

ARTICLE VIII. - NETWORK FACILITIES

Footnotes:

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Editor's note— Ord. No. 2070, adopted May 13, 2019, amended art. VIII in its entirety to read as herein set out. Former art. VIII pertained to the same subject matter, and derived from Ord. No. 2042, adopted Dec. 11, 2017.

Sec. 70-250. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where context clearly indicates a different meaning:

Abandon and its derivatives means the network nodes, transport facilities, and node support poles, or portions thereof, that have been left by provider in an unused or nonfunctioning condition for more than 120 consecutive days unless, after notice to provider, provider has established to the reasonable satisfaction of the city that the network nodes, transport facilities, and node support poles, or portion thereof, has the ability to provide communications.

ADA means Americans with Disabilities Act.

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

Building and standards commission or *BSC* means the building and standards commission appointed by city council for the City of West University Place.

Cable service means as defined in the Cable Communications Policy Act of 1984, as amended 47 U.S.C. 532.

City means the City of West University Place, Texas, and the city's officers and employees.

City Code means the Code of Ordinances of the City of West University Place, Texas.

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

Consumer Price Index means the annual revised Consumer Price Index for All Urban Consumers for Texas, as published by the Federal Bureau of Labor Statistics.

Concealment means any wireless facility that is covered, blended, painted, disguised, camouflaged, or otherwise concealed such that the wireless facility blends into surrounding environment and is visually unobtrusive. Concealment includes, but is not limited to, covering with a facade, designs that blend with the surrounding character of an area, paint that matches surrounding poles, disguising with landscaping, or locating underground.

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

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

Design manual refers to the wireless services (small cells) design manual, which contains the design requirements for the installation of network facilities in effect at the time of a permit issuance, or the commencement of work not required obtaining a permit, including any other city requirements, as amended from time to time.

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

Municipally owned utility pole means a utility pole owned or operated by a municipally owned utility, as defined by V.T.C.A., Utilities Code § 11.003 and located in a ROW.

Network facility means a network node or node, node support pole, transport facility, or any combination of such structures.

Network node or *node* means equipment as a fixed location that enables wireless communications between network provider equipment and a communications network. The term includes:

- (1) Equipment associated with wireless communications;
- (2) A radio transceiver, and antenna, a battery-only back-up power supply, and comparable equipment, regardless of technological configuration; and
- (3) Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and does not include:
 - a. An electric generator; or
 - b. A pole.

Network provider means a person that provides wireless service to the public; or a person that does not provide wireless service and that is not an electric utility but builds or installs on behalf of a person that provides wireless service to the public: network nodes, node support poles, or any structure that supports or is capable of supporting a network node.

New node support pole or *new pole* means a new installation, including any extension or replacement of an existing pole where the replacement is not excepted from permit requirements under this article.

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

Park means the various properties under the direction, control, and supervision of the city's director of the parks and recreation department, pursuant to the authority granted by city council and the City Code of Ordinances.

Provider shall have the same definition as network provider.

Permit means a written authorization for the use of the right-of-way including, collocation on a service pole, by a network provider required from the city before a network provider may perform any network facility related action in the right-of-way under this article.

Permit holder refers to any person that has been issued a permit pursuant to the terms of this article.

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

Public utility has the same meaning as defined in the V.T.C.A., Utilities Code § 11.004, including municipally owner and/or operated utilities.

Roadway means that portion of a street area improved, designed or ordinarily used for vehicular traffic (excluding private driveways).

Public works director means the city's director of public works or designee of the director of public works.

ROW means the same as in the V.T.C.A., Local Government Code § 283.002(6) (i.e., 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 the airwaves above a public right-of-way with regard to wireless telecommunications).

ROW work or *work in the ROW* means to place, install, construct, maintain, alter, operate, inspect, repair, connect, or disconnect any network facility.

Service pole means a pole, other than municipal-owned utility pole, owned or operated by a municipality and located in a right-of-way, including: A pole that supports traffic control functions; a structure for signage; a pole that supports lighting; other than a decorative pole; and a pole or similar structure owned or operated by a municipality and supporting network nodes.

SWPPP means stormwater pollution prevention plan.

TAS means the Texas Accessibility Standards.

Telecommunications service means any "local exchange telephone service" as defined by V.T.C.A., Utilities Code § 51.002.

Traffic signal means any device, whether manually, electrically, or mechanically operated by which traffic is alternatively directed to stop and to proceed.

Transport facility means each transmission path physically within a right-of-way, extending with a physical line from a network node directly to a network, for the purpose of providing backhaul for network nodes.

(Ord. No. 2070, § 1(App. A), 5-13-2019 ; Ord. No. 3005, § 1(Exh. A), 12-14-2020)

Sec. 70-251. - Authorization required.

