



CITY OF KERRVILLE PLANNING & ZONING COMMISSION AGENDA
REGULAR MEETING, THURSDAY, MARCH 01, 2018 4:30 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

CALL TO ORDER

1. VISITORS/CITIZENS FORUM

Any person with business not scheduled on the agenda is encouraged to briefly speak to the Commission. Please fill out the SPEAKER REQUEST FORM and give it to the Commission's Secretary prior to the meeting. The number of speakers will be limited to the first ten speakers and each speaker is limited to three minutes. (No formal action can be taken on these items as the Open Meetings Act requires formal action items be posted on an agenda no later than 72 hours before the meeting. If formal action is required, the items will be placed on an agenda for a future meeting.)

2. CONSENT AGENDA

All items listed below on the consent agenda are considered routine or ministerial in nature and will be enacted with one motion. There will be no separate discussion of items unless a Commissioner or citizen so requests; in which case the item(s) will be removed from the consent agenda and considered separately.

2A. Approval of the minutes from the February 15, 2018 meeting. *This item will be postponed to the next available meeting of the Planning and Zoning Commission.*

3. CONSIDERATION & ACTION

3A.Consideration & Final Action, Preliminary Plat – Consideration and action concerning a Preliminary Plat of Comanche Trace Section 15, a subdivision containing approximately 5.33 acres of land, out of the William Watt Survey No. 65, Abstract No. 364 in the City of Kerrville, Texas, and located along the future extension of Comanche Hills. (Case #2018-007) **Pg. 3**

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary's Office at 830-258-1117 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: February 23, 2018 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Cheryl Brown
Deputy City Secretary, City of Kerrville, Texas

3B. Consideration & Final Action, Final Replat - Consideration and action concerning a Final Replat of The Meridian, a portion of that subdivision containing approximately 7.89 acres of land a subdivision of Kerr County according to the plat of records in Volume 7 pages 80-81. **Pg. 4**

4. PUBLIC HEARINGS AND ACTION

4A. Public Hearing & Action, Conditional Use Permit – Public hearing, consideration, and action on a recommendation concerning a conditional use permit for an approximate 2.08 acres tract, Lot 1 Block 3 Sutton Addition, located at 3410 Memorial Boulevard; east of Loop 534, between Carmichael Street East and Tucker Road East. (File No. 2017-070) **Pg. 6**

4B. Public Hearing & Action, Text Amendment – Public hearing, consideration, and action on a recommendation concerning a text amendment adding conditional use permit regulations for parking lots to Chapter 1, Article 11-1-13, “Conditional Use Permits” of the City of Kerrville Zoning Code. (File No. 2018-008) **Pg. 13**

5. DISCUSSION ITEM

5A. Discussion - Discussion concerning a pending ordinance amendment to address right-of-way design standards, Wireless Telecommunication Network Node design manual. **Pg. 22**

6. STAFF REPORT

7. ADJOURNMENT

The facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this event. Please contact the City Secretary’s Office at 830-258-1117 for further information.

I do hereby certify that this notice of meeting was posted on the bulletin board at the city hall of the city of Kerrville, Texas, and said notice was posted on the following date and time: February 23, 2018 at 4:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Cheryl Brown
Deputy City Secretary, City of Kerrville, Texas



City of Kerrville Planning Department Report

To: Planning & Zoning Commission

Agenda Item: 3A

Action: Consideration and action concerning a Preliminary Plat of Comanche Trace Section 15, a subdivision containing approximately 5.33 acres of land, out of the William Watt Survey No. 65, Abstract No. 364 in the City of Kerrville, Texas, and located along the future extension of Comanche Hills.

Planning File #: 2018-007

Representative: Mr. Ken Kolacny

Proposal

A preliminary plat of Comanche Trace, Phase 15. The submission of this preliminary plat triggers the annexation process for this same acreage.

Procedural Requirements

Notice of this meeting was posted at city hall and on the city's internet website on May 26, 2017 in accordance with Section 551.043(a) of the Texas Government Code.

Recommended Action

Staff recommends that the Commission considers and takes action on the proposal.

Staff Analysis and Recommendation: Approval

Staff recommends approval of the preliminary plat.

Attachments

Copy of Preliminary Plat



City of Kerrville Planning Department Report

To: Planning & Zoning Commission

Agenda Item: 3B

Action: Consideration and action concerning a Final Replat of The Meridian, a portion of that subdivision containing approximately 7.89 acres of land a subdivision of Kerr County according to the plat of records in Volume 7 pages 80-81.

Planning File #: 2017-084

Representative: Lee Voelkel

This replat will delete and realign certain portions of the private street system in this gated subdivision. It also deletes those lots that would have taken access from the portions of the street to be deleted.

The original plat was approved in 2000 pursuant to a City Council Resolution that granted a waiver to the Subdivision Regulations requirements for public street access. The replat complies with the Resolution conditions.

The private street in this case, although it has different names on different segments, essentially constitutes one single lot (Lot 154), which is to be reconfigured on the northwestern section. The majority of Lot 154, however, is intended to remain the same. Technically, therefore, the entirety of Lot 154 should be included in this replat in order to be in full compliance with the City's regulations. However, to include Lot 154 in its entirety would add little to no additional value to the submittal. Therefore, the applicant requests, and staff supports, solely including the portions of Lot 154 that are changing.

Staff Recommendation:

Approval,

Attachments:

2000 final plat
Proposed replat

884





City of Kerrville Planning Department Report

To: Planning & Zoning Commission
Agenda Item: 4A
Action: Public Hearing, Consideration and Action
Planning File #: 2017-070
Representative: Wendy Wickware
Legal Description: an approximate 2.08 acres tract, Lot 1 Block 3 Sutton Addition, located at 3410 Memorial Boulevard; east of Loop 534, between Carmichael Street East and Tucker Road East.

