee shall compensate the City pursuant to applicable state law and City ordinances for the Collocation of the Network Nodes on Service Poles in the City’s Public Right-of-Way; and

WHEREAS, the Licensee’s non-exclusive use at locations in Public Right-of-Way are subject to the terms and conditions set forth herein and in City Ordinance _____, and pursuant to Permits issued by the City; and

WHEREAS, the City and Licensee desire by this Agreement to set forth their understanding of such matters.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein below, City and Licensee agree as follows:

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ARTICLE 1. PARTIES

1.1 Addresses.

The initial address of the Parties, which either Party may change at any time by giving written notice to the other Party pursuant to the terms of this Agreement, are as follows:

City of El Paso _____

Attn: _____

P.O. Box 1890

El Paso, Texas

Email: _____

Network Provider and Licensee

Attn: _____

Street _____

_____, Texas

Email: _____

ARTICLE 2. DEFINITIONS

2.1. As used in this Agreement, the definitions as used in Tex. Loc. Gov. Code, Chapter 284, § 284.002 and in City Ordinance _____ shall be used, unless otherwise noted below. When not inconsistent with the context, words used in the present tense include the future, words used 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. “Include” and “including,” and words of similar import, shall be deemed to be followed by the words “without limitation.”

2.1.1. *Agreement* means this contract between the Parties, including any exhibits and any written amendments as authorized by this Agreement.

2.1.2. *Collocate* and *Collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a Public Right-of-Way on or adjacent to a Service Pole.

2.1.3. *Collocation Application* means an application filed by Licensee to obtain City’s permission to Collocate Network Nodes on specific Service Poles.

- 2.1.4. *Director* means the Director of Public Works Department, or its successor department, or a person he or she designates
- 2.1.5. *Effective Date* means the date this Agreement has been signed by both Parties.
- 2.1.6. *Ground Equipment* means a Wireless Facility that is located on the surface of the Public Right-of-Way with an approved Permit that is immediately adjacent to the Service Pole on which the Network Node is located.
- 2.1.7. *Licensee and Network Provider* mean _____ and includes its successors and assigns.
- 2.1.8. *Licensed Locations* means the Service Poles where Licensee is authorized by this Agreement to place its Wireless Facilities.
- 2.1.9. *Party or Parties* mean the Licensee and City, individually or collectively as indicated in the context in which it appears.
- 2.1.10. *Rental Fees means* as described in Article 4 herein.
- 2.1.11. *TAS* means Texas Accessibility Standards.

ARTICLE 3. GRANT AND SCOPE OF AUTHORIZATION TO COLLOCATE

- 3.1. Grant of Permission in Accordance with Chapter 284.
 - 3.1.1. Only to the extent required by Chapter 284, § 284.056 and § 284.101 (a)(3) does the City grant Licensee the right to enter the Public Right-of-Way and to Collocate Network Nodes on Service Poles in the Public Right-of-Way, subject to the terms of this Agreement, City Ordinance _____, and Chapter 284.
 - 3.1.2. The grant of this License is a prerequisite to Licensee obtaining a Permit to install its Wireless Facilities in the Public Rights-of-Way. This License Agreement alone does not authorize Licensee to place its Wireless Facilities in the Public Right-of-Way, and can take effect only upon City’s grant of a Permit under the provisions of City Ordinance _____ to Licensee for the Service Pole Location described in such Permit.
 - 3.1.3. This Agreement does not confer any other rights not described herein nor does it permit Licensee or third parties to use the Public Right-of-Way or Service Poles for purposes not specified in this Agreement, except to the extent otherwise expressly allowed by law.
 - 3.1.4. This Agreement does not authorize the Licensee to install equipment or facilities associated with or for Macro Towers in the Public Right-of-Way.

3.1.5. Network Provider must have an existing Agreement with the City to apply for and be granted a Permit to use or to in any manner Collocate Network Nodes on Service Poles.

3.2. Licensed Locations.

3.2.1. The permission granted to Licensee by this Agreement is limited to the Licensed Location(s) as described and mapped on Exhibit A, attached hereto and made a part hereof.

3.2.2. In the event Licensee desires to obtain additional Licensed Locations, it shall submit a Collocation Application for each such Location. Upon approval by City, an amendment to Exhibit A will be made, which shall be signed by both parties, dated, and attached hereto.

3.3 Compliance with City Ordinances.

Provider's use and occupancy of Public Right-of-Way and Service Poles shall be subject to the provisions of all additional requirements of the City's Ordinances regulating Public Rights-of-Way, City Ordinance No. ____, and directions of the City concerning collocating Network Nodes on any Service Pole.

3.4 Scope of Agreement.

3.4.1. This Agreement is not exclusive and the City reserves the right to grant permission to Collocate Network Nodes to other eligible and qualified entities under Chapter 284 and City Ordinance _____.

3.4.2. This Agreement only authorizes Collocation of Network Nodes on Service Poles in the Public Right-of-Way in conjunction with a Permit issued by the City under City Ordinance No. _____, and does not confer any rights or permission to install or otherwise Collocate Network Nodes on any other Poles or to place such Network Nodes in the Public Right-of-Way.

3.4.3. No use, however lengthy, of any of Public Right-of-Way, and no payment of any fees or charges required under this Agreement, shall create or vest in Provider any easement or other ownership or property right of any nature in any Service Pole. After issuance of any Permit, Provider shall be and remain a mere licensee. Neither this Agreement, nor any Permit granted under City Ordinance _____, shall constitute an assignment of any of City's rights to the Service Pole.

3.4.4. No part of Provider's Wireless Facilities or Transport Facilities or other equipment constructed, Modified, or erected or placed on Service Pole will become, or be considered by the City as being affixed to or a part of, the Service Pole. All portions of Provider's Wireless Facilities and Transport Facilities and other equipment constructed, Modified, erected, or placed by Provider on a

Service Pole will be and remain the property of Provider and may be removed by Provider at any time.

