

ORDINANCE NO. _____

AN ORDINANCE AMENDING CODE OF ORDINANCES CHAPTER 94 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES BY ESTABLISHING A NEW ARTICLE IV – “WIRELESS NETWORK PROVIDERS” FOR THE PURPOSE OF REGULATION THE USE, OCCUPANY AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; CREATING AND REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING PROCEDURES AND TIME PERIODS FOR ACCEPTING AND PROCESSING PERMIT APPLICATIONS; PROVIDING APPLICATION AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL FEES; RESTRICTING PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS; RESIDENTIAL AREAS, AND HISTORIC DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Deer Park (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; and

WHEREAS, Chapter 284 of the Texas Local Government Code (the Code) allows certain wireless network providers to install in the City's public rights-of-way their wireless facilities, described and defined in Section 284.002 of the Code as "Micro Network Nodes," "Network Nodes," "Node Support Poles," and Transport Facilities;; and

WHEREAS, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City does hereby approve the *Design Manual for the Installation of Network Nodes, Node Support Poles and Transport Facilities* (the Design Manual) which is attached to this Ordinance as Exhibit “A”) in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Council desires to regulate the installation of Network Nodes, Network Support Poles and Transport Facilities pursuant to Chapter 284 of the Code in a way that is fair, reasonable and nondiscriminatory.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF DEER PARK, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Chapter-94: Article-IV – Wireless Network Providers Established. A new Chapter 94, Article IV – Wireless Network Providers is hereby established as follows:

Sec. 94-90: Purpose

The purpose of this article is to:

- (a) Assist the City in the competitively neutral and nondiscriminatory management of the physical use, occupancy, and maintenance of its public rights-of-way by wireless network providers;
- (b) Secure fair and reasonable compensation for the physical use and occupancy of the public rights-of-way by wireless network providers in a nondiscriminatory and competitively neutral manner; and
- (c) Assist the City in protecting the public health, safety, and welfare.

Sec. 94-91: Governing Law

This chapter shall be construed in accordance with Chapter 284 of the Texas Local Government Code (the Code) to the extent not in conflict with the Constitution and laws of the United States or the State of Texas.

Sec. 94-92: Definitions

For the purpose of this article, the definitions found in the City *Design Manual for the Installation of Network Nodes, Node Support Poles, and Transport Facilities* (the Design Manual) are hereby incorporated into this article and shall apply unless the context clearly indicates or requires a different meaning. The following definitions as found in the Design Manual are specifically applicable to this article.

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

Applicable Codes means:

- (a) The building, fire, electrical, plumbing, or mechanical codes promulgated by a recognized national code organization and adopted by the City; and
- (b) Local amendments to those codes to the extent not inconsistent with Chapter 284.

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

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

City means the City of Deer Park, Texas.

City Code means the Code of Ordinances, City of Deer Park, Texas and any ordinance not codified therein.

City Council means the municipal governing body of the City of Deer Park, Texas.

City Manager means the City Manager or his/her designee for the City of Deer Park, Texas.

Chapter 284 means Texas Local Government Code, Chapter 284.

Code means the Texas Local Government Code.

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

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

Day means a calendar day.

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

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

Design Manual means the design requirements in effect at the time of a construction Permit application, or the commencement of work not required to obtain a Permit, for specific types of Facilities, including any adopted Design Manuals or the City Code, as amended from time to time.

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.

Facilities means any and all of the Network Nodes, transport facilities, equipment cabinets, Node Support Poles, duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures, plant, and appurtenances and all Transmission Media used for the provision of Wireless Service or Telecommunication Service.

Federal Communications Commission or *FCC* means the Federal Communications Commission, 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.

Line Fee means a monthly fee to be applied to each Access Line for the calculation of the total amount to be paid to the City as a rights-of-way Fee.

Local means within the geographical boundaries of the City.

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

Macro Tower means a guyed or self-supported Pole or monopole greater than the height parameter prescribed by Section 284.103 of Chapter 284 and that supports or is capable of supporting Antennas.

Mayor means the mayor of the City of Deer Park, Texas, or designee.

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 the City as a public park for the purpose or recreational activity.

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

(a) Includes:

- (1) Equipment associated with wireless communications
- (2) A radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (3) Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collation: and

(b) Does not include:

- (1) An electric generator;

- (2) A Pole; or
- (3) 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;
- (1) Network Nodes; or
 - (2) Node Support Poles or any other structure that supports or is capable of supporting a network node; or
 - (3) Transport Facilities

New Node support pole or new pole means a new installation, including any extension or replacement of an existing pole where replacement is not exempt from permit requirements under this Article.

