

ORDINANCE NO. O-2017-97

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING TYLER CITY CODE CHAPTER 17, "STREETS AND TRAFFIC", ADDING ARTICLE XII., "SMALL WIRELESS FACILITY SITING; RIGHT-OF-WAYS", ORDINANCE ESTABLISHING STANDARDS FOR NETWORK NODES AND NODE SUPPORT POLES IN THE PUBLIC RIGHT-OF-WAY IN THE CITY OF TYLER; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the state has delegated to each city the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public, subject to state law; and

WHEREAS, the Texas State Legislature has adopted S.B. No. 1004 relating to the deployment of Network Nodes in public right-of-way and has amended Subtitle A, Title 9, Local Government Code by adding Chapter 284, to take effect on September 1, 2017; and

WHEREAS, it is the intent and policy of the state that cities receive from Network Providers fair and reasonable compensation for the use of public right-of-way and for Collocation on Poles; and

WHEREAS, the City of Tyler ("City") seeks to fully comply with and implement Chapter 284 of the Texas Local Government Code and to encourage wireless infrastructure investment by providing a fair, reasonable, and predictable process for the deployment of Network Nodes and Node Support Poles, while managing the public right-of-way in the overall interests of the public health, safety and welfare.

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

PART 1: That Tyler City Code Chapter 17, "Streets and Traffic", Article XII., "Small Wireless Facility Siting; Right-Of-Ways", is hereby amended by amending Section 17-231 to read as follows:

Sec. 17-231. Purpose and Scope

(A) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of Node Support Poles in the right-of-way and Network Nodes in the public right-of-way and on Service Poles within the City's jurisdiction, which will provide public benefits and will be consistent with the preservation of the integrity, safe usage, and visual qualities of the City public right-of-way and the City as a whole.

(B) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by Network Nodes, including without limitation, ensuring that Network Nodes or Node Support Poles do not adversely affect,

- (1) use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) vehicular and pedestrian traffic;
- (3) the operation of facilities lawfully located in public right-of-way or public property;

- (4) the ability of the City to protect the environment, including the prevention of damage to trees;
 - (5) the character of residential and historic areas, and city parks, in which Network Nodes may be installed; and
 - (6) the deployment of Network Nodes to provide the benefits of Wireless Services.
- (C) Conflicts with Other Chapters. This Chapter supersedes all Chapters, parts of Chapters or rules adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Sec. 17-232. Definitions

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

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

"Applicable Codes" means:

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

"Applicant" means any Person who submits an Application and is a Network Provider or its designee.

"Application" means a request submitted by an Applicant (i) for a Permit to Collocate Network Nodes; or (ii) to install a Transport Facility; or (iii) approve the installation, replacement or modification of a Pole.

"Chapter 284" and any reference to sections and subsections thereof means Texas Local Government Code; Chapter 284, Deployment of Network Nodes in Public Right-Of-Way.

"City Code" means the Code of Ordinances, City of Tyler, Texas.

"Collocate" and "Collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a public right-of-way on or adjacent to a Pole.

"Concealment or Camouflage" shall mean any Wireless Facility or Pole that is covered, blended, painted, disguised, Camouflaged, or otherwise concealed such that it blends into the surrounding environment and is visually unobtrusive. A Concealed or Camouflaged Wireless Facility or Pole includes any Wireless Facility or Pole approved by the City as conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to, a Wireless Facility or Pole that is hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

"Day" means calendar day.

"Decorative Pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed in accordance with City Code.

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

"Design Manual" means the City's rules and guidelines for the installation and construction of Network Nodes and new Node Support Poles in the public right-of-way.

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

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

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

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

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

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

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

(A) includes:

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

(B) does not include:

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

"Network Provider" means:

(A) a Wireless Service Provider; or

(B) a Person that does not provide Wireless Services and that is not an electric utility but builds or installs on behalf of a Wireless Service Provider:

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

"Node Support Pole" means a pole installed by a Network Provider for the primary purpose of supporting a Network Node.

"Permit" means a written authorization for the use of the public right-of-way or Collocation on a Service Pole required from a municipality before a Network Provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

"Pole" means a Service Pole, Municipally Owned Utility Pole, Node Support Pole, or Utility Pole.