- 3.4.5. Nothing in this Agreement shall be construed as granting Provider any right to attach Provider's Wireless Facilities or Transport Facilities to any specific Service Pole (unless described on Exhibit A) or to compel City to grant Provider the right to attach to any specific Service Pole.
- 3.4.6. This Agreement does not in any way limit City's right to locate, operate, maintain or remove Service Poles in the manner that the City deems appropriate.
- 3.4.7. Provider is obligated to obtain all necessary certification, permitting, and franchising from federal, state and local authorities prior to making any installations of Wireless Facilities or Transport Facilities on Service Poles.
- 3.4.8. Nothing in this Agreement shall be construed to require City to install, retain, extend, or maintain any City Facility for use by the Provider when such City Facility is not needed for City's own requirements.
- 3.4.9. Nothing in this Agreement shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding a Service Pole into which City has previously entered, or may enter in the future, with other entities, including, but not limited to, agreements or arrangements for the removal of Service Poles.
- 3.4.10. In the event the City determines to deny the use by Provider of any particular Service Pole or any particular location in the Public Right-of-Way, such denial shall not be construed to be a prohibition on, or to have the effect of prohibiting, the provision of Wireless Services. Any such denial by the City shall be undertaken in its capacity as proprietor of the Public Right-of-Way, and not in its regulatory capacity.
- 3.4.11. Any authorization provided under this Agreement is limited to the uses specifically authorized herein and any other use shall be considered a material breach of this Agreement. Nothing in this Agreement shall be construed to require City to allow Provider to use Service Poles after the termination of the authorization or of this Agreement.

3.5 Unauthorized Network Node on Service Pole.

- 3.5.1. The City shall deem as unauthorized any type of Network Node attached or Collocated to a Service Pole if there is no Collocation attachment agreement for such Network Node and/or Service Pole, or if there is no Permit issued by the City for such Location, even if the attachment was inadvertently or incorrectly permitted. The City, in its sole discretion, may upon 30 days' written notice, remove or require the Licensee to remove unauthorized Network Node at Licensee's expense without any liability to the City. The City will invoice and

Licensee shall reimburse the City within 30 days of receipt of the invoice for the City's cost of removal of unauthorized Network Node.

- 3.5.2. Modifications to Network Nodes attached to Service Poles must be approved by the City Engineer, except for those modifications, repairs, routine maintenance or related work that do not require a Permit under Chapter 284, and as set forth in City Ordinance _____, Article V. However, even for those Modifications, repairs, routine maintenance, or related work that do not require a Permit under Chapter 284 or City Ordinance _____, Article V., the provisions of City Ordinance ____, Article V. apply with regard to advance notice to the City, and to size limitations for such modifications.

3.6. Transport Facilities.

Licensee may either install its own Transport Facilities, subject to Transport Facility fee payments as set out in City Ordinance _____, or obtain transport service from a person that is paying the City fees to occupy the Public Right-of-Way for Transport Facilities. For third-party Transport Facilities, the City shall require independent reasonable verification that the provider of Transport Facility services to the Licensee Provider has paid the City the required Transport Facility fee, and that such payments are current. The burden shall be on Licensee to provide such verification.

ARTICLE 4. COMPENSATION

4.1 Collocation Fee.

Licensee shall pay City a fee for the Collocation of Network Nodes on Service Poles as set forth in City Ordinance _____. The Collocation fee shall be in addition to annual Network Node site rental fees, Transport Facility rental fees, and all ad valorem taxes, special assessments for municipal improvements, and other lawful obligations of the Licensee to the City.

4.2 Non-functioning Network Nodes.

Licensee shall continue to pay rental fees for Collocated Network Nodes that are no longer in service or operational if the Network Nodes attached to Service Poles occupy the Public Right-of-Way.

4.3 Payment.

Collocation fees shall be payable by ACH direct deposit or check payable to the City of El Paso, Texas, and sent to the following address:

ATTN: _____
City of El Paso
P.O. Box _____
El Paso, TX _____

4.4 Reimbursement.

When under the terms of this Agreement, the City at its own expense has removed or remediated Licensee's Network Nodes attached to Service Poles or Licensee is required to reimburse the City, the Licensee shall remit payment to the City within 30 days of the date of the invoice for removal, remediation, or requirement.

4.5 Compliance Review.

The City may, at its discretion, upon no less than 30 days prior written notice, require that the Licensee produce its records related to this Agreement for review by the City to ascertain the correctness of the payments made hereunder. If the City's review identifies amounts owed by the Licensee from prior periods, the Licensee shall pay the amount identified within 30 days of the date of an invoice from the City. If the review determines that payment of the Collocation fee was not made in accordance with the terms of this Agreement and that such payment represents an overpayment of any amount, City will credit such overpayment against Licensee's future obligations to City under this Agreement.

ARTICLE 5. INSTALLATIONS

5.1. Compliance With Standards.

Licensee shall, at its own cost and expense, install the Network Nodes on Service Poles in a good and workmanlike manner and in accordance with the requirements promulgated by the City, as such may be amended from time to time. Licensee'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, and/or replacement of the Network Nodes Collocated on Service Poles shall be in compliance with all Applicable Codes and Laws.

5.2 Inspections.

5.2.1. The City may perform visual inspections of any Network Nodes attached to Service Poles as the City deems appropriate, without notice to Licensee. If the inspection requires physical contact with the Network Node, the City will provide written notice to the Licensee five (5) days prior to the planned inspection. Licensee may have a representative present during such inspection.

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

ARTICLE 6. RADIO INTERFERENCE BY NETWORK NODE PROHIBITED

6.1. No Liability.

6.1.1. The City shall not be liable to Licensee for any damage caused by other entities with Network Nodes in close proximity to the Service Pole.

- 6.1.2. The City shall not be liable to Licensee by reason of inconvenience, annoyance, or injury to the Network Node, or Ground Equipment, or activities conducted by Licensee therefrom, arising from the necessity of repairing any portion of the Service Pole or Public Right-of-Way, or from the making of any necessary alteration or improvements in or to any portion of the Public Right-of-Way, or in or to its fixtures, appurtenances, or equipment. The City will use reasonable efforts to not cause material interference with Licensee's operation of its Network Node.

6.2. No Interference.

Licensee's Network Node shall strictly comply with Chapter 284, § 284.304 and City Ordinance _____ .

ARTICLE 7. ABANDONMENT, RELOCATION, AND REMOVAL

7.1 Termination or Expiration of Permit.

If any Permit granted to Licensee for location of Wireless Facilities within the Public Right-of-Way terminates, expires, or is revoked, Licensee's authorization to Collocate the formerly-Permitted Wireless Facility under this Agreement shall also terminate on the same date, without the necessity of further notification by City to Licensee. In such event, Exhibit A hereto shall be revised to remove the affected Collocation facility from such exhibit.