(a) *In general.* All of the following requirements must be met for each network facility, as applicable:

- (1) There must be a construction permit in effect for the network facilities, in those circumstances described in article II and this article;
- (2) All related network facilities work in ROWs must comply with this chapter, applicable city council authorization, and the design manual;
- (3) The network facility must comply with this chapter, applicable city council authorization, and the design manual;
- (4) Each provider must comply with this chapter, with applicable city council authorization, design manual, and applicable provisions of the V.T.C.A., Local Government Code.

(b) *Compliance required.* It shall be unlawful for any person to place, install, construct, maintain, alter, operate, control, use, rent or lease (as owner or tenant), control or own any network facility, if:

- (1) A requirement imposed by this chapter applies to that facility, or to that person; but
- (2) The requirement is not met or satisfied.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-252. - Administration and enforcement.

(a) *In general.* The public works director shall administer and enforce this article, subject to the jurisdiction of the

BSC as provided for in this chapter. Under this article:

- (1) Determinations of reasonableness, feasibility and practicality shall take into account certain user-specific factors, in addition to other police power considerations, if a user requests that they be considered and provides the requisite supporting information. Such user-specific factors are:
 - a. Possible service interruptions;
 - b. Possible accidents;
 - c. Possible delays in construction or availability of facilities; and
 - d. Unreasonable technological or economic burdens.
 - (2) Impacts upon ROWs, residents and property are measured in terms of access requirements, disruption or displacement of other facilities or activities, visual intrusiveness or other aesthetic degradations, risk of physical impact and other external effects including reduction in property values. These determinations may take into account any:
 - a. Unreasonable failure or refusal of a user to submit and coordinate its system plans when requested by the BSC; and
 - b. Unreasonable failure or refusal to participate in a common excavation, bore, etc., or allow others to do so, all as more fully described in this article.
- (b) *Information.* At the request of the public works director, each provider shall report information related to the use of the ROWs in the form and manner reasonably prescribed by the public works director, including, but not limited to:
- (1) Information relating to the provider's identity, address, telephone numbers, authorized personnel, 24-hour contact persons, network facilities and ROW work, at reasonable times specified by the public works director, which information shall thereafter be kept current by the provider;
 - (2) "As built" drawings, in a format reasonably prescribed by the public works director, and as allowed by law, within 60 days of completion of any section of new or reconstructed network facilities, and when otherwise requested by the public works director; provided, however, the public works director may accept reasonable alternatives to "as built" drawings if:
 - a. The alternatives provide adequate information about the network facilities; and
 - b. The provider agrees, at its own cost, to locate the network facilities in the field and provide necessary location data to the director, including depths, upon request;
 - (3) Written notice at least 15 days before any transfer of control or material change in operations; and
 - (4) Within 30 days following a written request, copies of public petitions, applications, written communications and reports submitted by the provider to federal or state regulatory agencies, but only if they relate to use of the ROWs, and are reasonably identified.
- (c) *Reimbursement of costs.* If a provider fails to perform any work required by this article (for example, work to move or remove network facilities or to restore the ROWs) within the prescribed time (or within a reasonable time, if no time is prescribed), the city may perform the work or have it performed. Except in case of an imminent threat to public health or safety, the city shall give the user a final notice allowing the user at least five days to perform the work before the city does it. The user shall reimburse the city for the costs so incurred within 30

days from the date the user receives an invoice and a written determination by the public works director that the amounts are correct and owed by the user. The city incurs no liability by taking such action. Reimbursement is not a bar to other enforcement action or to prosecution for any violation.

- (d) *Continuing duties.* The provisions of this section shall be continuing and shall survive the termination of any consent or other authorization for a period of one year.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-253. - Permit required.

Prior to installation or modification of network facilities, provider shall complete and submit to the city a ROWs permit application, along with standard required documents and the following items:

- (1) Permit for network facilities without installation of new poles.
 - a. Permit fee, as authorized by this article;
 - b. Aerial map showing the location of the existing pole to which the network node is proposed to be attached, and a street view image;
 - c. Plans and drawings prepared by a professional engineer licensed in the State of Texas that has evaluated the existing pole or infrastructure for structural stability to carry proposed network nodes and to bear the wind load. The engineer shall determine if construction can occur without pole modification or whether the installation will require pole reinforcement. If pole reinforcement is necessary, the provider shall provide engineering design and specification drawings for the proposed alteration to the existing pole. Any pole reinforcement or replacement shall be at the provider's sole cost. Engineered drawings for pole attachment or modification shall bear the authorized signature of the owner of the pole or their agent. All reinforcement or replacement poles shall match the character of the pre-existing pole in order to blend into the surrounding environment and be visually unobtrusive. The city reserves the right to deny a certain type of pole due to its differences;
 - d. Scaled dimensioned drawings or pictures of the proposed attachments of the network node to the existing poles or structures as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, and other existing light poles and any other poles or appurtenances. This shall include a before and after image of the pole and all proposed attachments and associated standalone equipment;
 - e. Scaled dimensioned construction plans indicating the current ROWs line and showing the proposed underground conduit and equipment, and its spacing from existing utilities. The drawings shall also show a sectional profile of the ROWs and identify all existing utilities and existing utility conflicts;
 - f. If a city pole is proposed to be used, the city pole ID number and address shall be provided;
 - g. The applicant needs to provide analysis that the proposed network node shall not cause any interference with city public safety radio system, traffic signal light system, or other communications components. It shall be the responsibility of the provider to evaluate, prior to making the application for the permit, the compatibility between the existing city infrastructure and the provider's proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on city's public safety radio infrastructure;
 - h. Prior to installing above ground cabinets or other above ground structures, applicants are required to

have a traffic study conducted by a licensed traffic engineer to confirm visibility clearance for traffic, pedestrian, and off street parking safety;

- i. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work;
 - j. The city-issued ROWs permit authorizes use of its ROWs. Applicants are responsible for obtaining permission on non-city-owned infrastructure. If the project lies within the state right-of-way, the applicant must provide evidence of a permit from the state; and
 - k. Notification to adjacent residential developments/neighborhoods within 300 feet is required on all node attachments.
- (2) Permit for installation of new poles.
- a. Permit fee, as authorized by this article;
 - b. Aerial map showing the location of the existing pole to which the network node is proposed to be attached, and a street view image;
 - c. The applicant will need to provide analysis showing that the proposed new node support pole is spaced at least 300 linear feet from another existing pole that is capable of supporting network nodes along the proposed location, unless otherwise approved by the city in writing;
 - d. Scaled dimensioned drawings or pictures of the proposed node support pole as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances. This shall include a before and after street view image. The after image needs to include the proposed pole and all proposed attachments and associated standalone equipment;
 - e. Scaled dimensioned construction plans indicating the current ROWs line and showing the proposed underground conduit and equipment, and its spacing from existing lines. The drawings shall also show a sectional profile of the ROW and identify all existing utilities and existing utility conflicts;
 - f. A traffic control plan, SWPPP, and trench safety plan may also be required based on the proposed scope of work;
 - g. The applicant needs to provide analysis that the proposed network node shall not cause any interference with city public safety radio system, traffic signal light system, or other communications components. It shall be the responsibility of provider to evaluate, prior to making application for permit, the compatibility between the existing city infrastructure and provider's proposed infrastructure. A network node shall not be installed in a location that causes any interference. Network nodes shall not be allowed on city's public safety radio infrastructure;
 - h. If the project lies within the state right-of-way, the applicant must provide evidence of a permit from the state. The city-issued ROWs permit authorizes use of its right-of-way. Providers/applicants are responsible for obtaining permission on non-city-owned infrastructure;
 - i. The applicant will be required to conduct a traffic study by a licensed traffic engineer prior to the installation of any newly proposed pole or other ground-mounted equipment to confirm visibility clearance for traffic, pedestrian, and off street parking safety; and
 - j. Notification to adjacent residential developments/neighborhoods within 300 feet is required on all new node support poles installed and/or owned by provider.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-254. - Permitting standards.

The permit proposal shall comply with the following standards:

- (1) *General standards.* All ROW work must be performed:
 - a. In accordance with this chapter and other applicable regulations;
 - b. In a manner that minimizes interference with public and private property, following all reasonable construction directions given by city officials to minimize such interference; and
 - c. Only after required authorizations, permits, and approvals are obtained and the provider has given the public works director at least 48 hours' advance notice of the start of work and the specific location of the work.
- (2) *Additional permitting standards for network facilities without installation of new poles.*
 - a. Any facilities located off pole must remain in cabinetry or enclosed structure underground, except for the electric meter pedestal. Facilities on pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure;
 - b. The electrical meter shall not be mounted on a city's metal pole or structure;
 - c. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway;
 - d. All proposed projecting attachments to the pole shall provide a minimum vertical clearance of eight feet. If any attachments are projecting towards the roadway side, for the safety and protection of the public and vehicular traffic, the attachment shall provide a minimum vertical clearance of no less than 16 feet above the ground. In addition, no protrusions from the outer circumference of the existing structure or pole shall be more than two feet;
 - e. The color of the network nodes shall match the existing pole color such that the network nodes blend with the color of the pole to the extent possible. City reserves the right to deny a certain style of node due to its difference in color to pole. Colors must be in strict accordance with the city's applicable ordinances, corridor land use ordinance, and other applicable ordinances, except to the extent inconsistent with V.T.C.A., Local Government Code Ch. 284;
 - f. There shall be no other pole, with small cell attachments permitted within 300 feet of the subject pole, and there shall be no more than one network node on any one pole;
 - g. Provider shall neither allow nor install network nodes on traffic signals and street signs located in the ROWs;
 - h. The network facilities comply with the city's design manual; and
 - i. Upon approval of the permit, the provider shall call for locates. If the city's utility locates are needed, provider is required to contact West University Place Public Works Department.
- (3) *Additional permitting standards for installation of new poles.*
 - a. Any facilities located off pole must remain in cabinetry or enclosed structure underground. Facilities on