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

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

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

"Public Right-of-Way management ordinance" means an ordinance that complies with Sections 284.101 through 284.110.

"Public Right-of-Way rate" means an annual rental charge paid by a Network Provider to a municipality related to the construction, maintenance, or operation of Network Nodes within a public right-of-way in the municipality.

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

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

"Transport Facility" means each transmission path physically within a public right-of-way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for Network Nodes.

"Utility Pole" means a pole that provides:

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

"Wireless Service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a Network Node.

"Wireless Service Provider" means a Person that provides Wireless Service to the public.

Sec. 2-233. Permitted Use; Application and Fees

- (A) Permitted Use: Collocation of Network Nodes and the placement of Node Support Poles, meeting the parameters set forth in Section 5 below and in Chapter 284, shall be a

permitted use. No zoning or land use review shall apply, subject to the requirements in Section 5.

- (B) **Permit Required.** No Person shall place a Network Node, Transport Facility or Node Support Pole in the public right-of-way, without first filing a Permit Application and obtaining a Permit therefore, except as otherwise provided in this Chapter.
- (C) **Permit Application.** All Permit Applications filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly, though Applications may be subject to disclosure under the Texas Public Information Act.
- (D) **Application Requirements.** The Permit Application shall be made by the Network Provider or its duly authorized representative and shall contain the following:
 - (1) The Applicant's name, address, telephone number, and e-mail address.
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
 - (3) Construction and engineering drawings prepared by a professional engineer licensed in the State of Texas, and for wireless facilities proposed to be attached to a Service Pole, a Decorative Pole or other City-owned or -controlled structure, a certification from the engineer that the existing Pole or structure and its foundations have sufficient structural stability to support the proposed Network Node and can bear the wind load without Pole modification, or in the event the installation will require Pole re-enforcement, that such re-enforced Pole will have sufficient structural stability to support the proposed Network Node and can bear the wind load without further Pole modification. Such construction and engineering drawings must also address the design of the connection of any item to the Pole. If Pole re-enforcement is necessary, Provider shall provide construction and engineering drawings for the proposed alteration to the existing Pole. Any re-enforcement or replacement of a Pole shall match the color of the existing Pole. Any Pole re-enforcement or replacement shall be at Provider's sole cost.
 - (4) Detailed 11"x17" drawings to scale, with calculations, showing strict conformity to the size limitations as set forth in City Code in accordance with Chapter 284.
 - (5) Scaled dimensional drawings or pictures of the proposed attachments of the Network Node to the existing Poles or structures as well as any other proposed wireless facility, indicating the spacing from existing curbs, driveways, sidewalks, and other existing Poles. This shall include a before-and-after image of the Pole and all proposed attachments thereto and associated standalone equipment. Any Concealment or Camouflage as required by the City Design Manual or by separate agreement must be detailed and shown.
 - (6) Scaled dimensional construction and engineering drawings indicating the current public right-of-way line and showing any proposed underground conduit and equipment and its spacing from the City's existing utility facilities. Such drawings shall also show a sectional profile of the public right-of-way and identify all existing utilities and existing utility conflicts.
 - (7) An Applicant proposing Collocation on a City-owned service Pole must submit a copy of the signed agreement with the City allowing the Collocation on the City-owned Service Pole located a specific address at the time of filing the Permit Application.
 - (8) A certificate that the Network Node complies with applicable regulations of the Federal Communications Commission.
 - (9) Certification that the proposed Network Node will be placed into active commercial service by or for a Network Provider not later than the 60th day after the date the construction and final testing of the Network Node is completed.

(10) Sealed engineering drawings for the electrical service providing power to the proposed Network Node, which must include the conduit size, circuit size, calculations for amp, and distances running. Provider shall use 120 voltage when connecting to any City Service Pole or Decorative Pole and shall provide a key to meter upon inspection. The City is entitled to disconnect power to the Network Node or other wireless facilities in emergency situations.

(11) If the location of the proposed wireless facility lies within right-of-way adjacent to a state or federal highway, the Provider must provide evidence of a Permit from the state or federal government

(12) Disclosure if the proposed installation is:

1. In an area as described in Section 5 (H).
2. In an underground utility district or other area with undergrounding requirements.