- 7.1.1. Within thirty (30) days after termination or expiration of any Collocation authorization under this Agreement, Licensee shall remove the affected Network Nodes and Ground Equipment from the Service Pole(s) in the Public Right-of-Way and peaceably surrender the Service Pole and the Public Right-of-Way to City in the same condition the Service Pole and the Public Right-of-Way was in on the Effective Date.

- 7.1.2. If Licensee fails to complete removal of the Network Node and Ground Equipment on or before the 30th day after the Collocation authorization expires or terminates, or fails to complete removal within 90 days, the City may remove, store, or dispose of any remaining portion of the Network Nodes and Ground Equipment in any manner the City Engineer deems appropriate. Licensee shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage fees).

7.2. Termination of Agreement.

If all of Licensee's Permits terminate, expire, or are revoked, then this Agreement shall likewise terminate. The removal of Licensee's Wireless Facilities and Ground Equipment shall proceed as provided in this Article.

ARTICLE 8. SECURITY

Network Provider shall comply with the City's Public Right-of-Way Management Ordinance concerning security requirements on any of its Network Nodes or Ground Equipment.

ARTICLE 9. INDEMNIFICATION, INSURANCE, AND LIABILITY

9.1. Indemnity.

Licensee Provider shall comply with City Ordinance _____ and Chapter 284 concerning indemnification requirements on any of its Network Nodes or Ground Equipment.

9.2. Insurance.

Licensee shall comply with City Ordinance _____ concerning insurance requirements on any of its Network Nodes or Ground Equipment.

9.3. Liability.

Licensee shall be responsible for any damages to any person or entity that occur due to the installation, maintenance or failure to maintain, the removal or failure to remove Network Nodes for which it would be liable under Law.

ARTICLE 10. TERM AND TERMINATION

10.1 Term.

This Agreement is effective on the Effective Date, and unless sooner terminated under other provisions of this Agreement, will remain in effect until December 31, 2019 ("Initial Term").

10.2 Renewals.

Upon expiration of the Initial Term, this Agreement will automatically renew for up to two (2) successive five (5) year terms (each a "Renewal Term") on the same terms and conditions, unless either the City or Licensee chooses not to renew, for so long as Licensee has any valid Permits with the City for any Collocation Location. If either the City or Licensee chooses not to renew this Agreement, the City shall notify the Licensee or the Licensee shall notify the City of non-renewal at least 90 days before the expiration of the then-current term. Licensee must be in compliance with all material provisions of this Agreement in order for the automatic renewal to be effective.

10.3 Termination for Cause by City.

10.3.1. If Licensee defaults under this Agreement, the City may terminate this Agreement subject to Licensee's ability to cure such defaults below. The City's right to terminate this Agreement for Licensee's default is cumulative of all its rights and remedies which exist now or in the future. Default by Licensee includes, but is not limited to:

- 10.3.1.1. Failure of the Licensee to comply with any material term of this Agreement;
 - 10.3.1.2. Licensee becomes insolvent.
 - 10.3.1.3. The Licensee's failure to obtain all licenses, permits, and certification required by the City under this Agreement and pay all fees associated therewith after the City has notified the Licensee that licenses, permits, and certifications must be obtained to work in the Public Right-of-Way;
 - 10.3.1.4. All or a substantial part of Licensee's assets are assigned for the benefit of its creditors;
 - 10.3.1.5. A receiver or trustee is appointed for Licensee; or
 - 10.3.1.6. Licensee fails to apply for permits to Collocate on Service Poles in the Public Right-of-Way within one year of the Effective Date of this Agreement.
- 10.3.2. If a default occurs, the City shall deliver a written notice to Licensee describing the default and the termination date. If the City sends a default notice, the Licensee shall have 60 days from the receipt of such notice to cure the default (unless the nature of the event takes longer to cure and the Licensee commences a cure within such 60-day period and thereafter diligently pursues it but will not exceed 180 days unless agreed to by the City which agreement will not be unreasonably withheld). If Licensee cures the default before the proposed termination date, the proposed termination is ineffective.
- 10.3.3. If the default is not cured in the time and manner set out above or by the City, then the City may immediately terminate this Agreement by notifying Licensee in writing of such termination. After receiving the notice, Licensee shall, immediately cease operations and remove Network Nodes from the Service Poles in accordance with the Section 7.1 of this Agreement, and any payment due shall be remitted by Licensee within 30 days of the receipt of the notice to the address in the Section 1.1 of this Agreement.

10.4 Termination by Licensee.

- 10.4.1. The Licensee may terminate this Agreement at any time without cause by giving 30 days advance written notice to the City.
- 10.4.2. If the Licensee does not remove all Network Nodes from the Service Poles within the time period required by Section 7.1 of this Agreement, the Network Nodes may be removed by the City, subject to reimbursement for its cost from the Licensee as allowed by the Agreement.

10.5 Automatic Termination.

If Chapter 284 of the Local Government Code, or any part thereof is at any time, in full or in part, revoked, found to be unconstitutional, struck down, preempted or otherwise becomes void

or invalid, then this Agreement shall automatically terminate, unless an extension is granted by the City. This section shall constitute Notice that in such case, all Network Nodes are to be removed from Service Poles within ninety (90) days from the event that affects Chapter 284. The Parties agree they will negotiate in good faith to assure an ease of transitions as to those parts of Chapter 284 that have been adjudicated as unenforceable, as well as continued compliance with those parts that may remain enforceable, if any.

ARTICLE 11. NON-ASSIGNMENT OF RIGHTS

11.1. No Assignment Without City Consent.

Rights granted to Licensee hereunder may not be assigned, transferred, sold, or disposed of by Licensee without the prior written consent of City.

11.2. Assumption of Obligations.

No assignment or transfer shall be allowed unless and until the assignee or transferee assumes all obligations of Licensee arising under the Agreement. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of the Agreement without the written consent to the release of Licensee by City.

11.3. No Lease of Rights.

Licensee shall not lease its rights under this Agreement to an unaffiliated third party, including but not limited to allowing third parties to place Wireless Facilities on Service Poles for the benefit of such third parties, without City's prior written consent. Any such action shall constitute a material violation of this Agreement.

11.4. Business Structure and Assignments.

Nothing in this Article, however, prevents the creation of a security interest in the Network Nodes as described in the Texas Business & Commerce Code. In the case of such an enforcement of that security interest by the holder of the security interest, as an assignee, Licensee shall immediately furnish to the City proof of the assignment and the name, telephone number, and address of the assignee and a clear contractual obligation that the assignee shall and does assume all the liabilities and responsibilities of Licensee under this Agreement, including responsibilities for any unpaid past due payments, and current and future payments that may be due the City. Such assignment does not release Licensee of its obligations and payments due or to be due the City, unless there is an express written release agreed to by the City.