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

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

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

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

Plans of Record means plans of the facilities that:

- a. A city street map marked in such a manner as to evidence which the thoroughfares along which the network provider has placed facilities (not including boxes and other appurtenances) shall serve as the plans of record for the network provider. The address and GPS coordinates must be included for any pole or equipment collocated on a pole. The city street map will be made available in a digital format upon request to the city engineer.
- b. On or before January 31 of each calendar year following the initial submittal of its plans of record, a network provider shall provide to the city engineer plans of record that show all installations of new facilities, and all changes, additions, abandonments, and relocations relating to existing facilities completed in the previous calendar year, including the address and GPS coordinates for such facilities.

- c. Plans of record shall not include information that is a trade secret or other confidential information protected from disclosure by state law. Information marked "proprietary" or "confidential" will not be accepted by the city. Location information is not a trade secret or proprietary/confidential information, and this definition may not be construed to authorize a network provider to fail to provide location information

Pole means a service pole, City-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 a Wireless Network Provider or Telecommunication Service 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 City 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. This includes, but is not limited to, all present and future public streets, avenues, highways, alleys, sidewalks, boulevards, drives, easements, bridges, and other similar passageways, thoroughfares, and public ways within the City.

Public Utility means a public utility as that term used in the Public Utility Regulatory Act, Texas Utilities Code § 11.004, including municipally owned and/or operated utilities.

Public Works Director means the City's Public Works Director or appointed designee.

Right-of-way fees means the total amount paid to the City for the use and occupancy of the rights-of-way. The fee shall be on a paid quarterly basis for access lines and on an annual basis for other structures and facilities. For Wireless Network Providers, this is the rental charge paid in accordance with Chapter 284 of the Texas Local Governmental Code.

Service pole means a pole, other than a City-owned utility pole, owned or operated by the City 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.

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 include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

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.

User means any Person that applies for a Permit under this Article, or any person that owns, controls, constructs, installs, repairs, maintains, upgrades or removes a structure in the Right-of-way, including any contractor or subcontractor of a person who owns or controls a structure in the Right-of-way.

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, Texas 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 or an entity.

Wireless facilities mean "Micro Network Nodes," "Network Nodes," "Node Support Poles," and "Transport Facilities" as defined in Chapter 284.

Sec. 94-93 - Registration and construction permits.

No person shall commence or continue with the construction, maintenance, operation or installation of any structure within the Rights-of-way of the City except as provided by this Article, or as provided by other City permits or written agreements with the City. Registration and Permits will be issued in the name of the person who will own the structures.

- (a) *Registration required.* For the safety of all Users and the public, all Users of the Right-of-way must register annually with the City. Registration shall include:

- (1) The name of the User of the right-of-way;

- (2) The name, address, and telephone number of the User;
 - (3) The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
 - (4) The location, including exact coordinates, of all structures located in the Right-of-way; and
 - (5) A description of each structure located in the Right-of-way.
- (b) *Construction permit required.* Unless otherwise provided by this Article, no person shall perform any construction or installation of structures in the Right-of-way without first obtaining a construction permit. The Permit must be completed and signed by the owner or authorized representative of the owner of the proposed structures. A construction Permit for a proposed Network Node, Node Support Pole, or Transport Facilities shall be processed in accordance with the timelines of Section 284.154 of Chapter 284.
- (1) *Permit information required.* The person requesting a Permit will provide the Public Works Director with documentation describing:
 - I. The proposed, approximate location, route and type of all structures to be constructed, installed, or modified and the User's plan for Right-of-way construction.
 - II. Engineering plans provided on a drawing scale not smaller than one (1) inch equals one hundred (100) feet unless approved by the Public Works Director.
 - III. Description of all existing public and private utilities in close proximity to User's proposed route (within 300 feet).
 - IV. Description of plans to remove and replace pavement or drainage works in streets. Plans submitted must conform to City of Deer Park standard construction requirements and any other applicable law.
 - V. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc., including depth.
 - VI. Three (3) sets of engineering plans.
 - VII. The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to Right-of-way.
 - VIII. The name and address of the person to whom notices are to be sent, a 24-hour per day contact number for the User in case of emergency.

- IX. Location map that includes all other structures within 500-feet of the proposed location.
 - X. When a new pole is proposed, an industry standard pole load analysis certified by an engineer licensed to practice in Texas, with soils test or geotechnical survey, where required.
 - XI. A complete application and supporting documents for land use approval where required.
 - XII. Proof of payment of the construction permit fee and prorated. Right-of-way fee for the remaining portion of the current calendar year.
 - XIII. Complete legend of drawings submitted by User, which may be provided by reference to previously submitted documents.
 - XIV. The construction and installation methods to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the Right-of-way, and the estimated dates and times work will occur, all of which (methods, dates and times, etc.) are subject to approval of the Public Works Director.
 - XV. Proof of insurance or net worth.
- (c) *Access to site.* All construction and installation in the Right-of-way shall be in accordance with the Permit for the structures. The Public Works Director shall be provided access to the work and to such further information as may reasonably be required to ensure compliance with the Permit.
- (d) *Plans on site.* A copy of the construction Permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Public Works Director at all times when construction or installation work is occurring.
- (e) *Timelines.* All work authorized by Permit must be completed in the time specified in the construction Permit. If the work cannot be completed in the specified times period, the Permit Holder may request an extension from the Public Works Director.
- (f) *Insurance and bonds.*
- (1) A User must provide proof of liability insurance in the amount of one million dollars (\$1,000,000.00). Such requirements may be waived by the Public Works Director if the User provides acceptable evidence of self-insurance backed by assets equal to but not less than a net worth in the amount of at least five million dollars (\$5,000,000.00).
 - (2) The coverage provided shall be on an “occurrence” basis and shall include coverage for personal injury, contractual liability, premises liability, medical