(13) If a Network Node is proposed to be installed on a private Utility Pole, the Applicant must submit documentation demonstrating the right to access said Utility Pole.

(E) Exemptions.

(a) A Network Provider is not required to submit an Application, obtain a Permit, or pay a rate for:

(1) routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

(2) replacing or upgrading a Network Node or Pole with a node or Pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or

(3) the installation, placement, maintenance, operation, or replacement of micro Network Nodes that are strung on cables between existing Poles or Node Support Poles, in compliance with the National Electrical Safety Code.

(b) For purposes of Subsection (a)(2):

(1) a Network Node or Pole is considered to be "substantially similar" if:

(A) the new or upgraded Network Node, including the Antenna or other equipment element, will not be more than 10 percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by Section 284.003; and

(B) the new or upgraded Pole will not be more than 10 percent higher than the existing Pole, provided that the increase may not result in the Pole exceeding the applicable height limitations prescribed by Section 284.103;

(2) the replacement or upgrade does not include replacement of an existing Node Support Pole; and

(3) the replacement or upgrade does not defeat existing Concealment elements of a Node Support Pole.

(c) The determination under Subsection (b)(1) of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the Network Node or Node Support Pole as approved by the municipality.

(d) Notwithstanding Subsection (a):

(1) a Network Provider must provide the City with at least 7 business-days advance written notice of its plan to complete work falling within the description of that subsection;

(2) a Network Provider may replace or upgrade a Pole only with the written approval of the Pole's owner; and

(3) the size limitations may not in any event exceed the parameters prescribed by Section 284.003 unless the Network Provider obtains prior written approval from the City in accordance with Section 284.109, subject to all applicable zoning or land use

regulations and applicable codes.

- (F) Information Updates. Any amendment to information contained in a Permit Application shall be submitted in writing to the City within 30 days after the change necessitating the amendment.

- (G) Construction Permit and Right-of-Way Fees.

1. Network Nodes:

(a) Construction Permit Fee: The nonrefundable construction Permit fee shall be \$500.00 for the first five nodes, \$250 for each additions node, not to exceed thirty nodes.

(b) Annual Public Right-of-Way Rate Fee: The nonrefundable annual public right-of-way rate shall be \$250 per Network Node site installed in the City public rights-of-way. For purposes of calculating the rate, the date of installation shall be six months from the date of Permit approval.

(c) Public Right-of-Way Rate Adjustment: , The City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics (CPI). The City shall provide written notice to each Network Provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60th day following the written notice.

(e) Cease Payment. A Network Provider is authorized to remove its facilities at any time from the public right-of-way and cease paying the City compensation for use of the public right-of-way following removal and written notification to the City of such removal. The Network Provider must leave the public right-of-way in the same or substantially the same condition as it was prior to the installation of its facilities.

2. Node Support Poles:

(a) Construction Permit Fee: The nonrefundable construction Permit fee for each Node Support Pole shall be \$1,000.00.

(b) Annual Public Right-of-Way Rate Fee: The nonrefundable annual public right-of-way rate shall be \$250 per Pole installed in the City public rights-of-way. For purposes of calculating the rate, the date of installation shall be six months from the date of Permit approval.

(c) Public Right-of-Way Rate Fee. This amount will be adjusted by an amount equal to one-half the annual change, if any, in the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics. The City shall provide written notice to each Network Provider of the new rate; and the rate shall apply to the first payment due to the city on or after the 60th day following the written notice.

(d) Cease Payment. A Network Provider is authorized to remove its facilities at any time from the public right-of-way and cease paying the City compensation for use of the public right-of-way following removal and written notification to the City of such removal.

3. Transport Facilities:

(a) Construction Permit Fee: The nonrefundable construction Permit fee for Transport Facilities shall be \$500 for the first five nodes and \$250 for each additional node.

(b) Public Right-of-Way Rate Fee: The nonrefundable public right-of-way rate fee shall be \$28 per month per node located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the

Network Provider's payment of municipal fees to the municipality exceeds its monthly aggregate per-node compensation to the municipality.