ARTICLE 12. INVENTORY AND INSPECTIONS

12.1 Inventory Records.

Licensee shall comply with the inventory requirements of City Ordinance _____, Section 2.2.D.

12.2 Inspections.

City representatives shall have the right to perform, or to have performed, (1) inspections of the inventory records described in 12.1, and (2) inspections of all places in the Public Right-of-Way where work is undertaken in connection with this Agreement.

ARTICLE 13. MISCELLANEOUS

13.1. Force Majeure.

13.1.1 Other than the Licensee's failure to pay amounts due and payable under this Agreement, the Licensee shall not be in default or be subject to sanction under any provision of this Agreement when its performance is prevented by Force Majeure. Force Majeure means an event caused by epidemic; act of God; fire, flood, hurricanes, tornadoes, or other natural disasters; explosions; terrorist acts against the City or Licensee; act of military or superior governmental authority that Licensee is unable to prevent by exercise of reasonable diligence; war; riots; or civil disorder; provided, however, that such causes are beyond the reasonable control and without the willful act, fault, failure or negligence of the Licensee. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Performance is not excused under this section following the end of the applicable event of Force Majeure. Licensee is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Force Majeure does not entitle Licensee to reimbursement of payments.

13.1.2. This relief is not applicable unless the affected Party does the following:

13.1.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

13.1.2.2. provides the other Party with prompt written notice of the cause and its anticipated effect.

13.1.3. The City will review claims that a Force Majeure that directly impacts the City or Licensee has occurred and render a written decision within 14 days. The decision of the City is final.

13.1.4. Licensee is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Licensee shall employ only fully trained and qualified personnel during a strike.

13.2. Dispute Resolution.

13.2.1. In the event of a dispute between the Parties that arises during the Term of this Agreement, the Parties shall attempt to expeditiously and amicably resolve any

dispute through good faith discussions in the ordinary course of business at the level at which the dispute originates.

- 13.2.2. If the Parties are not able to resolve the dispute in the ordinary course of business, the City Manager and representatives of other City departments that are involved in the dispute will meet with Licensee's authorized representative in an attempt to resolve the dispute.
- 13.2.3. Except in emergencies, no lawsuit under or related to this Agreement by one Party against the other may be filed until at least meeting has occurred between the City Manager and executives of Network Provider with full authority to resolve the claims in the meeting or that are available contemporaneously with the meeting via live telephonic communications where the Parties agree to attempt in good faith to resolve or narrow the issues; and if not resolved, and the Parties agree that before initiating litigation, either Party shall notify the other Party of its intent to sue, and provide a copy of the draft pleading, with supporting facts and legal authorities at least fourteen (14) days before suit is filed.
- 13.2.4. This section does not apply to disputes that involve a question of law.
- 13.2.5. Notwithstanding the existence of any dispute between the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a court of competent jurisdiction or unless this Agreement terminates or expires under the terms provided herein.

13.3. Acceptance and Approval; Consent.

An approval by any City representative of any part of the Licensee's performance shall not be construed to waive compliance with this Agreement or to establish a standard of performance other than required by this Agreement or by law. Where this Agreement contains a provision that either Party approve or consent to any action of the other Party, such approval or consent shall not be unreasonably withheld or delayed.

13.4. Representations and Warranties.

In addition to the representations, warranties, and covenants of the Licensee to the City set forth elsewhere herein, the Licensee represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the City) that, as of the Effective Date and throughout the term of this Agreement:

- 13.4.1. *Organization, Standing and Power.* The Licensee is a Network Provider duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to do business in the State of Texas and in the City. The Licensee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted and to execute, deliver and perform this

License and all other agreements entered into or delivered in connection with or as contemplated hereby.

13.4.2. *Truthful Statements.* The Licensee warrants, to the best of its knowledge and belief, that information provided and statements made in connection with its application for this Agreement were true and correct when made and are true and correct upon execution hereof.

13.4.3. *Condition of Public Right-of-Way.* Licensee accepts the Public Right-of-Way where Network Node are authorized to be located “as is” without any express or implied warranties of any kind.

13.5. Statement of Acceptance.

Licensee and City, for themselves, their successors and assigns, hereby accept and agrees to be bound by all terms, conditions and provisions of this Agreement.

13.6. Relationship of the Parties.

Licensee shall be responsible and liable for its contractors, subcontractors, and sublicensees. The City has no control or supervisory powers over the manner or method of Licensees’ contractors’ and subcontractors’ performance under this Agreement. All personnel Licensee uses or provides are its employees, contractors, or subcontractors and not the City’s employees, agents, or subcontractors for any purpose whatsoever.

13.7. Severability.

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

13.8. Entire Agreement.

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

13.9. Written Amendment.

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Licensee.

13.10. Applicable Laws and Venue.

13.10.1. This Agreement is subject to all Applicable Codes and Laws, and all rules and regulations of any regulatory body or officer having jurisdiction, including any lawful court or administrative decisions, judgments or orders that have been fully and finally adjudicated, including any appeals of such decisions

judgments, or orders (“Decisions”). This Agreement shall be governed, construed, and enforced according to the laws of the State of Texas, without regard to its choice of law provisions.

13.10.2. If any material provision of this Agreement is superseded or affected by Law, then the Parties shall negotiate in good faith to revise this Agreement.

13.10.3. Subject to the Parties’ obligation to submit to the dispute resolution process or mediation as described in this Agreement, Licensee shall submit any and all litigation and legal proceedings between any of the Licensee and the City to the exclusive jurisdiction of the state or federal courts in the State of Texas and waive any objections or right as to forum non conveniens, lack of personal jurisdiction, or similar grounds. Venue for any litigation relating to this Agreement is El Paso County, Texas.

13.11. Notices.

All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Article I, Section 1.1 of this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

13.12. Captions.

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

13.13. Non-Waiver.

If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other’s breach of a term, that waiver does not waive a later breach of this Agreement.