Proposal

A conditional use permit to allow the installation of a manufactured home.

Analysis

Adjacent Zoning and Land Uses

Subject site

Current Zoning: 29-E

Current Land Uses: Vacant

Direction: South

Current Zoning: 30-E

Current Land Uses: Single family mixed with limited commercial

Direction: East

Current Zoning: 29-E

Current Land Uses: Veterans' Health Care Systems Hospital campus

Direction: West

Current Zoning: 29-E

Current Land Uses: Vacant

Direction: North

Current Zoning: 29-E

Current Land Uses: Veterans' Health Care Systems Hospital campus

Thoroughfare: Memorial Blvd. is a major arterial (Highway 27)

Parking Information: Parking will meet the standard requirement of two spaces at 9'X19' on a stabilized granite surface

Access: Access will be exclusively off of a 10' private driveway from a private access easement that is the sole access driveway off of Memorial Blvd.

Zoning Ordinance Review Criteria – Zoning Ordinance Art. 11-1-10 Section (b)(1)

1. Compatibility with stated purpose of the zoning district

The property's zoning classification is a relatively broad classification that lists many residential, commercial, and even some light industrial uses as either permitted by right or as conditional uses. Its purpose statement specified that uses are to be compatible with the Veterans' Administration Hospital and should enhance the eastern entrance to the City.

LAND USES	29
Agricultural - General	
Agricultural Service	
Bed and Breakfast	
Building Construction, General	
Building Construction, Specialist	
Business Services I	P
Business Services II	P
Cocktail Lounge	P
Detention Facilities	C
Dwelling , Single Family, Detached	P
Manufactured Home or Manufactured Housing	C
Dwelling, Multiple Family	P
Dwelling, Single Family with apartment	P
Dwelling, RC District Uses (with plat)	
Education, Secondary and College	P
Education, Primary	C
Equipment Sales/Repair/Storage (Heavy)	
Fuel Sales	C
Funeral Services	P
Institutional and Public Use Facilities	P
Life Care Development	P
Manufacturing, Custom	P
Manufacturing and Industrial, Heavy	

Manufacturing and Industrial, Limited	C
Manufactured Housing Sales	C
Personal Services I	P
Personal Services II	P
Personal Services-Limited	P
Professional Offices	P
Restaurant, General	P
Restaurant, Limited	P
Retail Trade – I	P
Retail Trade – II	C
Retail Trade – III	
Retail Trade – Limited	P
Tourist/Visitor & Recreation Service	P
Transportation Terminal (Bus/Aviation)	C
Vehicle Maintenance and Repair	C
Vehicle Sales/Service-Used	C
Vehicle Sales/Services – New	P
Warehousing & Distribution	C

2. Compatible with surrounding uses:

The requested conditional use permit will have little impact on the surrounding properties. The existing zoning district and proposed conditional use are consistent with the surrounding area. The surrounding area will be impacted minimally due to the proposed use.

3. Vehicle and pedestrian safety:

The proposed conditional use will not increase traffic more than traffic already generated by existing uses, nor alter traffic patterns.

A public sidewalk would be specifically exempted by ordinance if the property were to develop as commercial. However, the exemption does not apply to residential development. On March 27, 2018, the City Council is scheduled to hear and decide whether to grant a waiver to the sidewalk requirement along Memorial Blvd.

4. Limit drainage and erosion impacts:

No additional impervious cover is proposed.

5. Nuisance prevention:

Staff has found no indication of likely adverse effects on the public health, safety, or welfare.

6. Preservation of significant terrain features:

No physical changes to the site are proposed.

7. Other Considerations

The City's Development Review Committee has reviewed a site plan and identified no significant issues for consideration by the Commission.

Procedural Requirements

This public hearing date was published in the Kerrville Daily Times, the FY2018 City of Kerrville official newspaper of general circulation. Additionally, notice of this meeting was posted at city hall and on the city's website in accordance with Section 551.043(a) of the Texas Government Code.

Staff Recommendation:

Approval

Attachments:

Location map

Zoning map excerpt

Site plan illustration

Location Map



Location Map

Case # 2017-070

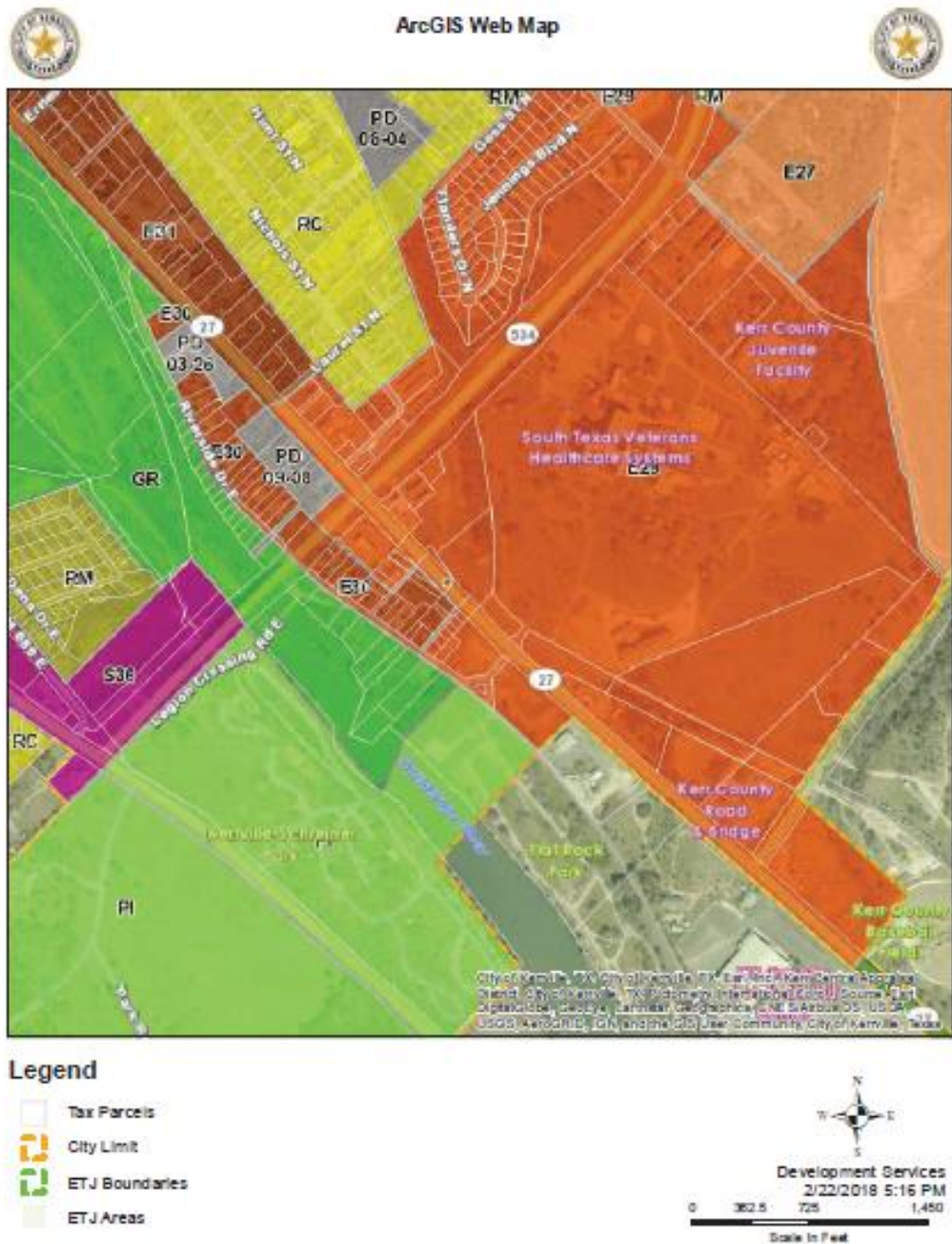
Location:
3410 Memorial Boulevard

Legend
200' Notification Area
Subject Properties

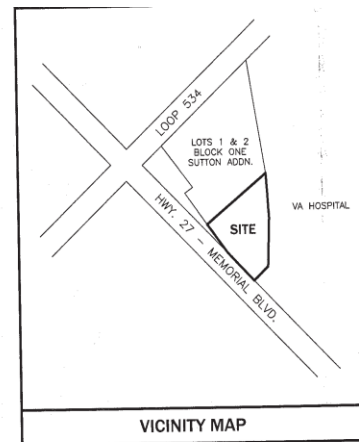
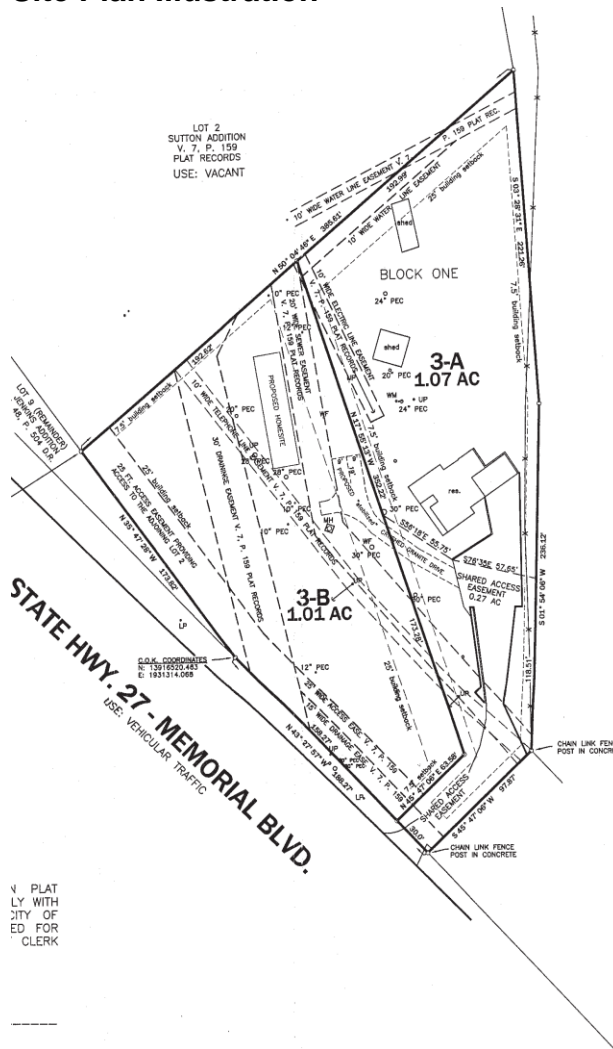