damages, underground, explosion, and collapse hazards.

- (3) The liability insurance must be from an insurer authorized to do business in the State of Texas.
 - (4) Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before cancelling, failing to renew, or reducing policy limits.
 - (5) The User shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name address and telephone number of insured; policy expiration date; and specific coverage amounts.
 - (6) The User shall file a surety bond which shall be valid prior to the commencement of any construction through two (2) full years after the completion of the construction from a surety company authorized to do business in the State of Texas in the amount of fifteen thousand dollars (\$15,000.00) to guarantee the restoration of the Right-of-way in the event the User leaves a job site in the Right-of-way unfinished, incomplete, or unsafe. Such requirement for a surety bond may be waived by the Public Works Director upon a showing of financial responsibility by the applicant.
- (g) *Approval.* Unless otherwise provided by this Article, request for Permits shall be approved or disapproved by the Public Works Director within a reasonable time of receiving all the necessary information.
- (h) *Preconstruction meeting.* The Public Works Director or User may request a preconstruction meeting.
- (i) *Exemption to construction permit and registration requirement.* The following activities shall not be required to obtain a permit under this Article.
- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in the public Right-of-way; or
 - (2) Replacing or upgrading a network node or network pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in the Right-of-Way; or
 - (3) The installation, placement, maintenance, operation or replacement of Micro Network Nodes that are strung on cables between existing Poles or Node Support Poles in compliance with the National Electrical Safety Code.

At least 24-hour advance written notice to the Public Works Director of work performed under this section is required, including proof that the User is acting with approval of a Pole's owner if structures are being collocated on an existing pole.

- (j) *Building permit.* The owner of driveways, streets, and other permanent structures constructed in the public Right-of-way pursuant to a building permit obtained under the adopted construction codes of the City is not required to register the structures annually.

Sec. 94-94 - Construction standards.

- (a) *Advance notice required.* The Public Works Director shall be notified twenty-four (24) hours in advance that construction, unless such period falls on a weekend or City holiday which in such case notice shall be provided the previous business day, is ready to proceed by either the Right-of-way User, their contractor or representative, including the name, address, and phone numbers of the contractor performing the actual construction, and the name and telephone number of the individual who will be available at all times during construction. Failure to provide the above information will result in the suspension of the Permit until the required information is received.
- (b) *Conformance to other Laws.* All construction shall be in conformance with all City Codes and applicable local, State and Federal Laws.
- (c) *Erosion control.* Erosion control measures (i.e., silt fence) and advance warning signs, markers, cones, and barricades must be in place before work begins. Permit Holder may be required to show proof of EPA approved plans relating to storm water and erosion when applicable or a letter stating such plans are not required. User shall comply with City, State and Federal guidelines regulating storm water management erosion control. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing , or straw bales, as appropriate.
- (d) *Lane closures.* Lane closures on collectors and thoroughfares, as identified by the City's thoroughfare plan, are limited to periods after 8:30 a.m. and before 4 p.m. unless the Public Works Director grants prior approval. Arrow boards will be required on lane closures with all barricades, advanced warning signs and thirty- six-inch (36") reflector cones placed accordance with the most recent Manual on Uniform Traffic Control Devices as adopted by the Texas Department of Transportation and reviewed by the Public Works Director.
- (e) *Workmanship.* Users are responsible for the workmanship and any damages caused by a contractor or subcontractor.
- (f) *Notice of damage.* All Users shall notify the Public Works Director immediately of any damage to utilities or other structures, either City or privately owned.