13.14. Enforcement.

The City may enforce all legal rights and obligations under this Agreement without further authorization. Licensee shall provide to the City all documents and records pertaining to this Agreement that the City requests to assist in determining Licensee's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

13.15. Ambiguities.

If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

13.16. Survival.

Licensee and the City shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond the termination or expiration of this Agreement, including, but not limited to, the provisions regarding warranty, indemnification and confidentiality. All representations and warranties contained in this Agreement shall survive the term of the Agreement.

13.17. Parties in Interest.

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Licensee only.

13.18. Remedies Cumulative.

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

IN WITNESS WHEREOF, the Original Signatories, through their duly authorized officers, have executed this Agreement in multiple counterparts, each of equal force and effect, effective as of the as of the date signed by the later to sign.

LICENSEE/NETWORK PROVIDER:

Name:

Title:

Tax Identification No.:

ATTEST/SEAL:

Name:

Date Signed. _____

CITY:

CITY OF EL PASO, TEXAS

Signed by:

Mayor

Date Signed. _____

ATTEST/SEAL:

City Clerk

Date Signed. _____

APPROVED:

City Manager

Date Signed. _____

Approved as to Form:

City Attorney,
City of E Paso, Texas



ITEMS 23.2 & 23.3

Authorizing the Deployment of Network Nodes in the Public Right-of-Way

An Ordinance Creating Chapter 15.10 and a
Resolution Adopting a Master Collocation License
Agreement

Project Team: Planning & Inspections, Information Technology,
Streets & Maintenance, & City Attorney's Office

Strategic Goal 3: Promote the Visual Image of El Paso

"Delivering Outstanding Services"



Before Council today is:

1. **An ordinance** amending Title 15 (Public Services) to create Chapter 15.10 (Deployment of Network Nodes in the Right-of-Way) to establish guidelines, procedures, and a design manual governing network providers' access to public rights-of-way.
2. **A resolution** establishing a master Service Pole Collocation Attachment License Agreement and authorizing the City Manager to enter into said agreement with network providers wishing to collocate network nodes on City-owned service poles.



Presentation Overview:

- Background
- Timeline & Outreach
- State Legislation Overview
- Steps to Take Prior to September 1st
- Proposed Ordinance Overview
- Recommendation



Background

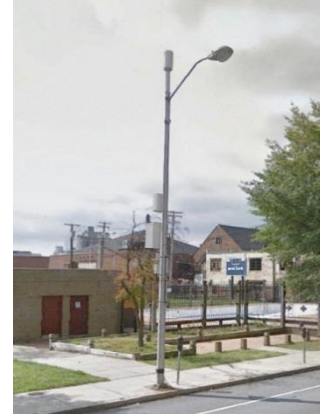
What is a Network Node?

- Equipment at a fixed location that enables wireless communications between user equipment and a communications network.
- Network Providers place them strategically to:
 1. Extend and enhance service coverage;
 2. Increase data speeds; or
 3. Increase network capacity.
- Network Nodes include:
 1. Equipment associated with wireless communications.
 2. Equipment such as radio transceivers, antennas, and battery-only operated backup power supply; and
 3. Associated coaxial or fiber-optic cables.
- Network Nodes do NOT include:
 1. Electric generators;
 2. Poles (e.g. support poles, utility poles, service poles, etc.); or
 3. Macrotowers.



Background

What does it look like?



"Delivering Outstanding Services"



Background

Why are Network Nodes important now?

- They are the wireless communications industry's current response to increasing use of wireless voice and data communications by the customer.

Where are Network Nodes located?

- Network Nodes may be attached to existing or new facilities or structures, such as buildings or light or utility poles located in the public right-of-way (ROW).
- **This ordinance and accompanying items address the deployment of Network Nodes and associated Wireless Facilities in the Public ROW on:**
 - 1. Service Poles (e.g. traffic signals, street signs, streetlight poles);**
 - 2. Node Support Poles; or**
 - 3. Utility Poles.**

How is the location of Network Nodes regulated in El Paso?

- The City of El Paso does not currently have a defined process to allow for the placement of network nodes on public right-of-way.



Timeline & Outreach

- **September 2016** Service providers inquired about a process for introducing Small Cells Technology in the ROW. Legal Department worked with outside counsel on a Master Licensing Agreement (MLA).
- **October 2016** Initial departmental meeting supported by Planning & Inspections, Streets and Maintenance, CID, PARD, Legal, and IT.
- **November 2016** MLA shared with service providers (Verizon Wireless, Mobilite T-Mobile, AT&T, Crown Castle).
- **December 2016** Municipality outreach, City of Austin and City of Boston, project team gathered documentation from other jurisdictions (fee structure, license agreements).
- **January 2017** Recommended engaging a consulting partner with technical expertise, and municipal government references.
- **February 2017** Drafted Scope of Work for consulting services.
- **March 2017** Approved Scope of Work provided to consultant. Initiated weekly meetings scheduled with consultant and departments.
- **March 2017** **H.B. 2838 and S.B. 1004, two bills addressing small cell deployment, first reading during the State Legislative Session.**
- **March 2017** Legal Department provided a draft of S.B. 1004 for review and requested feedback comments.



Timeline & Outreach

- **April 2017** Consultant informed service providers of the existing contract with City of El Paso, and upcoming on-site meetings.
- **May 2017** Consultant and departments on-site meetings with AT&T, Verizon Wireless, and Mobilite T-Mobile.
- **May 2017** **S.B. 1004 approved during State Legislative Session.**
- **June 2017** **Governor signs S.B. 1004, effective date of September 1, 2017.**
- **July 2017** Outside counsel provides draft of proposed ordinance and revised MLA to address new law. Staff begins working to develop permitting procedures based on ordinance.
- **July 25, 2017** Departmental meeting reviewed and discussed proposed application process, workflow. Consultant provided copy of recommended Design Manual.
- **August 8, 2017** First reading of proposed ordinance.
- **August 22, 2017** Council considers proposed ordinance and associated Master License Agreement.
- **September 1, 2017** **S.B. 1004 goes into effect. City must grant access to network providers for deployment of network nodes in public right-of-way, regardless of whether a local ordinance is adopted.**



State Legislation Overview

What is S.B. 1004?

- On June 9th, the governor signed S.B. 1004 with an **effective date of September 1st**.
- S.B. 1004 establishes **Chapter 284** (Deployment of Network Nodes in Public Right-of-Way) of the **Texas Local Government Code**.
- Mandates access for Network Providers for the deployment of Network Nodes in public rights-of-way, including on City-owned Service Poles.
- Limits cities' regulation of network providers' use of public ROW for this purpose.
- Standardizes the municipal permitting process for the deployment of Network Nodes across the state.