This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

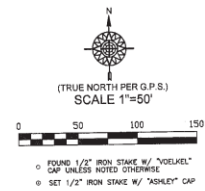
Zoning Excerpts



Site Plan Illustration



U.S. VETERANS ADMIN.
V. 163, P. 279
DEED RECORDS
USE: TO CARE FOR VETERANS



CHECKLIST FOR CUP REQUEST

- 1) OWNER: CHARLES & WENDY WICKWARE OWNERS
3410 MEMORIAL BLVD.
(830) 370-8449
- 2) LEGAL: LOT 3 BLOCK ONE SUTTON ADDITION V. 7, P. 159 PLAT RECORDS
- 3) PROPOSED USE: RESIDENTIAL
- 4A) N/A
- 4B) N/A
- 4C) VETERANS ADMIN. PROPERTY USED TO CARE FOR VETERANS INCLUDING MY FATHER
LOT 2 VACANT
- 4D) AS SHOWN
- 4E1) AS SHOWN HEREON
- 4E2) AS SHOWN HEREON
- 4E3) LIGHT POLES SHOWN (LP)
- 4E4) AS SHOWN HEREON
- 4EF) AS SHOWN HEREON
- 5) PHOTOGRAPHS OF EXISTING RES. AND PROPOSED MOBILE HOME ATTACHED
- 6A,B,C) N/A
- 7) N/A
- 8)
- 9) AVERAGE SLOPE NOT GREATER THAN 15% N/A
- 10) N/A



City of Kerrville Planning Department Report

To: Planning & Zoning Commission

Agenda Item: 4B Public Hearing, Consideration, and Action concerning a text amendment to the zoning ordinance creating a conditional use permit option for parking lots.

Representative: Ms. Sabine Kuenzel, Chief Planning Official

Proposal

At the January 18, 2018 meeting, the Planning and Zoning Commission meeting, the Commission briefly discussed an option to create a Conditional Use Permit process for parking lots. At the subsequent meeting, on February 2, the Commission held a discussion regarding a possible text amendment to the Zoning Ordinance.

Parking is not addressed as a stand-alone use in and of itself in the City's zoning regulations. Staff suggested adding the use to the list of conditional uses that could be considered on a case-by-case basis by the Commission and City Council. A conditional use permit could then be a possible path for approval, could be denied if its impact would be incompatible within the context of the area, or could be approved with mitigating conditions.

Procedure

A public hearing on the proposed amendment was notified in the Kerrville Daily Times on February 14, 2018. As of the date of this report,

Attachments

Applicable sections of the Zoning Ordinance

Art. 11-1-13 CONDITIONAL USE PERMITS

- (a) **"Conditional Use" Defined:** For purposes of the Zoning Code, a "conditional use" is a use of property which is otherwise not permitted in a specific zoning district but which may become a compatible use through the imposition of and compliance with conditions related to development of the specific property which are set forth in the Zoning Code or in a Conditional Use Permit approved by the City Council.
- ...
- (d) **Conditional Uses Permitted in Any Zone With a Conditional Use Permit:** The following uses shall be permitted in Zoning District No. 27-E without a conditional use permit and in any other zoning district with a conditional use permit:
- (1) Above ground electric transmission lines carrying voltage of 50 KV or more that transmit bulk power from power stations to substations, between substations, and between service areas and transmit;
 - (2) Electric power plants, transmission and distribution substations, and electric facilities;
 - (3) Landfills and solid waste disposal facilities not owned by the City;
 - (4) Wastewater treatment facilities not owned by the City
- (e) **Conditional Use Permit Required:** Except as otherwise authorized in the Zoning Code, no person may develop or use any property with a use which is defined by the Zoning Code as a conditional use for the zoning district in which the property is located without first obtaining a Conditional Use Permit for such conditional use from the City.
- (f) **Procedures for Obtaining a Conditional Use Permit:** The following procedures shall govern the application, consideration, content, issuance, and termination of a Conditional Use Permit:
- (1) **Application:** An owner and/or developer who desires to use property located in the City in a manner which is defined as a conditional use must file an application with the Planning Division for a Conditional Use Permit on forms approved by the Planning Division, which application must contain at least the following information:
 - (i) The name, address, and business phone number of the applicant;
 - (ii) If different than the applicant, the name, address, and business phone number of the record owner of the property according to the Deed Records of Kerr County, Texas;

- (iii) If the applicant and/or owner are not individuals, the name, address, and business phone number of the person or people authorized to act on behalf of the applicant and/or owner in all matters relating to the application;
- (iv) The full legal description of the property for which the application is made and, if available, the street address of the property; If the property is platted, the description need only include the complete lot and block description. If the property is not platted, a metes and bounds description certified by a registered public surveyor is required;
- (v) If the applicant is not the owner of the property described in the application, a sworn statement from the owner or legal representative of the owner that the applicant has been authorized by the owner to make the application for the Conditional Use Permit;
- (vi) A detailed description of the proposed use of the property;
- (vii) The availability and location of off-street parking;
- (viii) The projected amount of additional traffic generated in and around the property, the types of vehicles which are anticipated will visit the property, the likely changes in traffic patterns of the area around the property resulting from the proposed use, and the possible impact such changes in traffic will have on properties within 500 feet of the subject property;
- (ix) The proposed hours of occupancy or use,
- (xi) a statement as to whether or not the proposed use requires any type of state or federal license or permit to operate, what type of license or permit is required, and the issuing agency of such license or permit;
- (xiii) the use of the properties immediately contiguous to the property described in the application;
- (xiv) one or more site plans, building elevations, improvement plans, and other such drawings or pictures, graphically prepared in a manner that will reasonably illustrate the following:
 - a the location and dimensions of existing boundary lines, easements, and required yards and setbacks;

- b* the location, height, bulk, general appearance, and intended use of existing and proposed buildings on the site, indicating distances from property lines and between buildings;
- c* the location of existing and proposed site improvements including parking and loading areas, on-site pedestrian and vehicular access and circulation, landscaped areas, utility or service areas, fencing and screening, signs and lighting;
- d* the location of existing and proposed watercourses and drainage features;
- e* for property with an average slope greater than 15percent, a plan showing proposed grading, drainage and erosion control measures, or plans that are necessary according to other city ordinance regulating storm water runoff;
- f* the relationship of the property and the proposed use to surrounding uses, including pedestrian and vehicular access and circulation between the property and adjacent properties, current uses of nearby parcels, and any proposed off-site improvements to be made;

(xv) The non-refundable application fee established by the City Council by resolution for Conditional Use Permit applications.