pole shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. There shall be no external cables or electric wire/cables on pole or structures or aerial wires or cables extending from the pole or structure. The electrical meter shall not be mounted on city's poles or structures. Provider shall use 240 voltage when connecting to any city infrastructure and provide key to meter upon inspection;

- b. The pole and all attachments to the pole that are projecting, or any equipment or appurtenance mounted on the ground shall comply with TAS, ADA and shall not obstruct an existing or planned sidewalk or walkway;
- c. Wooden poles are prohibited. All new poles are required to be break-away and black powder-coated. All attachments for the network nodes shall also match the color of the network support pole. All network support poles shall match the existing poles in the surrounding block or district in which the network support pole is located in order to blend into the surrounding environment and be visually unobtrusive. City reserves the right to deny a certain type of pole due to its differences;
- d. Exemptions to a requirement for a permit will only be made for providers requesting to replace a previously installed wooden pole with a new, identical wooden pole, unless otherwise provided by this article. Requests must be made in writing to the public works director and approvals are at the discretion of the city.
- e. The network facilities comply with the city's design manual; and
- f. Upon approval of the permit, the provider shall call for locates. If the city's utility locates are needed, provider is required to contact West University Place Public Works Department.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-255. - Electrical permit.

Provider shall be responsible for obtaining any required electrical power service and associated permit to the network nodes and node support poles or structures as required by federal, state and local law.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-256. - Exceptions to a permit.

- (a) *Routine maintenance.* A provider is not required to obtain a permit for routine maintenance of network nodes, node support poles, and/or transport facilities that does not require excavation or closing of sidewalks or vehicular lanes in the ROWs.
- (b) *Replacing or upgrading.* A provider is not required to obtain a permit for replacing or upgrading a network 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 the ROWs. For the purposes of this section:
 - (1) A new or upgraded network node or node support pole is considered "substantially similar" if the equipment, including antenna, will not be more than ten percent larger and the pole will not be ten percent higher than the existing, permitted equipment and/or pole.
 - (2) The replacement of an existing node support pole is not included within this section.
 - (3) The replacement or upgrade may not violate concealment requirements for the network node or node support pole or height restrictions required in the design manual.

- (c) *Network node strung on cables.* A provider is not required to obtain a permit for the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node supports in compliance with the National Electrical Safety Code.
- (d) *Notice required.* A provider must provide the city with 48 hours' advance written notice to the public works director, or his/her designee, of intent to perform work that does not require a permit.
- (e) *Pole owner approval.* A provider may replace or upgrade a pole only with the approval of the pole's owner and written confirmation of such approval shall be submitted to the city with the notice.
- (f) *Size limitations.* The size of any upgraded or replaced network node or pole may not exceed the size limitations in the design guide.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-257. - Transfer of permit.

- (a) No permit granted in accordance with this article, or any rights or privileges of providers under a permit, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by providers to any other person, without the prior written consent of the city. Should the provider sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under this permit, without the city's prior consent, the city may revoke the permit for default, in which event all rights and interest of the provider under the permit shall cease.
- (b) Any transfer in violation of this section shall be null and void and unenforceable.
- (c) A mortgage or other pledge of assets to a bank or lending institution in a bona fide lending transaction shall not be considered an assignment or transfer.
- (d) Every permit granted in accordance with this article shall specify that any transfer or other disposition of rights which has the effect of circumventing payment of required permit fees and/or evasion of payment of such fees is prohibited.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-258. - General terms applicable to permit holders.