What will happen on September 1st?

- Municipal agreements and ordinances regulating the deployment of network nodes in the public ROW must conform to the new law.
- **On September 1st, the City will be required to allow Network Provider's to deploy facilities on public ROW in line with Chapter 284, whether a local ordinance outlining permitting procedures is adopted or not.**



State Legislation Overview

In General: Mandates access for Network Providers to public rights-of-way (ROW) for the deployment of Network Nodes on city-owned Service Poles.

Installation/Construction: Authorizes city adoption of a ***Design Manual*** for the installation and construction of Network Nodes and new Node Support Poles to better camouflage facilities throughout the City and in design and historic districts.

Size Restrictions: Establishes size restrictions for antennas and other wireless equipment associated with Network Nodes, such as ground-based enclosures; and for new Node Support Poles.

Location Restrictions: Establishes various location restrictions for installation of new Node Support Poles in public ROW (e.g. when in a City park or residential area).



State Legislation Overview

Permitting Process & Timelines: Addresses permitting requirements and establishes deadlines for processing permit applications.

- Prohibits moratorium on the filing of applications or issuance of permits;
- Authorizes City to require certain documents with application filing;
- Establishes deadlines for application review and permit issuance;
- Identifies activities exempt from permitting.

Fees for Access to Public ROW: Establishes the maximum application and annual rental rate fees.

Access to Municipally-Owned Poles: Requires access to municipally-owned utility poles subject to a negotiated pole attachment agreement (i.e. MLA).



Steps to Take Prior to September 1st:

Adopt a Design Manual

- Allows the City to adopt design/aesthetic standards affecting network nodes and wireless facilities in the public ROW.

Adopt Standards Regulating New Node Support Poles

- Allows the City to adopt standards regulating the installation of new node support poles.

Adopt Permit Processing Procedures

- Important to ensure shot clock requirements imposed by Chapter 284 are met.

Adopt a Fee for Permit Processing and for ROW & Pole Rental

- The City is limited by Chapter 284 to what it may charge for application processing and ROW rental.



Proposed Ordinance Overview

An ordinance amending Title 15 (Public Services) to create Chapter 15.10 (Deployment of Network Nodes in the Right-of-Way) to establish guidelines, procedures, and a Design Manual governing network providers' access to public rights-of-way, in accordance with Chapter 284 of the Texas Local Government Code.

Applicability: Establishes permitting process and standards for deploying Network Nodes, new Node Support Poles, Transport Facilities, and Ground Equipment in the Public ROW.

Major Items Addressed:

- Design Manual;
- Permitting Procedures;
- Fees and Charges; and
- Other Items: Security and Insurance Requirements, Non-Transferability of Permits, Permit Termination Process, etc.



Design Manual

Purpose: Provides design guidelines to better **camouflage** Network Nodes, new Node Support Poles, Transport Facilities, and Ground Equipment constructed or installed in the public ROW.

- Chapter 284 requires a network provider to comply with a Design Manual in place on the date a permit application is filed.
- Design Manual is codified in Article III of Chapter 15.10.

Major Items Addressed:

- General Requirements
- Placement Preference
- Proximity to Historic Districts, Residential Areas, Municipal Parks, etc.
- Pedestrian Impacts
- Ground Equipment and Equipment Size Restrictions



Design Manual



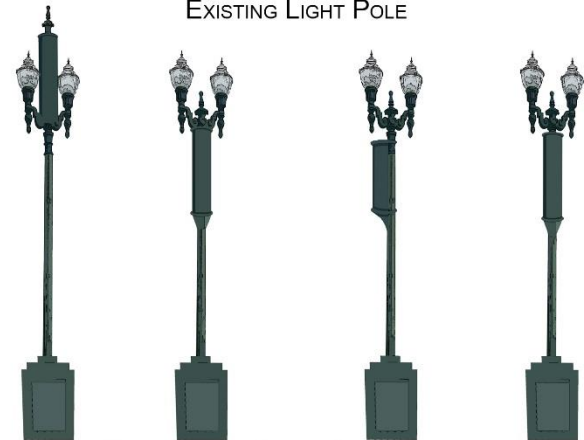
EXISTING LIGHT POLE



EXAMPLES OF SMALL CELL ADDITION



EXISTING LIGHT POLE



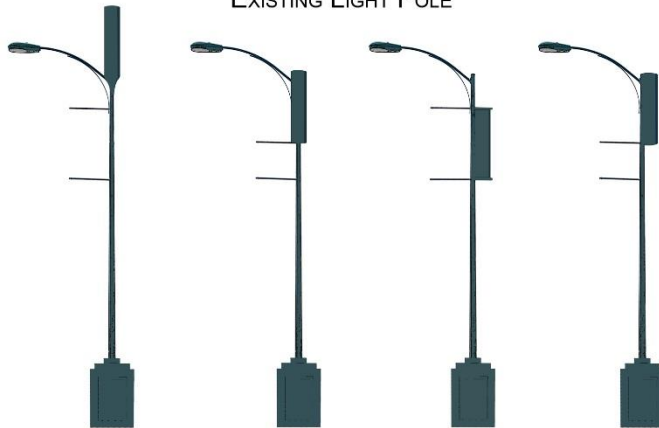
EXAMPLES OF SMALL CELL ADDITION



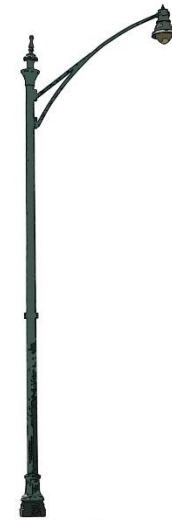
Design Manual



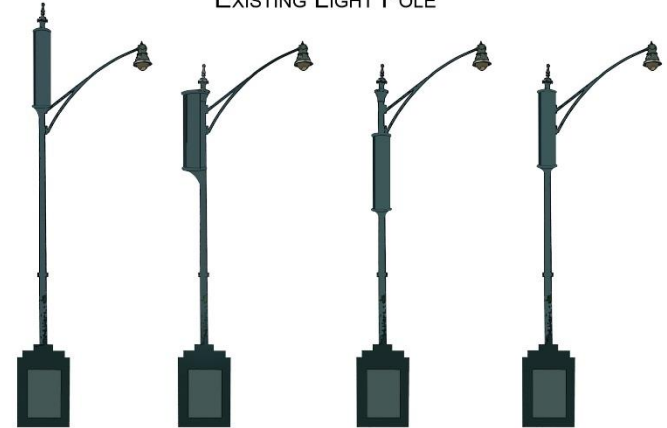
EXISTING LIGHT POLE



EXAMPLES OF SMALL CELL ADDITION



EXISTING LIGHT POLE



EXAMPLES OF SMALL CELL ADDITION



Design Manual

Summary of Requirements:

- Requires concealment and compliance with adopted Design Manual;
- Establishes spacing requirements for New Node Support Poles;
- Requires compliance with ADA standards;
- Establishes an order of preference for placement;
- Requires compliance with historic and design district regulations;
- Requires review by Historic Preservation Officer when deployment is proposed within a Historic District;
- Addresses installation that affects site visibility in intersections;
- Provides for minimum clearance standards to mitigate impacts to pedestrian traffic;
- Requires Airport review near Airport property;
- Limits deployment in residential areas and on ROW in municipal parks.
- Requires utility clearance for deployment on non-City owned utility poles.
- Requires compliance with Chapter 284 equipment sizing requirements.



Permitting Procedures

Chapter 284 establishes when a permit is required and requires that a negotiated license agreement be executed for deployments involving collocation.

Permit Required: A permit is required prior to installation or material modification of any Network Node, Network Node Support Pole, or Transport Facility in any portion of the public ROW.

License Agreement Required: As a precondition to receiving a Permit to Collocate a Network Node on a Municipally-Owned Service Pole, the Provider must enter into a license agreement with the City.

- Council is also considering a resolution that would approve a master Service Pole Collocation Attachment License Agreement.
- The purpose of the Agreement is to lay out the responsibilities of the City and the Network Provider with respect to installation, use, repair and maintenance of Wireless Facilities on City-owned Service Poles.
- The Master Agreement, once approved may be administratively executed by the City Manager between the City and a Network Provider.
- Should a Network Provider wish to change the terms of the Master Agreement, the Provider will be required to return to City Council for approval prior to Agreement execution.



Permitting Procedures

Chapter 284 establishes deadlines for review to grant or deny a permit.

A permit application is deemed approved if deadlines are not met.

1. Application Submittal

- Application submitted by the Network Provider.
- Online submittal will be required.
- Non-refundable application fee is due at the time of application submittal.
- For collocation applications, an MLA must be executed as a precondition of application submittal.



2. Completeness Check

- City must review applications for completeness and notify the applicant of its determination within:
 - **10 days** for a transport facility;
 - **30 days** for a network node or new node support pole.



3. Review Period*

- The City must approve or deny the permit within the following number of days, counted from when the City receives a complete application:
 - **21 days** for a Transport Facility Permit;
 - **60 days** for a Network Node Permit;
 - **150 days** for a Node Support Pole Permit.



4. Permit Issuance

- Monthly pro-rated payment of annual rental rate is due prior to permit issuance.
- Provider is billed every Jan. 1 thereafter.
- Permit expires 6 months after permit issuance if installation has not begun by that date.
- Inspections will be required during installation.

*If a permit is denied, the applicant must be notified via email and the applicant has 30 days to resubmit a revised application. City must thereafter approve or deny within 90 days of receipt.



Fees and Charges

Chapter 284 establishes maximum permit application and rental rate fees.

Adopting Fees: The fees below have been incorporated into the FY18 Schedule C (Schedule of Fees).

Application Fees:

- 1. Network Node or Transport Facility Application** - \$500 for up to 5 nodes, and \$250 for each additional node (a maximum of 30 nodes may be included in each application);
- 2. New Node Support Pole Application** - \$1,000 for each pole.

Rental Rates:

- 1. Network Node Site ROW Rental Rate** - \$250 annually per Network Node site, with an annual adjustment.
- 2. Transport Facility ROW Rental Rate** - \$28 monthly per Network Node Site, not to exceed network provider's monthly aggregate Network Node Site ROW Rental Rate.
- 3. Rental Rate for the Collocation of Network Nodes on Municipal-Owned Service Poles** - \$20 annually per Service Pole.

*Annual fees may be adjusted annually by an amount equal to one-half the annual change in the Consumer Price Index.



Proposed Floor Amendments

Proposed Floor Amendments: City received comments from 5 Network Providers: AT&T, Verizon, T-Mobile, Mobilitie, and Crown Castle. Where possible, comments have been integrated in the following proposed floor amendments:

Section 15.10.020 Applicability.

“The provisions of this Ordinance apply to any ~~sittings~~sitings, installations...”

Section 15.10.030 Definitions.

“Abandon: and its derivatives means, with regard to Wireless Facilities and Transport Facilities, and all supporting equipment installed in the Public Right-of-Way...that have been left by a Provider in an unused or non-functioning condition for more than ~~120~~180 consecutive days...”

“Decorative Pole: means any Streetlight Pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments...have been placed or are permitted to be placed according to nondiscriminatory City ordinances.”



Proposed Floor Amendments

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

“Historic District: means ‘Historic District’ as defined in Section 20.20.020 of the City Code, now or hereafter in effect and areas designated as historic under state or federal law.

“Modification or Modify: means any work in the Public Right-of-Way, or alteration of a Wireless Facility that is not substantially similar in size or a is a change in the Wireless Facility’s location in the Public Right-of-Way or its physical position on the Pole, except those alterations or changes set forth in Section 15.10.330 that are excepted from requiring a Permit under Chapter 284...”

Section 15.10.040 Access to Public Right-of-Way.

(F) “Subject to the provisions in Articles VI through VIII, this ordinance does not in any way limit the City’s right to locate, operate, maintain or remove Service Poles or other City equipment or property in the manner the City deems appropriate.”



Proposed Floor Amendments

(H) *“Subject to the provisions in Articles VI through VIII, nothing in this Ordinance shall be construed to require City to install, retain, extend, or maintain any Service Poles or other City equipment or property for use by the Provider when such Service Poles or other City equipment or property are not needed for City’s own requirements.”*

(I) *“Subject to the provisions in Articles VI through VIII, nothing in this Ordinance shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding a Service Pole or other City equipment or property into which City has previously entered, or may enter in the future, with other entities, including, but not limited to, agreements or arrangements for the removal of Wireless Facilities.”*

Section 15.10.050 Fees and Charges.