- (g) *Prior approval required for Street or Sidewalk cut.* Except in the event of an emergency, prior approval must be obtained from the Public Works Director when a Street or Sidewalk cut is required and all requirements of the City shall be followed. Repair of all Street and Sidewalk removals shall be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (h) *Interference prohibited.* Newly installed structures shall not interfere with Facilities or structures of other Users, in particular gravity dependent Facilities.
- (i) *Depth.* Underground structures shall be installed at a minimum of two (2) feet depth, unless approved by the Public Works Director or as otherwise provided by this Article.
- (j) *Work hours.* Except in the event of an emergency, working hours in the Right-of-way that do not require a lane closure as described in 94-94(d) above are 7:00 a.m. to 6:00 p.m., Monday through Friday. Work that needs to be performed after 6:00 p.m. Monday through Friday must be approved in advance. Except in the event of an emergency, any work performed on Saturday or Sunday must be approved twenty-four (24) hours in advance by the Public Works Director. Directional boring is permitted only Monday through Friday, unless approved in advance.
- (k) *Plans of record.* Right-of-way Users shall provide the Public Works Director with "plans of record" within ten (10) days of completion of structures in the Right-of-Way. Submittal of "plans of record" should be in digital formatting as well as written or in any other format requested by the Public Works Director.

Sec. 94-95 - General terms applicable to permit holders.

- (a) *Permit rights apply to Permit Holder only.* The rights granted by this Article inure to the benefit of the Permit Holder only. The rights granted by Permit may not be assigned, transferred, or sold to another. For the purposes of this Section, assignment, transfer or sale means a change of operating control of the Permit Holder, expressly excepting an assignment or transfer to entities that control, are controlled by, or are under common control with the Permit Holder.
- (b) *Not exclusive.* No rights agreed to in this Article by the City shall be exclusive and the City reserves the right to grant franchises, licenses, easements or permissions to use the Rights-of-way within the City to any person as the City, in its sole discretion, may determine to be in the public interest.
- (c) *Deed restrictions.* A User installing Structures in a Public Right-of-way shall comply with private deed restrictions and other private restrictions in the area.
- (d) *Cable service not authorized by Permit.* A Permit Holder is not authorized to provide Cable Service as a cable operator in the City under this Article, but must first obtain a franchise agreement from the City for that purpose, under such terms and conditions as may be required by law. A Permit for the installation, placement, maintenance, or operation of a Network Node or Transport Facility under this Article shall not confer

authorization to provide Cable Service or video service, as defined by Section 66.002, Texas Utilities Code, or information service as defined by 47 U.S.C. Section 153(24), or Wireless Service as defined by 47 U.S.C. Section 153(53), in the Public Right-of-way.

- (e) *Interference not permitted; Notice and time for correction of interference.* A wireless Network Provider shall ensure that the operation of a Network Node does not cause any harmful radio frequency interference to a Federal Communications Commission-authorized mobile wireless operation of the City operating at the time the Network Node was initially installed or constructed. On written notice, a Wireless Network Provider shall take all steps reasonably necessary to remedy any harmful interference. If a Wireless Network Provider fails to correct any harmful interference within 60 days of written notice, the City may upon 14-day advance written notice revoke any and all Permits and registrations for the Network Node.
- (f) *Permit limited.* A Permit provided under this Article does not provide authorization for attachment of Network Nodes on Poles and other structures owned or operated by investor-owned electric utilities, as defined by Section 31.002 , Utilities Code , electric cooperatives, telephone cooperatives , as defined by Section 162.003, Utilities Code , or wireless Providers, as defined by Section 51.002 , Utilities Code .
- (g) *Other requirements.* The city may impose additional requirement on the activities of Providers in the Public Right-of-way to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.
- (h) *Authority Granted.* A Permit from the City authorizes an Applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the public right-of-way.

Sec. 94-96 - Structure location and conformance with public improvements.

Prior to initiating construction of a "City project" in the right-of-way, the City will provide each Right-of-way User preliminary project plans at various stages of completion (i.e., thirty (30) percent plans, sixty (60) percent plans, ninety (90) percent plans and final plans). Upon receipt of the first submittal of preliminary project plans (thirty (30) percent plans), each Right-of-way User shall be responsible for verifying the location of its underground structures in the vicinity of the City's project. In verifying the location of structures as required by this section, each Right-of-way User shall compile the information obtained regarding any structures located in the Right-of-way that are potentially affected by the City project and shall, within thirty (30) days of receipt of the first submittal of the preliminary project plans, make that information available to the City in a written and verified format acceptable to the Public Works Director. Whenever by reasons of widening or straightening of Streets, water or sewer line projects , or any other City projects (*i.e.*, install or improve storm drains, water lines, sewer lines) it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform the underground or overhead structures of a Right-of -way User, such alterations shall be made by the owner of the structures at the owner's expense

within forty five (45) calendar days from the receipt of written notice to make the alterations, unless a different schedule has been approved by the Public Works Director. The owner of the structures shall be responsible for any direct costs incurred by the City, associated with project delays resulting from owner's failure to conform structures within the time limits established by this section. Reimbursement for all costs provided for by this paragraph shall be made within thirty (30) calendar days from the day which the owner receives written notice of such costs.

Sec. 94-97- Improperly installed structures.