- (2) **Complete Application Required:** No application for a Conditional Use Permit shall be deemed to be complete until all information and items set forth in Subsection (1), above, have been delivered to the Planning Division and the required application fee paid.
- (3) **Preliminary Conference:** Prior to submitting an application for a Conditional Use Permit, an applicant or the applicant's authorized representative must meet with the Director of Planning or designated Planning Division staff to receive information regarding application procedures and requirements.
- (4) **Report of the Planning Division:** Upon receipt of a completed application for a Conditional Use Permit, the Planning Division will review and prepare a report and recommendation regarding the application which shall be forwarded to the Commission for consideration, which report shall contain:
 - (i) a review of the application in view of the criteria set forth in Subsection (9), below;

- (ii) a summary of any public comment received;
 - (iii) proposed conditions to be applied if the Conditional Use Permit is to be granted; and
 - (iv) the recommendation of the Planning Director regarding the application, or, if the Planning Director has no recommendation, a statement to that effect.
- (5) **Public Hearing before the Commission:** After notice has been published in the same manner as required of a zoning amendment, but in no case earlier than fifteen (15) days after receipt of the completed application, the Commission shall hold a public hearing on the application for a Conditional Use Permit. At the public hearing, the Commission shall review the application and receive from the applicant, Planning Division staff, and others who have an interest in the matter, facts and opinions concerning the proposed use and the proposed conditions to which such use would be Subject.
- (6) **Recommendation of the Commission:** After the close of the public hearing described in Subsection (5), above, the Commission shall consider the application in light of the criteria set forth in Subsection(9), below, and forward to the City Council a recommendation:
- (i) to grant the Conditional Use Permit subject to the conditions recommended by staff with or without addition or modification; or
 - (ii) denying the application on the grounds that the use, even with conditions, and in light of the criteria set forth in Subsection (9), below, will be incompatible with the uses on adjacent properties.
- (7) **Public Hearing before the City Council:** After the action of the Commission and notice has been published in the same manner as required of a zoning amendment, the City Council shall hold a public hearing on the application for a Conditional Use Permit. At the public hearing, the City Council shall review the application and the recommendation of the Commission and receive from the applicant, Planning Division staff, and others who have an interest in the matter, facts and opinions concerning the proposed use and the proposed conditions to which such use would be subject,
- (8) **Action of the City Council:** After the close of the public hearing described in Subsection (7), above, the City Council shall take the following action:

- (i) grant by resolution a Conditional Use Permit subject to development regulations and conditions establishing requirements and standards of operation, location, arrangement, occupancy limits, and construction for the use for which the permit is issued. In authorizing the location of any conditional use, the City Council may impose such development standards and safeguards as the conditions and location indicate important to the health, safety, welfare and protection of adjacent property and its occupants from excessive noise, vibration, dust, dirt, smoke, gas, odor, traffic, explosion, glare, surface water drainage, offensive view or other undesirable or hazardous conditions and the preservation of existing trees, natural terrain features, and navigable streams and their tributaries; or
 - (ii) deny the application.
- (9) **Review and Evaluation Criteria:** In determining its recommendation to the City Council, and assuming imposition of certain development regulations and conditions, the Commission shall make the following determinations:
- (i) the proposed use will be compatible with the stated purpose for the zoning district in which the use is proposed;
 - (ii) the proposed use will be compatible with the existing or permitted uses on abutting property;
 - (iii) the proposed site or development plan will be compatible with adjacent properties, mitigates potentially negative impacts to adjacent properties, if any, and includes elements and features necessary to conform to applicable regulations and standards that will protect the public health, safety, and general welfare, including, but not limited to, features and elements that:
 - a* adequately address vehicle and pedestrian access and circulation in a manner that avoids an unreasonable negative impact on adjacent properties;
 - b* prevent increased erosion on either the subject property or adjacent properties resulting from increased surface drainage;
 - c* reasonably prevent increased noise, glare or similar nuisances that would impact adjacent properties;
 - d* if the property is located in or immediately adjacent to a zoning district where single family dwellings are a permitted use, provide

for construction of buildings and other features architecturally compatible in appearance with structures on adjacent property; and

e reasonably preserve significant terrain features.

- (10) **Effective Date of Conditional Use Permit:** A Conditional Use Permit shall be deemed effective upon the date approved by the City Council.
- (g) **Termination of Conditional Use Permit:** A Conditional Use Permit shall terminate and become null and void as follows:
- (1) **Failure to Commence the Use:** Upon a finding by the City Manager that the conditional use for which the Conditional Use Permit was issued has not commenced within 180 calendar days after the effective date of the Conditional Use Permit or the date set forth in the Conditional Use Permit, whichever is applicable. For purposes of this paragraph, the use shall be deemed to have commenced:
- (i) if no new construction or renovation of an existing building is required, when actual use for the purposes described in the permit commences; or
 - (ii) if new construction or renovation of an existing building is required before the use can commence, when a completed application for a building permit, all required construction drawings, and the applicable permit fees have been delivered to the City Building Inspections Department;
- (2) **Failure to Commence Actual Use Within Two Years of New Construction or Renovation:** If new construction or renovation of an existing building is required before the use can commence, upon a finding by the City Manager that actual use of the property has not commenced within two (2) years after the effective date of the Conditional Use Permit or the date set forth in the permit, whichever is applicable;
- (3) **Cessation of Use Not Related to Destruction of Property:** After commencement of the actual use of the property for the purpose set forth in the permit, upon a finding by the City Manager that actual use of the property for the purpose for which the Conditional Use Permit was approved:
- (i) has not occurred for a period of 180 consecutive days after the commencement of the actual use for which the Conditional Use Permit was approved; and
 - (ii) that the conditional use ceased for reasons other than destruction of buildings due to fire, flood, or windstorm;