- (a) *Not exclusive.* No rights agreed to in this article by the city shall be exclusive and the city reserves the right to grant franchises, licenses, easements, or permissions to use the rights-of-way within the city to any person as the city, in its sole discretion, may determine to be in the public interest.
- (b) *Deed restrictions.* A permit holder installing facilities in ROWs shall comply with private deed restrictions and other private restrictions in the area.
- (c) *Cable service not authorized by permit.* A permit holder is not authorized to provide cable service as a cable operator in the city under this article, but must first obtain a franchise agreement from the city for that purpose, under such terms and conditions as may be required by law. A permit for installation, placement, maintenance, or operation of a network node or transport facility under this article shall not confer authorization to provide cable service or video service, as defines by V.T.C.A, Utilities Code § 66.002, or information service as defined by 47 U.S.C. Section 153, or wireless service as defines by 47 U.S.C. Section 153, in the right-of-way.
- (d) *Permit limited.* A permit provided in accordance with this article does not provide authorization for attachment of a network nodes on poles and other structures owned or operated by investor-owned electric utilities, as defined by V.T.C.A., Utilities Code § 31.002, electric cooperatives, telephone cooperatives, as defined by V.T.C.A.,

Utilities Code § 162.003, or wireless providers, as defined by V.T.C.A., Utilities Code § 51.001.

- (e) *Priority of usage.* In case of conflict or interference between the facilities of different providers, the provider whose facilities were first permitted shall have priority over a competing use of the public ROWs.
- (f) *No right to use city property or utility infrastructure granted by permit.* The grant of a permit under this article shall not be construed to grant any attachment rights or authorize the use of any city property or utility infrastructure in any manner not specified in the permit without additional compliance by the provider with other applicable city requirements.
- (g) *Review is no guarantee of sufficiency.* Review and approval by the city does not constitute a guarantee of sufficiency of the design of the facilities. The applicant retains full responsibility for the adequacy of the design of the facilities.
- (h) *Other requirements.* The city may impose additional requirements on the activities of network providers in the ROWs to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-259. - Denial and termination of permits.

- (a) *Denial of a permit application.* If the city denies a permit application submitted in accordance with this article, the city must include specific applicable code provisions or other municipal rules, regulations, or other law on which the denial was based. The provider shall have 30 days from the date of denial to cure the deficiencies identified in the denial and resubmit without incurring an additional application fee. The city's review of the resubmitted application is limited to deficiencies cited in the denial.
- (b) *Termination of a permit.* The city shall reserve the right to terminate any permit and any rights or privileges granted under this article in the event of a breach of the terms and conditions of the permit or of this article, subject to a 30-day written notice and the opportunity to cure the breach during that 30-day period.
- (c) *When a breach occurs.* A breach shall not be deemed to have occurred if the violation occurs without the fault of a provider or occurs as a result of circumstances beyond its control. Providers shall not be excused from performance of any of their obligations under this chapter by economic hardship, nor misfeasance or malfeasance of their managers, officers, agents or employees.
- (d) *Does not apply for default of payment.* The provision of this section shall not apply to any automatic termination resulting from a default of payment as set forth in section 70-260 below.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-260. - Permit and ROW use fees.

- (a) *Permit fee.* Except as otherwise provided by V.T.C.A., Local Government Code Ch. 283 or 284, the network provider shall pay to the city a permit fee that is calculated as of the date of the application for permit by applying the appropriate permit fee to each of the facilities included in the application, in accordance with the city's fee schedule, not to exceed the values provided in the table below.
- (b) *Public ROWs use fee.* The permit holder shall pay to the city a ROW fee that is calculated in accordance with V.T.C.A., Local Government Code Ch. 283 or 284, an agreement with the city, or the table below, as applicable. The ROW fee for network nodes, node support poles, and transport facilities shall be prorated for the first year in

which the permit is paid, and shall be paid at the time of the permit application. This fee is in addition to permit fees, and is based on the continued location of Network Facilities or Network Facilities related work in the city ROW.

Equipment Type	Permit Fee	ROW Fee
Transport facilities	\$500.00 for first five nodes, \$250.00 for each additional node	\$28.00 per month per node ^{1,4}
Network nodes	\$500.00 for the first five nodes, \$250.00 for each additional node	\$250.00 per year per node ^{2, 3}
Node support poles	\$1,000.00 per pole	N/A

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Unless equal or greater amount of municipal fees is paid under Chapter 283 or 284 of the V.T.C.A., Local Government Code Ch. 283 or 284 or V.T.C.A., Utility Code Ch. 66.

²

As adjusted by an amount equal to one-half the annual change, if any, in the Consumer Price Index. 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.

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Collocated network nodes on city service poles shall also pay an annual collocation fee at a rate not greater than \$20.00 per year per service pole.