- (a) *Proper installation required.* Structures in the Right-of-way shall be properly installed, repaired, upgraded and maintained. Structures shall be considered to be improperly installed, repaired, upgraded or maintained if:
 - (1) The installation, repairs, upgrade, or maintenance endangers people;
 - (2) The structures do not meet the applicable City requirements;
 - (3) The structures are not capable of being located using standard practices; or
 - (4) The plans are not approved by the Public Works Director.
- (b) *Existing structures.* The Section shall not apply to structures installed prior to the effective date of this ordinance unless such structures are repaired or upgraded.
- (c) *Public works Director review of Poles.* When Poles are used, the type of Poles, location, depth, upgrades, etc. shall be subject to review of the Public Works Director, unless otherwise provided by this Article.

Sec. 94-98 - Restoration of property.

- (a) *Restoration of affected property required.* Users of the Right-of-way shall restore property affected by construction in the Right-of-way to a condition that is equal to or better than the condition of the property prior to the performance of the work. This includes, but is not limited to, replacing all natural ground cover with an equal or better type of ground cover damaged during work, either by sodding or seeding, as directed by Public Works Director.
- (b) *Restoration requirements.* Restoration shall be to the reasonable satisfaction of the Public Works Director. The restoration shall include, but not be limited to:
 - (1) Installation of all manholes and handholes, as required;
 - (2) All bore pits, potholes, trenches, or any other holes shall be covered or barricaded daily;
 - (3) Leveling of all trenches and backhoe lines; and

- (4) Restoration of excavation site to City specifications.
- (c) Locator flags. All locator flags shall be removed during the cleanup process by the Permit Holder or Permit Holder's contractor at the completion of the work.

Sec. 94-99 - Revocation or denial of Permit.

If any provisions of this Article are not followed, a Permit may be revoked by the Public Works Director. If any User fails to follow the terms and conditions of this Article, new Permits may be denied or additional terms required prior to issuance of Permits to the same User.

Sec. 94-100 - Construction and maintenance of structures.

- (a) *Construction requirements.* Except where expressly provided otherwise by State Law, a User shall construct and maintain structures in the public Right-of-way in accordance with the Design Manual to ensure structures do not:
 - (1) Obstruct, impede, or hinder the usual travel or public safety on a Public Right-of-way;
 - (2) Obstruct the legal use of a Public Right-of-way by other utility Users;
 - (3) Violate or conflict with the City's publicly disclosed Public Right-of-way design specifications; or
 - (4) Violate the Federal American's with Disabilities Act of 1990 (ADA).
- (b) *Design Manual.* Structures to which the Article applies must conform to the specifications required by the construction codes and Design Manual as adopted by the City at the time the permit application is submitted.
- (c) *Request for temporary moves.* Upon request, the Permit Holder shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the Permit Holder may require payment in advance. The Permit Holder shall be given not less than forty- eight (48) hours advance notice to arrange for such temporary rearrangements.
- (d) *Tree trimming.* The Permit Holder, his contractors and agents have the right, permission and license to trim trees upon and overhanging the Rights-of-way to prevent trees from coming in contact with the Permit Holder's Facilities. When directed by the City, tree trimming shall be done under the supervision and Direction of the Public Works Director.

Sec. 94-101. Permit applications

- (a) Except as otherwise provided in Chapter 284, a network provider shall obtain a permit or

permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City public Right-of-way.

- (b) As required by Chapter 284, the City shall not require a network provider to perform services for the City for which the permit is sought.
- (c) A network provider that wants to install collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than thirty (30) Network Nodes and upon payment of the applicable fee(s), receive a permit or permits for the installation of collection of those Network Nodes.
- (d) The network provider shall provide the following information in its permit applications:
 - (1) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City's Design Manual and applicable codes;
 - (2) Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual and this chapter;
 - (3) A certificate that the Network Node(s) complies with the applicable regulation of the FCC; and certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not later than the 60th day after the date of construction and final testing or each Network Node is completed.
 - (4) A certificate of insurance that provides the Network Provider and its contractor has at least \$1,000,000.00 (one-million dollars) in general liability coverage.
- (e) Exception: A Network Provider is not required to apply, obtain a permit, or pay a rate to the City for any activity enumerated Section 284.157 of the Code. However, the network provider or its contractors shall notify the City at least twenty-four (24) hours in advance of exempted work described herein.

Sec. 94-102: Installation in Historic Districts

A Network Provider must obtain advance written consent from the City Council before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a Historic District. The network provider shall be required to comply with the General Aesthetic Requirements described in the City's Design Manual. The City has the authority to designate new Historic Districts at a future date.