- (4) **Cessation of Use Related to Destruction of Property:** After commencement of the actual use of the property for the purpose set forth in the permit, upon a finding by the City Manager that actual use of the property for the purpose for which the Conditional Use Permit was approved has not occurred for a period of two consecutive years after the date of destruction by fire, flood, or windstorm of the buildings in which the use was occurring;
- (5) **Failure to File an Appeal:** Unless the owner of the property files an appeal as set forth in Section (h.), below, on the fifteenth day following delivery of written notice to the owner of the property for which a Conditional Use Permit is issued that the City Manager has determined that a violation of the provisions of the permit has occurred in accordance with Section (h.), below.
- (h) **Appeal of Termination for Non-Compliance:** Upon a finding of the City Manager that the use of the property has not been or is not in compliance with the provisions of the permit, the City Manager shall send written notice that the permit will be terminated fifteen (15) days from the date of the receipt of the notice, said notice to be sent by certified mail, return receipt requested to the owner of the property at the last known address indicated on the property rolls of the Kerr County Appraisal District, a copy of which notice shall also be placed on the property. Said notification shall contain a summary of the findings by the City Manager citing the provisions of the permit or City Code which have been violated. The owner of the property may file a written appeal of the City Manager's decision with the City Council by delivering to the City Clerk a summary of the property owner's basis for appeal not later than ten (10) calendar days from receipt of the City Manager's notice. The appeal shall be heard at the next regular City Council meeting which occurs on or after the tenth calendar day following the receipt of the notice of appeal. The appeal to the City Council shall be conducted in accordance with procedures adopted by the City Council. On appeal, the City Council may:
- (1) uphold the decision of the City Manager and terminate the permit;
 - (2) uphold the decision of the City Manager, but grant additional time for compliance, after which date the permit shall terminate if the City Council determines that compliance has not been achieved during the additional time; or
 - (3) overrule the decision of the City Manager. The decision of the City Council shall be final.

...

- j) **Certificates of Occupancy:** The use of property for the purposes described in a Conditional Use Permit may not commence until a certificate of occupancy has been issued by the City Building Official. No certificate of occupancy shall be issued until all conditions regarding the construction or installation on the property of improvements or structures of any nature and/or landscaping have been satisfied.
- (k) **Application for Extension of Deadlines:** A person to whom a Conditional Use Permit is issued may request an extension of time to commence the use for which the permit was issued by submitting a written request to the Planning Division not later than 15 days prior to the date the period for commencement of actual use ends. The City Council, on a showing of good cause by the applicant, may grant an extension for such time as it deems reasonable and in the best interest of the public.
- (l) **Reapplication After Denial:** No application for a Conditional Use Permit for property which includes all or part of the same property which was described in a previously denied application for a Conditional Use Permit may be accepted by the Planning Division earlier than one year after the date of final action by the City Council on the prior application unless:
- (1) the Commission determines the use for which the new application is made is not the same or similar use to that proposed in the previously denied application; or
 - (2) the Commission determines that conditions relating to the property adjacent to the property which was the subject of the previously denied application have substantially changed, in which case the application may still not be accepted earlier than six months from the date of the final action of the City Council on the prior application



City of Kerrville Planning Department Report

To: Planning & Zoning Commission

Agenda Item: 5A Discussion concerning a pending ordinance amendment to address right-of-way design standards, Wireless Telecommunication Node design

Representative: Mr. Drew Paxton, Executive Director of Development Services

Proposal

In response to the 85th Texas Legislative Session and a legislative bill resulting in Chapter 284, the City of Kerrville staff is drafting a Design Manual for the Installation of Network Nodes and Node Support Poles and a Right Of Way (ROW) ordinance. The application of these two documents will help to ensure equitable and consistent application of ROW specifications and permitting processes.

The Planning Department has briefed the Commission on the topic in the fall of 2017 about the wireless telecommunication facilities and small network nodes and equipment. The first step of this process has been completed through City Council thus far with the clarification that a few existing zoning districts are "Design Districts". Much like many other land use regulations, this will allow the City of Kerrville to place a level of design criteria on special areas of town, such as our Gateway District, Guadalupe River District, and our Central Business District.

The next step will involve the introduction of a ROW ordinance, associated permitting process, and the Design Manual pursuant to Chapter 284 of the Texas Local Government Code. These documents will clarify how certain construction and utility installations will be permitted and installed within the City of Kerrville rights of ways.

The proposed Design Manual is a combination of several nearby communities' manuals and a template drafted by the Texas Municipal League. Many cities across the state have used this template as a starting point for their respective design manuals and ordinances.

The attached draft Design Manual has several blanks to be completed and references to a ROW ordinance are missing, but is attached for your review and discussion.

The Commission received a copy of the draft prior to its meeting on January 18, 2018, to begin review. On February 15, the Commission received a presentation and began discussions, requesting additional discussion time. This item is now coming back before the Commission. No action is required.

Attachments:

Draft Design Manual



Design Manual

for the

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

Adopted by Ordinance No. #####

DRAFT

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SECTION 1. PURPOSE AND APPLICABILITY.

The City of Kerrville (“City”) recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

Purpose: Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as “Micro Network Nodes”, “Network Nodes”, and “Node Support Poles”.

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301ⁱ, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Applicability: This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

City Rights-of-Way Management Ordinance: A Network Provider shall comply with the City’s Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

SECTION 2. DEFINITIONS.