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A network provider may not install its own transport facilities unless the provider: (i) has a permit to use the ROW; and (ii) pays to the city a monthly ROW rate for transport facilities in an amount equal to \$28.00 multiplied by the number of the network provider's network nodes located in the ROW for which the installed transport facilities provide backhaul unless or until the time the network provider's payment of fees to the city exceeds its monthly aggregate per-node compensation to the city. A network provider that wants to connect a network node to the network using the right-of-way may: (i) install its own transport facilities as provided in this article; or (ii) obtain transport service from a person that is paying municipal fees to occupy the right-of-way that are the equivalent of not less than \$28.00 per node per month. A ROW rate required by this article is in addition to any other ROW rate required by the city.

(c) *Annexation and disannexation.* For the purpose of compensating the city under this article, a permit holder shall start including or excluding structures within an annexed or disannexed area within 30 days of written notice by the city to the permit holder of the annexation or disannexation.

(d) *Timing of ROWs fee payment.* Permit holder shall remit the ROWs fees on an annual basis, unless otherwise proscribed by V.T.C.A., Local Government Code Ch. 284 or a written agreement with the city. Unless otherwise mandated by state law, the payment of ROWs fees shall be due on January 31 of each year following the year in which a permit fee and prorated ROW fee was paid, and each subsequent year until (i) the structures are

removed from the ROW and written notice is provided to the city, or (ii) the structures are no longer owned by the permit holder and written notice of the new owner's name, address, and phone number are provided to the city.

- (e) *Default.* Notwithstanding any other provision in this article, in the event that full and proper payments due the city under this article or the permit have not been made by a permit holder within 20 days after the due date, an event of default shall have occurred, in which case the permit may be terminated by the city. Any provider that is found to be in default and whose permit has been terminated for nonpayment of fees may not apply for another permit until all past-due fees have been paid.
- (f) *No release.* No acceptance of any payment shall be construed as a release of, or an accord or satisfaction of, any claim that the city might have for further or additional sums payable under the terms of this chapter or a permit, or for any other performance or obligations of permit holder.
- (g) *Confidential records.* If the permit holder notifies the city of the confidential nature of any information, reports, documents, or writings, and such information, reports, document or writings are prominently labeled as confidential, the city agrees to maintain the confidentiality of the information, reports, documents, and writings to the extent permitted by law. Upon receipt by the city of requests for the permit holder's confidential information, reports, documents, or writings, the city shall notify the permit holder of the request in writing. The city shall request an attorney general's opinion before disclosing any confidential information, reports, documents or writings and will furnish the provider with copies of attorney general opinion requests it makes pertaining to the permit holder's confidential information, reports, documents or writings. Upon request by the city, the permit holder shall provide assistance in preparing and submitting the request for an attorney general's opinion.
- (h) *Books and records.*
 - (1) Upon written request from the public works director, permit holders shall report to the city such other information as the public works director may reasonably require to ensure correct payments to the city are made and shall comply with the city's reasonable determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.
 - (2) Permit holders shall promptly make available to the city or a city-designated representative, its books and records to examine, audit, review and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of permit holders pertaining to permits granted under this chapter to ensure proper payments are made to the city. Permit holders shall fully cooperate in making available its records and otherwise assisting in these activities.
 - (3) The public works director may, at any time, make inquiries pertaining to permit holders' performance of the terms and conditions of a permit. Permit holders shall respond to such inquiries on a timely basis.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-261. - Construction and maintenance of structures.

- (a) *Construction requirements.* Except where expressly provided otherwise by state law, a permit holder shall construct and maintain structures in the right-of-way in accordance with the design manual to ensure structures do not:
 - (1) Obstruct, impede, or hinder the usual travel or public safety on a ROW;
 - (2) Obstruct the legal use of a ROW by other persons;

- (3) Violate nondiscriminatory applicable codes;
 - (4) Violate or conflict with the city's ROW design specifications; or
 - (5) Violate the Federal Americans with Disabilities Act of 1990 (ADA).
- (b) *Design manual.* Structures to which this article applies must conform to the specifications required by the construction codes and design manual as adopted by the city at the time the permit application is approved.
- (c) *Requests for temporary moves.* Upon request, the permit holder shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be raise by the party or parties requesting them and the permit holder may require payment in advance. The permit holder may require payment in advance. The permit holder shall be given not less than 48 hours' advance notice to arrange for such temporary rearrangements.
- (d) *Time and manner.* Provider must limit the length of network facilities under construction at any given time, and must also limit the time, place, and manner of work in ROWs, to the extent necessary to reduce impacts upon ROWs, nearby residents and properties. Permits for work in accordance with this article may prescribe reasonable limits for this purpose.

(Ord. No. 2070, § 1(App. A), 5-13-2019.)

Sec. 70-262. - Insurance and financial security.