Sec. 94-103: Installation in Municipal Parks and Residential Areas

A network provider may not install a new Node Support Pole in a public right-of-way without the City Council's discretionary, nondiscriminatory, and written consent if in the public right-of-way:

- (a) Is in a municipal park; or
- (b) Is adjacent to a street or thoroughfare that is;
 - (1) Width is 60 feet or less: 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, other than a thoroughfare streets.
- (c) In addition to the above, a Network Provider installing a Network Node, Node Support Pole, or Transport Facilities in a public Right-of-way shall comply with a private deed restrictions and other private restrictions in the area that apply to those facilities.
- (d) The Network Provider shall be further required to comply with guidelines set out in the City's Design Manual

Sec. 94-104: Municipal review process by the City.

- (a) *Determination of Application Completeness:* the City shall determine whether the permit application is complete and notify the applicant of that determination:
 - (1) *For Network Nodes and Node Support Poles:* No later than thirty (30) days after the date the City receives the permit application.
 - (2) *For a Transport Facility:* No later than ten (10) days after the date the City receives the permit application.
- (b) *Approval or denial of application:* The City shall approve or deny a completed application after the date it is submitted to the City:
 - (1) *For Network Nodes:* No later than sixty (60) days after the date the City receives the complete application.
 - (2) *For Network Support Poles:* No later than one-hundred-fifty (150) days after the date the City receives the complete application.
 - (3) *For Transport Facilities:* No later than twenty-one (21) days after the City receives the complete application.
- (c) *Basis for denial of application:* If an application is denied by the City, the City shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based. The documentation for the denial must be sent by electronic mail to the applicant on or before the date that the City denies the application.
- (d) *Resubmission of denied application:* The applicant may cure the deficiencies identified

in the denied application.

- (1) The applicant has thirty (30) days from the date the City denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual cost incurred by the City.
- (2) The City shall approve or deny the revised completed application after a denial not later than the ninetieth (90th) day after the City receives the revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.

(e) *Nondiscriminatory Review*: Each completed application shall be processed by the City on a nondiscriminatory basis.

Sec. 94-105: Time of Installation.

A Network Provider shall begin installation for which a permit is granted not later than six months after final approval of the application and shall diligently pursue installation to completion. The City Manager may in his/her sole discretion grant reasonable extensions of time as requested by the network provider.

Sec. 94-106: Applicable fees and rental rates to the city.

- (a) As compensation for the Network Provider's use and occupancy of the City public right-of-way, the Network Provider shall pay application fees and annual public right-of-way rental rates as set forth herein, which shall not be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street cut or inspection fee; or other right-of-way relate charge or fee, whether charged to the Network Provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.
- (b) The Schedule of Fees relating to this article shall be adopted by separate ordinance.
- (c) *Public Right-of-way adjustment*: As provided in Sec. 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI) for all Urban Consumers for Texas. The City shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the City on or after the sixtieth (60th) day following the written notice.
- (d) *Micro Network Nodes*:
 - (1) No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.
- (e) *Collocation of Network Nodes on City services poles*:

- (1) Subject to the City's Pole Service Agreement, there shall be a fee assessed per year, per pole, for collocation of Network Nodes on City service poles.

(f) City-owned municipal utility poles:

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

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

Sec. 94-107: Indemnity

As provided in Section 284.302 of the Code, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions (claims) covered by this indemnity after which the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of the City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law.

Sec. 94-108: Effect on other utilities and telecommunication providers.

Nothing in this Ordinance shall govern attachment of Network Notes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.

Sec. 94.109: Emergency Removal.

The City retains the right and privilege to disconnect or move any Network Node located within the public right-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Network Provider and allow the Network Provider an opportunity to move its own facilities prior to the City disconnecting or removing a facility and shall notify the Network Provider after disconnecting or removing a Network Node or Node Support Pole

Sec. 94-110: Abandonment.

A Network Provider may not abandon its facilities in a public right of way. If a Network Provider stops use of a Network Node or Node Support Pole for 120 consecutive days it shall be deemed abandoned and must be removed by the Network Provider at its sole expense within 60 days of such abandonment. Except that a Network Provider is not required to and shall not remove any Node Support Pole that has been abandoned by the Network Provider but is in Collocation use by another Network Provider. The Network Provider shall give the City written notice of all abandoned facilities and its plan for removal of such facility at least 30 days prior to any removal. Following the removal of any facility the Network Provider shall leave the right-of-way in the same or substantially the same condition as it was prior to the installation of the facility.

Section 3. Repealer. That other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

Section 4. Severability. That should any provisions of this ordinance be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

Section 5. Effective Date. That this ordinance is effective upon final passage and approval.

Section 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Chapter. 551, Loc. Gov't. Code

In accordance with Article VIII, Section 1 of the City Charter, this Ordinance was introduced before the City Council of the City of Deer Park, Texas, **passed, approved and adopted** on this the ____ day of _____, 2021 by a vote of _____ “Ayes” and _____ “Noes”.