The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.ⁱⁱ

Abandon and its derivatives means the facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by Provider in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

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

Applicable codes means:

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

City means the City of Kerrville, Texas or its lawful successor.

City Manager shall mean City Manager or designee

Chapter 284 means Tex. Loc. Gov. Code, Chapter 284.

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 Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. A Concealed or Camouflaged Wireless Facility or Pole also includes any Wireless Facility or Pole conforming to the surrounding area in which the Wireless Facility or Pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

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

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 The City of Kerrville, Texas Public Right-of-Way Communication Facilities Design Manual. The design manual is incorporated by reference into this article and the terms and conditions of the design manual are binding upon any entity acting under any portion of this article. In the event of any discrepancy or ambiguity between this article, this code, or the design manual, the design manual will control.

Disaster emergency or *disaster* or *emergency* means an imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the city is threatened, and includes, but is not limited to any declaration of emergency by city state or federal governmental authorities.

Distributed Antenna System or DAS shall be included as a type of “Network Node.”

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

Entity. Means, but is not limited to, any person, business, company, agency, or other group or individual, whether or not formally established, that acts or affects any activity contemplated under this article.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means right-of-way adjacent to a state or federal highway.

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.

Local means within the geographical boundaries of the City.

Location means the City approved and lawfully permitted location for the Network Node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Mayor means the Mayor for the City.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

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

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

MUTCD means Manual of Uniform Traffic Control Devices.

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

- (A) includes:
 - (i) equipment associated with wireless communications;
 - (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
 - (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (B) does not include:
 - (i) an electric generator;
 - (ii) a pole; or
 - (iii) a 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.

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

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

Provider has the same meaning as “Network Provider.”

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

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

Public right-of-way management ordinance means an ordinance that complies with Chapter 284, Subchapter C.

Right-of-way means “Public right-of-way”.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

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

Small cell shall be included as a type of “Network Node.”

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later. *SWPPP* shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

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

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

Underground Requirement Area shall mean means an area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

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

Wireless service provider means a person that provides wireless service to the public.

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.

1. ***Municipal Parks and Residential Areas.*** In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

(2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1. In accordance with Chapter 284, Sec. 284.104 (b), a Network Provider installing a Network Node or Node Support Pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. ***Historic District and Design Districts.*** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

2.1. As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

2.2. The City request that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts or in an Historic District.

2.3. Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

2.4. Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

3. **Historic Landmarks.** A Network Provider is discouraged from installing a Network Node or Node Support Pole within 300 feet of a historic site or structure or Historic Landmark recognized by the City, state or federal government (*see, for example, and not limited to* §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

4. **Compliance with Undergrounding Requirements.** In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

4.2 Each permit application shall disclose if it is within an area that has undergrounding requirements.

B. Least preferable locations.

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

C. Most preferable locations

1. *Industrial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. *Highway Rights-of-Way* areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

D. Designated Areas. (We could attach a map showing these designated areas or describe each boundary)

1. The City Council may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. Currently designated *Design District* areas are:

(a) Design District Number 1 is the area referred to as Guadalupe River District. Its boundaries are: _____.

(b) Design District Number 2 is the area referred to as Central Business District. Its boundaries are: _____.

(c) Design District Number 3 is the area referred to as Gateway District. Its boundaries are: _____.

3. Reserved for designated *Historic Districts* are:

4. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Council. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

5. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

Currently designated *Underground Compliance Areas* are:

(a) Underground Compliance Area Number 1 is the area referred to as _____. Its boundaries are: _____.

(b) Underground Compliance Area Number 2 is the area referred to as _____. Its boundaries are: _____.

(c) Underground Compliance Area Number 3 is the area referred to as _____. Its boundaries are: _____.

(d) Underground District Number 4 is the area referred to as _____. Its boundaries are: _____.

E. Exceptions

The City by its discretionary consent and agreement may grant exception to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on Utility Poles, Node Support Poles or Service Poles.

2. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

3. *Municipal Service Poles*:

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal Service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

4. *Ground Equipment*. Ground equipment should be minimal and the least intrusive.

SECTION 4. GUIDELINES ON PLACEMENT.

A. Generally.

In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;
4. violate or conflict with the municipality's publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

B. General Requirements and Information:

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.ⁱⁱⁱ

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

4. *Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

a. Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall

promptly remove the Network Node facilities, Node Support Poles or ground equipment.

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of **XXXX** (to be consistent with other sections of CoK ordinances) per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

B. Underground Requirement Areas.

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement Area, then a Network Provider's permit for the location of the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location will be revoked 90 days after the designation, with removal of said the Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities.

C. Network Node facilities placement:

1. *Right-of-Way:* Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

D. New Node Support Poles.

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

(1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or

(2) 55 feet above ground level.

E. Ground Equipment.

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

2. *Ground Equipment near Municipal Parks.* For the safety of Municipal park patrons, particularly small children, and to allow full line of sights near Municipal park property, the Network Provider shall not install Ground Equipment in a Right-of-Way that is within a Park or within 250 feet of the boundary line of a Park, unless approved by the City Manager and Parks Director in writing.

3. *Minimize Ground equipment density:*

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of xxx [25?] sq. ft. or more.

F. Municipal Service Poles:

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.

3. *Height of attachments*: All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and if a Network Node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

3. *Installations on Traffic Signals*: Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- i. Be encased in a separate conduit than the traffic light electronics;
- ii. Have a separate electric power connection than the traffic signal structure; and
- iii. Have a separate access point than the traffic signal structure; and

4. *Installations on Street signage*: Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

- i. Be encased in a separate conduit than any City signage electronics;
- ii. Have a separate electric power connection than the signage structure;
- iii. Have a separate access point than the signage structure; and

SECTION 5. GENERAL AESTHETIC REQUIREMENTS

A. Concealment.

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Each permit application shall include documentation showing that the color of the network node shall match the existing pole color such that the network node blends with the color of the pole to the maximum extent practicable.