- (a) *In general.* At all times when work on network facilities is done in the ROWs or when network facilities are present in the ROWs, a provider shall maintain in effect insurance or self-insurance and financial security, subject to the same standards as exemptions provided in article II of this chapter.
- (b) *Submission of proof.* Proof of required insurance or self-insurance must be submitted to the public works director with applications for permits and other approvals and must be kept current with updated filings. Additional proof shall be submitted at other times upon request. The public works director may prescribe the form of insurance certificates and other proof to be submitted.

(Ord. No. 2070, § 1(App. A), 5-13-2019.)

Sec. 70-263. - Interference with operations.

- (a) *No liability.*
- (1) The city shall not be liable to the provider for any damage caused by other providers with network facilities sharing the same pole or for failure of provider's network nodes for whatever reason, including damage resulting from vehicular collisions, weather-related events, or malicious attacks.
 - (2) The city shall not be liable to the provider by reason of inconvenience, annoyance or injury to the network nodes or node support poles or activities conducted by the provider therefrom, arising from the necessity of repairing any portion of ROW, or from the making of any necessary alteration or improvements, in, or to, any portion of the ROW, or to, city's fixtures, appurtenances or equipment. The city will use reasonable efforts not to cause material interference to the provider's operation of its network nodes or node support poles.
- (b) *Signal interference with city's communications infrastructure prohibited.*
- (1) No interference. In the event that provider's network nodes interferes with the city's traffic signal system, public safety radio system, or other city communications infrastructure operating on spectrum where the city is legally authorized to operate, provider shall promptly cease operation of the network nodes causing said

interference upon receiving notice from the city and refrain from operating. Provider shall respond to the city's request to address the source of the interference as soon as practicable, but in no event later than 24 hours of receiving notice.

- (2) Protocol for responding to event of interference. The protocol for responding to events of interference will require the provider to provide the city an interference remediation report within 24 hours of receiving notice that includes the following items:
 - a. Remediation plan. Devise a remediation plan to stop the event of inference;
 - b. Time frame for execution. Provide the expected reasonable time frame for execution of the remediation plan;
 - c. Additional information. Include any additional information relevant to the execution of the remediation plan.
- (3) If the provider does not execute the remediation plan in the time frame provided, the city will eliminate the interference at the expense of the provider.
- (4) In the event that interference with city facilities cannot be eliminated, the provider shall shut down the network nodes and remove or relocate the network node that is the source of the interference as soon as possible to a suitable alternative location made available by the city.
- (5) Following installation or modification of a network node, the city may require the provider to test the network node's radio frequency and other functions to confirm it does not interfere with the city's operations.

(Ord. No. 2070, § 1(App. A), 5-13-2019.)

Sec. 70-264. - Abandonment of obsolete network facilities.

Provider shall remove network facilities when such facilities are abandoned regardless of whether or not it receives notice from the city. Unless the city sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 120 days of the network nodes and node support poles being abandoned or within 120 days of receipt of written notice from the city. When the provider removes or abandons permanent structures in the ROW, the provider shall notify the city in writing of such removal or abandonment and shall file with the city the location and description of each network node or node support pole removed or abandoned. The city may require the provider to complete additional remedial measures necessary for public safety and the integrity of the ROW.

(Ord. No. 2070, § 1(App. A), 5-13-2019.)

Sec. 70-265. - Relocation and removal of network facilities at provider's expense.

- (a) Provider shall remove and relocate its network facilities at its own expense to an alternative location no later than 120 days after receiving written notice that removal, relocation, and/or alteration of the network facilities is necessary due to:
 - (1) Construction, completion, repair, widening, relocation, maintenance of, or use in connection with, any city construction or maintenance project or other public improvement project;
 - (2) Maintenance, upgrade, expansion, replacement, removal or relocation of the city's pole or structure upon which provider's network nodes are attached;

- (3) The network facilities, or portion thereof, is adversely affecting proper operation of traffic signals, streetlights or property;
 - (4) Closure of a roadway or sale of city property;
 - (5) Projects and programs undertaken to protect or preserve the public health or safety;
 - (6) Activities undertaken to eliminate a public nuisance;
 - (7) Provider fails to obtain all applicable licenses, permits, and certifications required by law for its network nodes or node support poles; or
 - (8) Duty otherwise arising from applicable law.
- (b) Provider's duty to remove and relocate its network facilities at its expense is not contingent on the availability of an alternative location acceptable for relocation. City will make reasonable efforts to provide an alternative location within the ROWs (rights-of-way) for relocation, but regardless of the availability of an alternative site acceptable to the provider, the provider shall comply with the notice to remove its network facilities as instructed.
- (c) The city may remove the network facilities if the provider does not remove such within 120 days. In such case, the provider shall reimburse the city for the city's actual cost of removal of its network facilities within 30 days of receiving the invoice from the city.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-266. - Removal or relocation of network facilities by provider.