MAYOR, City of Deer Park, Texas

ATTEST:

City Secretary

APPROVED:

City Attorney

EXHIBIT A – DESIGN MANUAL

I. Introduction

A. Purpose

The following design specifications are required by the City to: (i) prevent obstruction, impediment, or hindrance of the usual travel or public safety on a Public Right-of-way; (ii) prevent obstruction of the legal use of the Public Rights-of-way by utility Providers; and (iii) protect the health, safety, and welfare of the public.

B. Scope

Any Person that constructs, modifies, maintains, operates, relocates or removes structures within the Rights-of-way shall conform to the following design specifications and all applicable construction codes of the City. The Public Works Director shall deny any Permit application that does not strictly conform to applicable requirements.

C. Definitions

Terms defined in Chapter 94 of the Code of Ordinances of the City of Deer Park, Texas shall have those same meanings when used in this Design Manual.

II. Design Requirements for all Rights-of-way

A. Pole stability requirements

Nodes, equipment cabinets, and Poles shall be constructed based on an industry standard pole load analysis completed, sealed by a registered professional engineer licensed to practice in Texas, and submitted to the City indicating that the Service Pole or network support Pole to which the Network Node is to be attached will safely support all proposed and existing equipment. Documentation shall be completed and submitted to the City indicating that the Pole foundation or anchoring mechanism is (i) sufficient for the type of soil in the proposed location, and (ii) sufficient to withstand typical area wind loads as identified by the adopted construction codes of the City. Poles shall be constructed with foundations based on a (i) soils test if the proposed Pole is over thirty (30) feet in height, or ii) a geotechnical survey if the proposed Pole is over forty-five (45) feet in height.

B. Limit on number of Network Nodes per Pole

The number of Network Nodes allowed per Pole shall be limited based on the pole load analysis.

C. Minimum placement height

Network Node equipment placed on new and existing Poles shall be placed more than twelve (12) feet above ground level. If a Network Node or other equipment 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.

D. Equipment size limitations

All Facilities shall be constructed and limited in size in accordance with Section 284.003 of the Texas Local Government Code.

E. Compliance with National Electrical Safety Code

Facilities must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and any Utility Pole owner's construction standards.

F. New Pole locations and construction requirements

New Poles shall be constructed with break away bases and located as close as possible to the outside edge of the Right-of-way. New poles shall be spaced apart from existing poles by no less than 100 feet. New poles may not be located within three (3) feet of sidewalks, pedestrian paths or bicycle paths. New poles may not be located within ten (10) feet of driveways, streets, or highways. New Poles should provide minimum disruption of visibility and site lines for nearby driveways, windows and other existing improvements.

G. Installations near intersections

A User shall not install structures within 100 feet of any intersection, as measured from the closest outside corner of the two intersecting Streets.

H. Installation near schools and parks

For the safety of pedestrians, particularly small children and to allow full line of sight near school property and Parks, a User shall not install ground equipment or new Poles within a Right-of-way inside the boundary line of school property or within 250 feet of the boundary line of school property. A User shall not install ground equipment within a Right-of-way inside the boundary line of a Park or within 250 feet of the boundary line of a Park.

I. Installation of wires, conduits or cables

Any structures that include wires, conduits, or cables shall be located underground, except where the City Engineer identifies based on the Permit application that existing utility or other structures prevent the safe installation of the proposed structures underground. Where wires, conduits, or cables are required to be installed aboveground, they shall be attached to existing Poles where possible and must not hang lower than twelve (12) feet above ground level. New Poles installed to support aboveground wires, conduits, or cables shall comply with all location and construction requirements for new Poles.

J. Installations in utility easements

Facilities may be installed in utility easements where i) the installation will not interfere with existing or planned utilities, and ii) the underlying property owner grants written authorization, except where installation of a Collocated Network Node does not require installation of any ground equipment.

K. Height limitation

A User shall ensure that the vertical height of a structure installed in a Public Right-of-way does not exceed the lesser of:

- i. 10 feet in height above the tallest existing Utility Pole located within 500 linear feet of the proposed structure in the same Public Right-of-way; or
- ii. 55 feet above ground level.

L. Electrical supply

Users shall be responsible for obtaining any required electrical power service to the structures. Users shall not allow or install generators or back-up generators in the Rights-of-way.

III. Designated areas; Right-of-way Management Map

Providers are not required to obtain conditional use permits or other land use approvals for location in Rights-of-way, except as specified in this section. In addition to the requirements of Section II of this Design Manual, the following requirements shall apply to any structures to be located in designated areas as described by this Section. The requirement for a conditional use permit or other land use approval in designated areas is in addition to any other Permit required by City Code.

A. Historic Areas / Design Areas with Decorative Poles

A User must obtain advance written consent from the City Council before installing structures in an area of the City that has been designated as a Historic Area or as a Design Area with Decorative Poles. The City may designate additional Historic Areas and Design Areas.