(c) **Public Right-of-Way Fee** This amount will be adjusted by an amount equal to one-half the annual change, if any, in the Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics. The City shall provide written notice to each Network Provider of the new rate; and the rate shall apply to the first payment due to the city on or after the 60th day following the written notice

i. However, no rate is required if the Network Provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Local Government Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

(d) **Cease Payment.** A Network Provider is authorized to remove its facilities at any time from the public right-of-way and cease paying the City compensation for use of the public right-of-way following removal and written notification to the City of such removal.

4. **Micro Network Nodes:**

(a) No Application fee is required for a Micro Network Node if the installation is attached on lines between Poles or Node Support Poles.

5. **Collocation of Network Nodes on City Service Poles**

(a) Subject to the City's Pole Service Agreement, the Collocation of Network Nodes on City Service Poles shall be at a rate of \$20.00 per year per Service Pole.

6. **City-Owned Municipal Utility Poles:**

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

7. The City shall not seek or accept in-kind services in lieu of or as additional payment or consideration from any user of the public rights-of-way for use of the public rights-of-way.

Sec. 17-234. Action on Permit Applications

(A) **Review of Applications.** The City shall review Applications for Network Nodes, Node Support Poles and transport facilities for conformity with applicable law and City Code and shall issue such Permits on nondiscriminatory terms and conditions subject to the following requirements:

(a) Within 30 days of receiving an Application for a Network Node or Node Support Pole, or 10 days for a Transport Facility, the City shall determine and notify the Applicant whether the Application is complete; or if incomplete, the City must specifically identify the missing information in such notification.

(b) The City shall make its final decision to approve or deny a complete Application no later than (i) 21 days after receipt of a complete Application for a Transport Facility, (ii) 60 days after receipt of a complete Application for a Network Node; and (iii) 150 days after receipt of a completed Application for a new Node Support Pole.

(c) The City shall advise the Applicant in writing of its final decision, and, if denied, the basis for that denial, including specific provisions of City Code or applicable law on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the Application. The Applicant may cure the deficiencies identified by the City and resubmit the Application within 30 days of the denial without paying an additional Application fee, other than a fee for actual costs incurred by the municipality. The City shall approve or deny the revised Application

within 90 days of receipt of the amended Application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial, provided that no other revisions were made to the original Application other than to address the deficiencies cited in the original denial.

(d) If the City fails to act on an Application within the review period specified in this Section 4, the Application shall be deemed approved.

(e) An Applicant seeking to Collocate Network Nodes may, at the Applicant's discretion, file a consolidated Application and receive Permits for up to 30 Network Nodes. However all Network Nodes within a single Application must be approvable for any node to be Permitted. The City will not authorize the segmenting of an Application that has already been deemed complete.

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

Section 5 – Network Nodes, Utility Poles and Node Support Poles in the Public Right-of-Way; Maximum Height; Other Requirements

(A) Maximum Size of Equipment.

1. Network Nodes

a. Antenna without exposed elements and attached to an existing structure or Pole:

- i. Must be located inside an enclosure of not more than six cubic feet in volume;
- ii. May not exceed a height of three feet above the existing structure or Pole; and
- iii. May not protrude from the outer circumference of the existing structure or Pole by more than two feet.

b. Antenna with exposed elements and attached to an existing structure or Pole, the Antenna and all of the Antenna's exposed elements:

- i. Must fit within an imaginary enclosure of not more than six cubic feet;
- ii. May not exceed a height of three feet above the existing structure or Pole; and
- iii. May not protrude from the outer circumference of the existing structure or Pole by more than two feet.

c. The cumulative size of other wireless equipment associated with the Network Node attached to an existing structure or Pole may not:

- i. Be more than 28 cubic feet in volume; or
- ii. Protrude from the outer circumference of the existing structure or Pole by more than two feet;

d. Ground-based enclosures, separate from the Pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches.

e. Pole-mounted enclosures may not be taller than five feet.

f. The following types of associated ancillary equipment are not included in the calculation of equipment volume:

- i. Electric meters
- ii. Concealment elements
- iii. Telecommunications demarcation boxes
- iv. Grounding equipment
- v. Power transfer switches
- vi. Cut-off switches

