

**ORDINANCE NO. 2017-29**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, DELETING ALL OF ARTICLE VI, USE OF PUBLIC RIGHTS-OF-WAY, OF CHAPTER 38, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, AND REPLACING IT WITH A NEW ARTICLE VI, RIGHT-OF-WAY MANAGEMENT; UPDATING THE CITY'S RIGHT OF WAY MANAGEMENT REGULATIONS; DELETING ALL OF ARTICLE VII, USE OF RIGHTS-OF-WAY BY PROVIDERS OF TELECOMMUNICATION SERVICES, OF CHAPTER 38, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, AND REPLACING IT WITH A NEW ARTICLE VII, TELECOMMUNICATIONS AND WIRELESS FACILITIES; REGULATING THE PHYSICAL USE, OCCUPANCY AND MAINTENANCE OF THE CITY'S RIGHTS-OF-WAY BY TELECOMMUNICATIONS SERVICE AND WIRELESS NETWORK PROVIDERS; PROVIDING PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING PERMIT FEES AND PUBLIC RIGHTS-OF-WAY RENTAL RATES; REQUIRING LAND USE APPROVAL PRIOR TO PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN PARKS, RESIDENTIAL AREAS, HISTORIC AREAS, UNDERGROUND AREAS AND DESIGN AREAS; ADOPTING A DESIGN MANUAL UNDER CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; AND PROVIDING A SAVINGS CLAUSE.**

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**WHEREAS**, in its most recent session, the Texas Legislature adopted Senate Bill 1004, relating to the use of public rights-of-ways by wireless communications companies;

**WHEREAS**, Senate Bill 1004 goes into effect on September 1, 2017;

**WHEREAS**, the City Council desires to establish regulations related to use of its rights-of-ways by wireless communications companies as provided by Senate Bill 1004;

**WHEREAS**, the City Council finds it to be in the best interest of the health, welfare and safety of its citizens to establish the regulations set forth in this ordinance, now, therefore:

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The facts and matters set forth in the preamble to this ordinance are hereby found to be true and correct.

**Section 2.** The Code of Ordinances of the City of Tomball, Texas is hereby amended by deleting Article VI, Use of Public Rights-of-Way, of Chapter 38, Streets, Sidewalks and Other Public Places, in its entirety and replacing it with a new Article VI, Right-of-Way Management, to read as follows:

**“ARTICLE VI. -- RIGHT-OF-WAY MANAGEMENT**

**Section 38-159. – Definitions.**

Whenever used in this chapter, the following terms, as well as their singulars, plurals and possessives, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise.

*Access line:* (1) The transmission media within the rights-of-way extended to the end-user customer's premises network interface within the city that allows delivery of telecommunications service within the city; and (2) Each termination point of a nonswitched telephone circuit consisting of transmission media connecting specific locations identified by, and provided to, the end user for the delivery of nonswitched telecommunications service within the city. Interoffice-transport and other transmission media that do not terminate at an end-user customer's network interface device are not access lines that would be separately identified and counted for the purposes of assessing the monthly line fee.

*Antenna:* Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

*Cable service:* "Cable service" as defined in the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 532 et seq.

*City:* The city of Tomball, Texas.

*City Code:* The Code of Ordinances of the city of Tomball, Texas, as amended.

*City Council:* The municipal governing body of the city of Tomball, Texas.

*City Manager:* The City Manager or designee of the City Manager.

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

*Consumer price index:* The annual revised Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics.

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

*Decorative pole:* 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 city code.

*Design area:* 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:* The design requirements for specific types of facilities, including any adopted design manuals, the city's unified development code, adopted constructed codes and any other city requirements.

*Direction of the city:* All ordinances, laws, rules, resolutions, and regulations of the city that are now in force or may hereafter be passed and adopted.

*Easement:* 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:* 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:* The Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

*Historic area:* An area that is zoned or otherwise designated as a historic area under municipal, state, or federal law.

*Highway right-of-way:* The right-of-way adjacent to a state or federal highway.

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

*Line fee:* 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.

*Location:* The city-approved and lawfully permitted location for the Network Node.

*Macro tower:* A guyed or self-supported pole or monopole greater than the lesser of (i) 55 feet, or (ii) 10 feet higher than the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way and that supports or is capable of supporting antennas.

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

*Municipally owned utility pole:* 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.

*Park:* Any property dedicated or used as a park or for public park purposes or that may be dedicated or used as a park or for public park purposes within the city.