B. Underground areas

A User shall comply with undergrounding requirements where applicable, including City 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.

C. Parks / residential areas

A User may not install a new Pole in a Public Right-of-way without City Council's written consent if the Public Right-of-way is in a Park or is adjacent to a Street that is:

- i. Width is 60 feet or less: and
- ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions, other than a thoroughfare streets.

D. Designation of areas under this section

Design Areas with Decorative Poles, Historic Areas, underground areas, Parks, and residential areas adjacent to Streets not more than 60 feet wide are those shown on the Rights-of-way Management Map, as adopted and amended from time to time by City Council. A User's structures in a particular location shall be subject to the area designations in place at the time of a Permit application for those particular structures. Any area where all Poles within 1,000 feet of a proposed location are of a similar design with no additional permanent appurtenances attached are designated by this section as Design Areas with Decorative Poles, even where such an area is not shown as a Design Area on the Right-of-way Management Map.

E. Land Use Approval process

The following shall constitute the process for obtaining advance written consent of City Council or land use approval for installation of any structures required to obtain such approval by this Design Manual.

- (1) *Application.* The User shall submit an application for conditional use permit, in addition to any other Permits required for construction of structures and use of the Public Rights-of-way. This conditional use permit application shall include documentation for the following:
 - i. plans or design specifications compliant with specific design criteria for an area;
 - ii. a conditional use permit fee, provided the total fees paid by a Provider for a Facility do not exceed the maximum allowed construction permit fee in Appendix B of the City Code;
 - iii. the locations of all other buildings, structures, Facilities and Poles located within 1000 feet of the proposed location; and
 - iv. at least one photo of the nearest Pole to the proposed location.
- (2) *Processing.* The User's application for conditional use permit shall be processed for review by the City's planning and zoning commission and the City Council using the City's standard notice procedures, administrative processes, and scheduling procedures for zoning applications.
- (3) *Evaluation criteria.* Conditional use permit applications for Facilities shall be evaluated using only the following criteria:

- i. alternative locations available within 1000 feet for the specific type of structure being requested;
- ii. concealment measures proposed for minimizing the impact of the proposed structures on surrounding land uses; and
- iii. conditions to the Permit requested by landowners within 200 feet of the proposed location.

Note: Specific Use Permits where the proposed plans for Facilities meet the design criteria for a proposed location should be granted for that location or an alternate location within 1,000 feet, as determined by the City Council.

IV. Design requirements in underground areas

In designated underground areas, including areas where utilities are required to be installed underground by City ordinance, zoning regulations, State Law, private deed restrictions and other public or private restrictions that prohibit installing aboveground utilities or structures in a Public Right-of-way without first obtaining zoning or land use approval, the User must install structure underground, or obtain land use approval in accordance with Section III E. of this Design Manual to install above ground structures. The City may designate additional underground areas in accordance with filed plats, or conversions of overhead to underground areas.

V. Design requirements in historic and Design Areas

A. Concealment measures required

As a condition for land use approval of structures in Design Areas with Decorative Poles or in a Historic Area, the City shall require Concealment measures for any above ground structures. Any request for installations in designated areas must be accompanied with proposed Concealment measures that are similar to an existing structure that is 1) within the area, 2) within 1,000 feet of the proposed location, and 3) is not a nonconforming structure. Structures shall be constructed and maintained in compliance with all City, State, and Federal historic preservation laws and requirements.

B. Concealment shall comply with other City Code requirements

Where a User is required to employ Concealment measures, the User shall comply with other City Code requirements, including zoning and Uniform Development Code requirements, where applicable. Colors in designated areas must be approved by the Public Works Director from a palette of approved colors for that area. 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.

VI. Design requirements in Parks and residential areas

A. Specific Use permit required

A User may not install a new Pole in a Public Right-of-way without the City's written consent obtained in accordance with Section III E. of this Design Manual if the Public Right-of-way is in a Park or is adjacent to a Street or thoroughfare that is:

- i. Width is 60 feet or less: and
- ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions, other than a thoroughfare streets.

VII. Administrative hearing

Should a User desire to deviate from any of the standards set forth in this Design Manual to appeal an interpretation by City staff of the City regulations applicable to structures located in the Rights-of-way, or allege a specific provision of this Design Manual is inconsistent with State or Federal Law as applied specifically to that User, the User may request an administrative hearing before the Planning & Zoning Commission.

VIII. Unauthorized and improperly located structures

If any structures are installed in a location that has not obtained a Permit, that impedes pedestrian or vehicular traffic, or that obstructs the legal use of a Public Right-of-way by utility providers, then the User shall promptly remove the structures. After 30 days advance written notice to remove unauthorized or improperly located structures, the City may remove and dispose of structures that remain unauthorized or improperly located.