- vii. Vertical cable runs for the connection of power and other services
 - g. Equipment attached to Node Support Poles may not protrude from the outer edge of the Node Support Pole by more than two feet.
 - h. Equipment attached to a Utility Pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the Utility Pole owner's construction standards.
 - i. Network Nodes on a Node Support Poles shall be installed at least eight (8) feet above the ground.
 - j. If any attachments are projecting towards the street side, it shall provide a minimum vertical clearance of 16 feet.
- 2. New, modified, or replacement Utility Poles or Node Support Poles installed in a public Right-of-Way in relation to which the network Provider received approval of a Permit Application:
 - a. Shall not exceed the lesser of:
 - i. 10 feet in height above the tallest existing Utility Pole located within 500 linear feet of the new Pole in the same public Right-of-Way; or
 - ii. 55 feet above ground level
 - b. Shall be set back a minimum of twenty (20) feet from a Traffic Signal Pole, and set back a minimum of fifteen (15) feet from any pedestrian ramp.
 - c. Shall be located at least ten (10) feet from a driveway and at least twelve (12) feet from the center of existing trees.
 - d. Node Support Poles shall not be closer than 300 linear feet from an Node Support Pole within the same block.
 - e. 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 noncompliant with applicable Laws, including the American Disabilities Act, then Network Provider shall remove the Node Support Poles, ground equipment or Network Nodes at their sole expense.

- (B) Visual Clutter: There shall not be more than two Network Nodes on any one Pole less than 36 feet in height. Poles consisting of more than one Network Node shall be subject to the City Design Manual as applicable.
- (C) Fiber Connection. Network Provider shall be responsible for obtaining lawful access and connection to fiber optic lines or other backhaul solutions that may be required for its Node Support Poles or Network Nodes.
- (D) Generators. Provider shall not allow or install generators or back-up generators in the Right-of-Way.
- (E) Undergrounding Provisions. A Network Provider shall comply with nondiscriminatory undergrounding requirements, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval. This requirement

or restriction shall not be interpreted to prohibit a Network Provider from replacing an existing structure.

- (F) Historic and Design Districts. Providers shall not Collocate new Network Nodes or install new Node Support Poles in an area designated as a historic district, the Downtown Business Arts and Culture District (design district with Decorative Poles), or any other design district as may be designated by the City without approval from the City. The City requires that new Network Nodes and/or new Node Support Poles in such districts utilize Concealment mechanisms to protect such district's character and aesthetics as stipulated in state law. The Network Provider shall be further required to comply with guidelines set out in the City's Design Manual.

- (G) Installation in Municipal Parks and Residential Areas. A Network Provider may not install a new Node Support Pole in a public right-of-way without the City Council's discretionary, nondiscriminatory and written consent if the public right-of-way is located in a Municipal Park or is adjacent to a street or thoroughfare that is 1) not more than 50 feet wide from edge of pavement; and 2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions. A Network Provider shall comply with private deed restrictions and other private restrictions when installing Network Nodes in parks and residential areas. City Council may only consider the requested installation after a public hearing. The Network Provider shall give notification of the meeting to adjacent residential properties within 200 feet of the proposed Node Support Pole at their sole expense. At a minimum, the notification shall give information about the project, location, contact information and the date and time of the public hearing. The Network Provider shall be further required to comply with guidelines set out in the City's Design Manual.

- (H) Network 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. When directed by the City, Network Provider shall trim under the supervision and direction of the City Arborist. Network Provider shall be solely liable and responsible for any damages, injuries, or claims arising from Network Provider's actions under this section.

- (I) 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. Except as required by laws or by the Utility Pole owner, Network Provider shall not post any other signage or advertising on the Node Support Poles and Network Nodes, or Utility Pole.

- (J) Electrical Supply: Network Provider shall be responsible for obtaining any required electrical power service to the Network Provider's wireless facilities. Network Provider's electrical supply shall be separately metered from the City and must match City infrastructure voltage. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the wireless facilities, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the wireless facility structure or the act or omission of any other tenant or Network Provider of the wireless facility structure, or for any other cause beyond the control of the City.