The Network Node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible, except to the extent not consistent with Chapter 284.

B. New Node Support Pole Spacing.

New node support poles shall be at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

C. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City's designee may deny a request for a proposed Location if the Network Provider installs Network Node ground equipment where existing ground equipment within 300 feet already occupies a footprint of 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

C. Allowed Colors.

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

Colors in Historic Districts and Design Districts must be approved by the City Manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

Each permit application shall include documentation showing that the color of the network node shall match the existing pole color such that the network node blends with the color of the pole to the maximum extent practicable.

SECTION 6. ELECTRICAL SUPPLY

A. Network Provider shall be responsible for obtaining any required electrical power service to the Micro Network Node, Network Node facilities, Node Support Poles and ground equipment. The City shall not be liable to the Network Provider for any stoppages or shortages of electrical power furnished to the Micro Network Node, Network Node facilities, Node Support Poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or Network Provider of the structure, or for any other cause beyond the control of the City.

B. Network Provider shall not allow or install generators or back-up generators in the Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.

1. Insurance, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

SECTION 8. REQUIREMENTS IN REGARD TO REMOVAL, REPLACEMENT, REPLACEMENT, MAINTENANCE AND REPAIR

A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

1. If the Network Provider removes or relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to removal or relocation. Network Provider shall obtain all Permits required for relocation or removal of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation or removal.

2. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

1. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way

2. Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

3. Network Provider shall, at the City Manager's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the traveling public's use for travel and transportation.

3. If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within 90 days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related

ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

4. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment at the Network Provider's sole cost and expense.

2. The City Manager shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

3. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

SECTION 9. INSTALLATION AND INSPECTIONS

A. INSTALLATION.

Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

Network Provider shall, at its own cost and expense, install the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City Manager, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City Manager. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

B. INSPECTIONS.

The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way as the City Manager deems appropriate without notice. If the inspection requires physical contact with the Micro Network Node, Network Node, Node Support Poles or related ground equipment, the City Manager shall provide written notice to the Network Provider within five business days of the planned inspection. Network Provider may have a representative present during such inspection.

SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being Abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or Abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager and City Manager in writing of such removal or Abandonment and shall file with the City Manager and City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

SECTION 11. GENERAL PROVISIONS.

- 1. As Built Maps and Records.** Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Inventory

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

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

Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

2. Courtesy and Proper Performance. Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

3. DRUG POLICY. Drug policy of Network provider's personnel, and contractors in the rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by

Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE. The City has appropriated \$0 to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under this Article, and no other funds are allocated.

5. OWNERSHIP. Ownership of Network Node and related equipment shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

No part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment erected or placed on the Right-of-Way by Network Provider will become, or be considered by the City as being affixed to or a part of, the Right-of-Way. All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment constructed, modified, erected, or placed by Network Provider on the Right-of-Way will be and remain the property of Network Provider and may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager prior to any work in the Right-of-Way.

6. Tree Maintenance. Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the Parks Director. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

7. Signage. Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node facility 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 Manager.

Except as required by Laws or by the Utility Pole owner, Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole or Utility Pole.

8. Graffiti Abatement. Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro

Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

9. Restoration.

Network Provider shall restore and repair of the rights-of-way from any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall repair any damage to the Right-of-Way, or any facilities located within the Right-of-Way, and the property of any third party resulting from Network Provider's removal or relocation activities (or any other of Network Provider's activities hereunder) within 10 calendar days following the date of such removal or relocation, at Network Provider's sole cost and expense, including restoration of the Right-of-Way and such property to substantially the same condition as it was immediately before the date Network Provider was granted a Permit for the applicable Location or did the work at such Location (even if Network Provider did not first obtain a Permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Manager.

10. Network provider's responsibility.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

Network Provider shall be responsible and liable for the acts and omissions of Network Provider's employees, temporary employees, officers, directors, consultants, agents, Affiliates, subsidiaries, sub-Network Provider's and subcontractors in connection with the installations of any Micro Network Node, Network Node, Node Support Pole and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

SECTION 13-19 RESERVED

SECTION 20. DESIGN MANUAL - UPDATES

Placement or Modification of Micro Network Node, Network Node, Node Support Pole and related ground equipment shall comply with the City's Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

i Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

ii The definitions as used in Tx. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

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

(2) "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 this chapter.

(3) "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.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "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.

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

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

(8) "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.

(9) "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.

(10) "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.

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

(12) "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.

(13) "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.

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

(15) "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.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "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.

(18) "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.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "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.

(21) "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;

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- (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.

(22) "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.

(23) "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.

(24) "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.

(25) "Wireless service provider" means a person that provides wireless service to the public.

iii Sec. 284.002. DEFINITIONS (8) "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.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

- (1) each antenna that does not have exposed elements and is attached to an existing structure or pole:
 - (A) must be located inside an enclosure of not more than six cubic feet in volume;
 - (B) may not exceed a height of three feet above the existing structure or pole; and
 - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
 - (A) must fit within an imaginary enclosure of not more than six cubic feet;
 - (B) may not exceed a height of three feet above the existing structure or pole; and
 - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
- (3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
 - (A) be more than 28 cubic feet in volume; or
 - (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;
- (4) 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; and
- (5) pole-mounted enclosures may not be taller than five feet.

(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):

- (1) electric meters;
- (2) concealment elements;
- (3) telecommunications demarcation boxes;
- (4) grounding equipment;
- (5) power transfer switches;
- (6) cut-off switches; and
- (7) vertical cable runs for the connection of power and other services.

(c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

(d) 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.