*Network node or node:* Equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term 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 does not include: (i) an electric generator; (ii) a pole; or (iii) a macro tower.

*Network provider:* A wireless service provider; or 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.

*New node support pole or new pole:* A new installation, including any extension or replacement of an existing pole where the replacement is not excepted from permit requirements under section 38-161 of this chapter.

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

*Permit:* A written authorization for the use of the public right-of-way, including collocation on a service pole, required from the city before a provider may perform an action under this chapter.

*Permit holder:* Any person that has applied for or been issued a permit pursuant to the terms of this chapter.

*Provider:* A network provider or telecommunication service provider.

*Person:* A natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

*Pole:* A service pole, municipally owned utility pole, node support pole, or utility pole.

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

*Public right-of-way or right-of-way:* 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. This includes but is not limited to all present and future public streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, easements, bridges, and other such similar passageways, thoroughfares, and public ways within the city.

*Public utility:* A public utility as that term is used in the Public Utility Regulatory Act, V.T.C.A., Utilities Code § 11.004, including municipally owned and/or operated utilities.

*Rights-of-way fee:* The total amount paid to the city on a quarterly basis for access lines and on an annual basis for other facilities for the use and occupancy of the rights-of-way. For network providers, this is the rental charge paid in accordance with chapter 284 of the Texas Local Government Code.

*Service pole:* 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 pole that supports traffic control functions; a structure for signage; a pole that supports

lighting, other than a decorative pole; and a pole or similar structure owned or operated by a municipality and supporting only network nodes.

*Street:* The portion of the public right-of-way, including a highway, designed or used for vehicular traffic, including that part of the street marked or platted as a bicycle or public transit lane. Street width shall be the widest of the following measurements: (i) edge of pavement to edge of pavement, or (ii) curb to curb.

*Substantially similar:* Includes the following: (i) A replacement or upgrade that does not include replacement of an existing node support pole nor defeat existing concealment elements of a node support pole; and (ii) a new or upgraded network node, including the antenna or other equipment element, will not be more than 10 percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by the city's design manual; and the new or upgraded pole will not be more than 10 percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by the city's design manual.

*Telecommunications service:* The transmittal of voice, data, image, graphics and other communications between or among points by wire, fiber optics, or other similar facilities, as well as the rental, lease, or furnishing of the facilities to accomplish such transmittal, but does not include transmissions for long distance purposes (interLATA and intraLATA) or any "wireless service" as defined by law.

*Telecommunications service provider:* Any person that supplies telecommunications service to others within the corporate limits of the city in exchange for money or other value.

*Telecommunications utility:* "Telecommunications utility" as used in the Public Utility Regulatory Act, V.T.C.A., Utilities Code § 51.002(11).

*Transmission media:* Any and all of the cables, fibers, wires or other physical devices owned, maintained or placed by a user to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, data or other purposes.

*Transport facility:* 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.

*Use and occupancy:* Acquisition, installation, construction, reconstruction, maintenance, repair, control, or operation of any facilities within the rights-of-way for any purpose whatsoever.

*User:* 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:* A pole that provides: electric distribution with a voltage rating of not more than 34.5 kilovolts; or services of a wireless provider, as defined by Section 51.002, Utilities Code.

*Wireless service:* 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:* A person that provides wireless service to the public.

### **Section 38-160. - Registration and construction permits.**

No person shall commence or continue with the construction or installation of any structure within the rights-of-way of the city except as provided by this chapter, or as provided by other city permits or written agreements with the city.

- (a) *Registration required.* All users of the right-of-way must register annually with the City of Tomball. Registration and permits will be issued in the name of the person who will own the facilities. Registration shall include:
  - i. The name of the user of the right-of-way;
  - ii. The name, address, and telephone number of people who will be contact person(s) for the user;
  - iii. The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
  - iv. The location, including exact coordinates, of all structures located in the rights-of-way; and
  - v. a description of each structure located in the rights-of-way.
- (b) *Permits required.* Unless otherwise provided by this chapter, no person shall perform any construction or installation of structures in the right-of-way without first obtaining a construction and/or building permit. The permit will be in the name of the person who will own the proposed structures. The permit must be completed and signed by a representative of the owner of the proposed structures. The permit shall state to whom it is issued, location of work, location of proposed structures, estimated dates and times the work is to take place and any other conditions set out by the City Manager or his/her designee, or other decision making body when applicable.
  - (1) *Permit information required.* The person requesting a permit will provide the City Manager or his/her designee with documentation describing:

- i. The proposed, approximate location and route of all structures to be constructed or installed and the applicant'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 otherwise approved by City Manager.
  - iii. Description of all existing public and private utilities in close proximity to applicant's proposed route.
  - iv. Description of the applicant's proposed installation, such as pipe size, number of interducts, valves, etc.
  - v. Pursuant to Section 40-76 of the City of Tomball Code of Ordinances, all new utilities must be installed underground. All underground installation must be bored and no pavement cuts are permitted. Applicant must submit plans to reconstruct any affected drainage areas in conformity with City of Tomball standard construction requirements.
  - vi. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth.
  - vii. Manholes of the type applicant plans to use or access.
  - viii. Complete legend of drawings submitted by applicant, which may be provided by reference to previously submitted documents.
  - ix. Three (3) sets of engineering plans must be submitted with permit application.
  - x. 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, times, etc.) are subject to approval of the City Manager or his/her designee; and
  - xi. Proof of insurance or net worth as required.
- (2) *Access to site.* All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The City Manager or his/her designee shall be provided access to the work and to such further information as may reasonably be required to ensure compliance with the permit.
- (3) *Plans at 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 City Manager or his/her designee at all times when construction or installation work is occurring.
- (4) *Timeliness.* All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the City Manager or his/her designee.

- (5) *Insurance and bonds.*
- i. An applicant must provide proof of liability insurance in the amount of one million dollars (\$1,000,000.00), as approved by the City Manager or his/her designee.
  - ii. 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.
  - iii. 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 canceling, failing to renew, or reducing policy limits.
  - iv. The applicant 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.
  - v. Applicant shall file a surety bond 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 applicant leaves a job site in the right-of-way unfinished, incomplete, or unsafe.
- (6) *Approval.* Unless otherwise provided by this chapter, requests for permits shall be approved or disapproved by the City Manager or his/her designee within a reasonable time of receiving all the necessary information. The City Manager or his/her designee shall use his/her best efforts to approve or disapprove a request for permit as soon as possible.
- (7) *Pre-construction meeting.* The City Manager or user may request a pre-construction meeting.
- (c) *Exception to construction permit and registration requirement.* The following activities shall not be required to obtain a permit under this chapter.
- (1) *Emergencies.* Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the City Manager must be notified in writing within two (2) business days of any construction related to an emergency response. A reasonably detailed description of the work performed in the right-of-way and an updated map of any facilities moved shall be provided as soon as practicable.
  - (2) *Routine maintenance.* Except as specifically provided otherwise by this chapter, the installation of structures necessary to initiate utility, water, wastewater or other service to a customer's property or the repair or maintenance of existing structures, unless such repair or maintenance

requires the breaking of pavement, excavation in the right-of-way, or the closure of a public traffic lane for greater than two (2) hours, are not required to obtain a permit under this chapter.

**Section 38-161. - Construction standards.**

- (a) *Advance notice required.* The City Manager shall be notified twenty-four (24) hours in advance that construction 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, is limited to after 8:30 a.m. and before 4:00 p.m. unless the City Manager grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and thirty-six-inch reflector cones placed according to the specifications of the City Manager.
- (e) *Workmanship.* Users are responsible for the workmanship and any damages caused by a contractor or subcontractor. A responsible representative of the permit holder will be available to City Manager at all times during construction.
- (f) *Notice of damage.* All users shall notify the City Manager immediately of any damage to other utilities, 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 City Manager 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.* Structures shall be installed at a minimum of two (2) feet depth, unless approved by the City Manager or as otherwise provided by this chapter.
- (j) *Working hours.* Except in the event of an emergency, working hours in the rights-of-way are 7:00 a.m. to 7:00 p.m., Monday through Saturday. Work that needs to be performed after 7:00 p.m. Monday through Saturday must be approved in advance. Except in the event of an emergency, any work performed on Sunday must be approved twenty-four (24) hours in advance by the City Manager. Directional boring is permitted only Monday through Friday, unless approved in advance.

#### **Section 38-162. - "Plans of record".**

Right-of-way users shall provide the City Manager director or his/her designee with "plans of record" within ten (10) days of completion of structures in the right-of-way. The plans shall be provided to the city in the format specified by the City Manager. Submittal of "plans of record" should be in digital formatting as well as written or in any other format requested by the City Manager. The requirement to provide "plans of record" may be waived by the City Manager upon a showing of good cause.