- (K) Insurance: Any Person required under this Chapter to obtain the City's consent to make use of the public right-of-way or any Person required by this Chapter to obtain a Permit to perform construction in the public right-of-way must, during the period of the use or work, obtain and keep in effect insurance against claims for injuries to Persons or

(L)

damages to property arising from or in connection with the use or performance of the work- comprehensive general liability and property damage insurance with minimum limits of \$500,000.00 for the injury or the death of any one Person, \$1,00,000.00 for each occurrence, and \$100,000.00 for each occurrence of damage to or destruction of property. Indemnification: The indemnification provisions of Sections 283.057(a) and (b) apply to a Network Provider accessing a public right-of way under this Chapter.

Sec. 17-235. Effect of Permit

- (A) Authority Granted. A Permit from the City authorizes an Applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the public right-of-way.
- (B) Time of Installation. A Network Provider shall begin the installation for which a Permit is granted not later than six months after final approval and shall diligently pursue the installation to completion.
- (C) Right to Occupy. Once a Network Provider has Collocated a Network Node or placed a Node Support Pole pursuant to a Permit, the provider shall be permitted to continue to maintain such Collocation or such Pole unless required to remove or relocate under the terms of this Chapter.

Sec. 17-236. Removal, Relocation or Modification of Network Nodes in the ROW

- (A) Notice. Within 90 days following written notice from the City, a Network Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Network Node or Node Support Pole within the public right-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the public right-of-way.
- (B) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to disconnect or move any Network Node located within the public right-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Network Provider and allow the Network Provider an opportunity to move its own facilities prior to the City disconnecting or removing a facility and shall notify the Network Provider after disconnecting or removing a Network Node or Node Support Pole.
- (C) Street widening or straightening. Consistent with Texas Utilities Code § 54.203(c), upon thirty (30) days' notice by the City, a Network Provider shall begin relocation of its facilities within the rights-of-way at its own expense to permit the widening or straightening of streets. The notice by the City shall include a specification of the new location for the Network Provider's facilities along the rights-of-way.
- (D) Abandonment of Facilities. A Network Provider may not abandon its facilities in a public right of way. If a Network Provider stops use of a Network Node or Node Support Pole for 120 consecutive days it shall be deemed abandoned and must be removed by the Network Provider at its sole expense within 60 days of such abandonment. Except that a Network Provider is not required to and shall not remove any Node Support Pole that has been abandoned by the Network Provider but is in Collocation use by another Network Provider. The Network Provider shall give the City written notice of all abandoned facilities and its plan for removal of such facility at least 30 days prior to any removal. Following the removal of any facility the Network Provider shall leave the right-of-way

in the same or substantially the same condition as it was prior to the installation of the facility

Sec. 17-237. Attachment to City Service Poles in the Public Right-of-Way

A Network Provider, upon written agreement with the City and in accordance with the City Design Manual, shall be permitted to attach Network Nodes to City-owned Service Poles, consistent with applicable law, City Code and subject to the requirements specified herein.

(A) Permits. A Network Provider shall obtain a Permit, pursuant to the terms of this Chapter, prior to collocating Network Nodes on Service Poles.

(B) Make Ready. Network Provider shall be responsible for costs for make ready work on City Service Poles to which provider seeks to place a Network Node.

Sec. 17-238. Design Manual

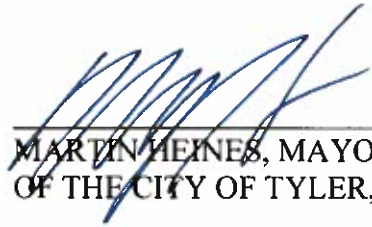
The Managing Director of Planning and Economic Development is authorized to approve and promulgate the City's Design Manual. A Network Provider shall comply with the City's Design Manual in place on the date a Permit Application is filed in relation to work for which the City has approved a Permit Application.

(Ord. No. O-2017-97; 10/25/17)

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That this Ordinance shall take effect ten (10) days after its passage, approval and publication.

PASSED AND APPROVED this 25th day of October, A.D, 2017.



MARTIN MEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:


CASSANDRA BRAGER, CITY CLERK




DEBORAH G. PULLUM,
CITY ATTORNEY