- (a) If the provider removes or relocates at its own discretion, it shall notify the city in writing not less than ten business days prior to removal or relocation. The provider shall obtain all permits required for relocation or removal of its network facilities prior to relocation or removal.
- (b) The city shall not issue any refunds for any amounts paid by the provider for network facilities that have been removed.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-267. - Provider responsibility.

The provider shall be responsible and liable for the acts and omissions of the provider's employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, sublessees, and subcontractors in connection with the performance of activities within the city's ROW, as if such acts or omissions were the provider's acts or omissions.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-268. - Restoration.

- (a) *ROW restoration.* When any ROW work is completed, or when no substantial work is done at the site of any ROW work for more than three consecutive business days, the user shall, beginning within two business days thereafter, restore the ROW as follows:
 - (1) Use properly-compacted cement-stabilized material for all backfill and provide a reasonable opportunity for city inspection before the backfill is covered, unless the public works director approves a different backfill method;

- (2) Replace and properly relay and repair the pavement, curb, sidewalk and gutter (including the surface and base), structures, any irrigation system and any landscape treatment that may have been affected by the ROW work;
 - (3) Return the ROW and all structures therein to their pre-existing condition as nearly as practicable; and
 - (4) Otherwise comply with applicable regulations.
- (b) *Destruction of new pavement.* See article II regarding work in ROWs.
- (c) *Sidewalks.* Providers must replace sidewalks in segments that end at logical division points such as intersecting driveways and crosswalks, thus avoiding patched and piecemeal sections of sidewalks. Permits for ROW work may prescribe the division points.

(Ord. No. 2070, § 1(App. A), 5-13-2019.)

Sec. 70-269. - Penalties and remedies.

- (a) Improperly located network facilities shall not impede pedestrian or vehicular traffic in the ROWs. If any network facility is installed in a location that is not in accordance with the plans approved by the city, impedes pedestrian or vehicular traffic, or does not comply or otherwise renders the row non-compliant with applicable laws, including the American Disabilities Act, then the network provider shall promptly remove the network facilities.
- (b) The city shall give the provider 30 days' notice to remove and relocate the improperly located network facilities that are located in the incorrect permitted location. If not relocated by 30 days following the notice, the provider shall be subject to a penalty of \$500.00 per day until the network facilities are relocated to the correct area within the permitted location, regardless of whether or not the provider's contractor, subcontractor, or vendor installed the network facilities in strict conformity with the city rights-of-way management ordinance, and other applicable ordinances concerning improperly located facilities in the ROWs.

(Ord. No. 2070, § 1(App. A), 5-13-2019.)

Sec. 70-270. - Priorities for use of ROW.

- (a) *Municipal use.* For municipal purposes, the city has first priority over all other uses of the ROW. For example, the city has full authority to lay sewer, gas, water, and other pipes and cables and conduits, to install and change all other facilities, to do underground and overhead work, and attachments, restructuring or changes to regulated facilities, and to change the curb, sidewalks or roadways and their grades.
- (b) *Standards.* The city shall assign locations in, on or over ROW among users and other persons with due consideration to public health and safety considerations of each use. If there is limited space available for additional occupiers of the ROW, the city may limit new occupiers, as allowed under state or federal law.
- (c) *Abutting uses.* If the city authorizes abutting landowners to occupy space under the surface of any ROW, the grant to an abutting landowner shall be subject to the rights of any previously authorized occupier of the ROW already using that location. If the city closes or abandons a ROW that contains a provider's network facilities, the closure or abandonment shall be subject to the rights of the provider.

(Ord. No. 2070, § 1(App. A), 5-13-2019.)

Sec. 70-271. - Indemnity.

At all times when work is done in the ROWs or when network facilities are present in the ROWs, a provider shall maintain on file with the city a written indemnity, subject to the same standards as exemptions provided in article II of this chapter.

(Ord. No. 2070, § 1(App. A), 5-13-2019)

Sec. 70-272. - Administrative hearing.

Should the provider desire to deviate from any of the standards set forth in this article or the design manual, the provider may request a hearing before the building and standards commission. The process for an application, hearing and vote shall follow the process set out for a variance, in accordance with applicable city ordinances.

Sec. 70-273. - Design manual.

Placement or modification of a network facility or related ground equipment shall comply with the city's design manual in effect at the time a permit for installation or modification is issued, or at the time of commencement of work if a permit is not required. The public works department shall maintain, review, and periodically update the design manual. Any changes to the design manual shall be approved in writing by the public works director.

(Ord. No. 3005, § 1(Exh. A), 12-14-2020)