#### **Section 38-163 - Facility 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 city's project director or his/her designee. Whenever by reasons of widening or straightening of streets, water, gas or sewer line projects, or any other City Manager 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 project director or his/her designee. 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.

**Section 38-164. - Improperly installed structures.**

- (a) *Proper installation required.* Structures in the rights-of-way shall be properly installed, repaired, upgraded and maintained. Structures shall be considered to be improperly installed, repaired, upgraded, or maintained if:
  - i. The installation, repairs, upgrade, or maintenance endangers people;
  - ii. The structures do not meet the applicable city requirements;
  - iii. The structures are not capable of being located using standard practices; or
  - iv. The structures are not located in the proper place in accordance with the plans approved by the City Manager.
- (b) *Existing structures.* This section shall not apply to structures installed prior to the effective date of this ordinance unless such structures are repaired or upgraded.
- (c) *City Manager review of poles.* When poles are used, the type of poles, location, depth, upgrades, etc. shall be subject to review of the City Manager, unless otherwise provided by this chapter.

**Section 38-165. - 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 City Manager.
- (b) *Restoration requirements.* Restoration shall be to the reasonable satisfaction of the City Manager. The restoration shall include, but not be limited to:
  - i. Installation of all manholes and handholes, as required;
  - ii. All bore pits, potholes, trenches, or any other holes shall be covered or barricaded daily;
  - iii. Leveling of all trenches and backhoe lines;
  - iv. 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 his/her contractor at the completion of the work.

**Section 38-166. - Revocation or denial of permit.**

If any provisions of this chapter are not followed, a permit may be revoked by the City Manager. If any person fails to follow the terms and conditions of this chapter in work performed pursuant to a permit, except as provided by Article VII, new permits may be denied or additional terms required prior to issuance of permits to the same user.

**Sections 38-167—38-198. -- Reserved.**

**Section 3.** The Code of Ordinances is further amended by deleting all of Article VII, Use of Rights-of-Way By Providers of Telecommunications Services, of Chapter 38, Streets, Sidewalks and Other Public Places, and replacing it with a new Article VII, Telecommunications and Wireless Facilities, to read as follows:

**“ARTICLE VII – TELECOMMUNICATIONS AND WIRELESS FACILITIES**

**Section 38-199. - Purpose.**

The purpose of this division is to:

- i. Assist the city in the management of the rights-of-way;
- ii. Govern the use and occupancy of the rights-of-way by telecommunications and network providers;
- iii. Secure fair and reasonable compensation for the use and occupancy of the rights-of-way by providers in a nondiscriminatory and competitively neutral manner; and
- iv. Assist the city in its efforts to protect the public health, safety and welfare.

**Section 38-200. – Exceptions to permit requirement; Notice requirement.**

A network provider is not required to obtain a construction permit, or pay a rate to the city for:

- i. Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- ii. 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 a public right-of-way; or

- iii. Notwithstanding the provisions of Section 40-76 of the City of Tomball Code of Ordinances, 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 Code.

At least 24 hour advance written notice to the city of work performed under this section is required, including proof that the network provider is acting with approval of a pole's owner; and proof that the size limitations may not in any event exceed the parameters prescribed by this chapter and the city's design manual.

**Sec38-201. - General terms.**

- (a) *Permit rights apply to permit holder only.* The rights granted by this chapter inure to the benefit of the permit holder only. The rights granted by permit may not be assigned, transferred, or sold to another by the permit holder. 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 permit holder.
- (b) *Not exclusive.* No rights agreed to in this chapter 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 provider installing facilities 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 chapter, 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 chapter shall not confer authorization to provide cable service or video service, as defined by Section 66.002, 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 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 municipality operating at the time the network node was initially installed or

constructed. On written notice, a network provider shall take all steps reasonably necessary to remedy any harmful interference. If a 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 for the network node.

- (f) *Permit limited.* A permit provided under this chapter 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 requirements 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.

**Section 38-201. – Compensation.**

- (a) *Construction permit fee.* The applicant shall pay to the city a permit fee in accordance with the values provided in the table below.
- (b) *Rights-of-way fee.* The permit holder shall pay to the city a rights-of-way fee that is calculated as of month-end for access lines and as of year-end for all other facilities by applying the appropriate fee to each facility type owned, placed, or maintained by the permit holder. The rights-of-way fee for access lines shall be as proscribed by the Texas Public Utilities Commission. Rights-of-way fees for all facilities other than access lines shall be prorated for the first year in which a construction permit fee is paid, and shall be paid at the time of the permit application.