(E) *“The adjusted rate will be effective sixty (60) days after the City provides written notice to Providers of the new rate.”*

(G) *When the City at its own expense has removed or remediated Provider’s Wireless Facilities or Transport Facilities pursuant to Articles VI and VII..., the Provider shall remit payment to the City...”*



Proposed Floor Amendments

Section 15.10.070 General Requirements.

(C) “...the City may deny a Permit for a new Node Support Pole if the requested location...is not spaced apart from existing utility poles or Node Support poles at the same spacing as the spacing between utility poles in the immediate proximity, however when no other facilities are present in the location, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole...”

Section 15.10.090 Historic Landmark and Historic District.

(C)(1) “Subject to Section 105 of Chapter 284, as a condition for approval of Permits for Network Nodes or Node Support Poles in Historic Districts, the City shall require reasonable design or Concealment measures for such facilities.”

Section 15.10.090 Historic Landmark and Historic District.

(B) “A minimum of five (5) foot path of travel and a six (6) foot clear path of travel in the downtown plan area will be provided at all times.”

(D) “If the Network Node attachment is projecting toward the Street, it must be installed no less than ~~sixteen (16)~~ eight (8) feet above the ground...”



Proposed Floor Amendments

Section 15.10.140 Scenic Area or Scenic Corridor.

(B) *“Subject to Section 105 of Chapter 284, all Wireless Facilities proposed in or within a Scenic Area or Scenic Corridor must be Camouflaged so as to be unobtrusive...”*

Section 15.10.150 Decorative Poles.

(A) *“Subject to Section 105 of Chapter 284, Wireless Facilities proposed for Decorative Poles must be Camouflaged so as to not adversely affect the appearance of such poles...”*

Section 15.10.160 Residential Areas and Municipal Parks.

(A) *“Subject to Section 104 of Chapter 284, providers are discouraged from installing a Network Node on an existing Pole in a Public Right-of-Way located in or adjacent to a Street or thoroughfare that is...”*

(B) *“As a general rule, subject to Section 104 of Chapter 284, new Node Support Poles will not be permitted in a Public Right-of-Way that is in a Municipal Park or that is adjacent to a Street or thoroughfare that is described in Section A above.*



Proposed Floor Amendments

Section 15.10.210 Ground Equipment.

(A) “...~~Ground Equipment may not be installed within 250 feet of a Street corner or a Street intersection.~~ Ground equipment at or near street corner or street intersections must comply with Chapter 12.68 of this Code....”

Section 15.10.230 Non-Interference.

(A) “...If Provider’s Network Node interferes with City Operations, the City shall contact Provider’s Emergency Service Contact to provide notice of any interference with City Operations pursuant to Section 15.10.720. The Provider shall immediately cease operation of the Network Node...upon receiving notice from the City...”

Section 15.10.270 Damage to Service Pole.

“Whenever a Service Pole or other City facility or equipment supporting a Network Node is damaged or knocked down, City shall ~~endeavor to~~ provide prompt notice to Provider through Provider’s Emergency Service Contact in Section 15.10.720... If the Provider does not promptly respond, the City may take measures as are necessary to make the area safe.”



Proposed Floor Amendments

Section 15.10.280 Access by Provider.

"...The time of day and duration of Provider's access shall be as determined by City, except for emergency circumstances which shall be coordinated with the City to allow the Provider immediate access to the Public Right-of-Way..."

Section 15.10.340 Permit Application Requirements.

(E) The city must approve or deny applications under this Title in the following timeframes:

- 1. An application for a node support pole not later than the 150th day after the date the municipality receives the complete application.*
- 2. An application for a network node not later than the 60th day after the date the municipality receives the complete application.*
- 3. An application for a transport facility not later than the 21st day after the date the municipality receives a complete application.*
- 4. An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied on or before the applicable date for approval or denial prescribed in this section.*

(F) The City shall approve or deny the revised completed application after denial not later than 90 days after the date the City receives the completed revised application.



Proposed Floor Amendments

Section 15.10.360 Removal Upon Notice from City for City Project.

(B) Provider shall complete the removal or relocation within ~~thirty (30)~~ ninety (90) days after receiving written notice from the City...

Section 15.10.370 Removal Required by City for Safety and Imminent Danger Reasons.

(B) "If the City reasonably determines that there is imminent danger to the public, then the City may, after attempting to contact Provider's Emergency Service Contact under 15.10.720, immediately disconnect, remove, or relocate the applicable Wireless Facilities...at the Provider's sole cost and expense..."

Section 15.10.390 Abandonment by City.

(A) "...City shall give Provider notice in writing at least ~~sixty (60)~~ ninety (90) days prior to the date on which City intends to abandon or remove such Service Pole or other City facility or equipment..."



Proposed Floor Amendments

Section 15.10.410.

“...The City may perform visual inspections of any Wireless Facilities located in the Public Right-of-Way as the City deems appropriate without notice. If the inspection requires physical contact with any Wireless Facilities, the City shall provide written notice to the Provider within five (5) business days of the planned inspection. Provider may have a representative present during such inspection...”

Section 15.10.470.

*“...Provider agrees to use Public Rights-of-Way at Provider’s sole risk **except for inconvenience, annoyance, or injury to Provider’s Wireless Facilities caused by the City’s negligence or willful misconduct...**”*

Section 15.10.480 Indemnification.

*“PROVIDER SHALL INDEMNIFY CITY AS PROVIDED IN CHAPTER 283, SECTION 283.057(a) AND (b), TEXAS LOCAL GOVERNMENT CODE **EXCEPT, HOWEVER WHERE A CLAIM OR DAMAGE RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.**”*



Proposed Floor Amendments

Section 15.10.540 Security Required.

“...‘Security’ means ~~either~~ an executed performance bond, ~~letter of credit, or a bank or cashier’s check made payable to the City, or other form of security acceptable to the City...~~”

Section 15.10.550 Amount of Security.

“The amount of Security shall be at least \$25,000 for each multiple of five (5) Attachments. The security amount shall be prorated based on the number of attachments.”



Recommendation:

1. **That Council adopt an ordinance** amending Title 15 (Public Services) to create Chapter 15.10 (Deployment of Network Nodes in the Right-of-Way) to establish guidelines, procedures, and a design manual governing network providers' access to public rights-of-way **with proposed floor amendments**; and
2. **That Council adopt a resolution** establishing a master Service Pole Collocation Attachment License Agreement and authorizing the City Manager to enter into said agreement with network providers wishing to collocate network nodes on City-owned service poles.