<b>Equipment Type</b>	<b>Construction Permit Fee</b>	<b>Rights-of-way Fee</b>
Transport Facilities	\$500 for first 5 nodes, \$250 for each additional node	\$28 per month per node <sup>1 4</sup>
Network Nodes	\$500 for first 5 nodes, \$250 for each additional node	\$250 per year per node <sup>2 3</sup>
Node Support Poles	\$1000 per pole	\$250 per year per pole <sup>2</sup>

<sup>1</sup> Unless equal or greater amount is paid under Chapter 283 of the Local Government Code or Chapter 66 of the Utility Code.

<sup>2</sup> As adjusted by an amount equal to one-half the annual change, if any, in the consumer price index .The city shall provide written notice to each network

provider of the new rate; and the rate shall apply to the first payment due to the city on or after the 60th day following the written notice.

<sup>3</sup> Collocated network nodes on city service poles shall also pay an annual collocation fee at a rate not greater than \$20 per year per service pole.

<sup>4</sup> A network provider may not install its own transport facilities unless the provider: (i) has a permit to use the public right-of-way; and (ii) pays to the city a monthly public right-of-way rate for transport facilities in an amount equal to \$28 multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the network provider's payment of fees to the city exceeds its monthly aggregate per-node compensation to the city. A network provider that wants to connect a network node to the network using the public right-of-way may: (i) install its own transport facilities as provided in this section; or (ii) obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month. A public right-of-way rate required by this section is in addition to any other public right-of-way rate required by the city.

(c) *Annexation and disannexation.* Within thirty (30) days following the date of the passage of any action effecting the annexation of any property to or the disannexation of any property from the city's corporate boundaries, the city agrees to furnish user written notice of the action and an accurate map of the city's corporate boundaries showing, if available, street names and number details. For the purpose of compensating the city under this chapter, a permit holder shall start including or excluding facilities within the affected area in the permit holder's count of facilities within thirty (30) days of annexation or disannexation.

(d) *Telecommunications service providers uncollectibles.* City and telecommunication service provider understand and agree that telecommunication service provider has a statutory right to pass through to its customers on a pro rata basis any compensation paid to the city for access to the rights-of-way. Any other provision of this chapter notwithstanding, telecommunication service provider shall not be obligated to pay the city for any access lines for which revenues remain uncollectible.

(e) *Facilities provided to other telecommunications service providers.* To the extent allowed by applicable state and federal law, any telecommunications service providers that purchase unbundled network elements or other facilities for the purpose of rebundling those facilities to create telecommunications service for sale to persons within the city shall pay to the city a rights-of-way fee that is calculated as of month-end by applying the appropriate line fee, as specified in subsection (1) above, to each access line created by rebundling services or facilities. Such direct payment to the city is necessary because it is only the person creating the

services for resale that will be able to determine the number of access lines being provided, so that the rights-of-way fee imposed herein can be applied on a nondiscriminatory basis to all telecommunications service providers that sell telecommunications service within the city. Other provisions of this chapter notwithstanding, the permit holder shall not include in its monthly count of access lines any unbundled network elements or other facilities provided to other telecommunications service providers for rebundling into telecommunications services, if the telecommunications service provider that is rebundling those facilities for resale has provided a signed statement to the permit holder that the telecommunications service provider is paying the access line fees applicable to those rebundled services directly to the city. If permit holder provides a copy of the signed statement to the city, then permit holder is absolved of all responsibility for the line fees payable on the services, unbundled network facilities, and other facilities rebundled for the creation of telecommunications service for sale within the city.

- (f) *Fee application to leased facilities.* Pursuant to V.T.C.A., Utilities Code § 54.206, a telecommunications service provider may collect the line fee imposed by the city pursuant to this chapter through a pro rata charge to the customers in the boundaries of the city, including any other persons who are leasing, reselling or otherwise using the permit holder's access lines to provide telecommunications service. With respect to any person leasing, reselling, or otherwise using a permit holder's access lines, if a permit holder believes it does not have sufficient information to determine the appropriate rate to apply, then the higher line fee shall apply until such time as the person using the access lines provides to the permit holder sufficient written information to determine the correct line fee. If a person provides sufficient written information for the application of the line fee, permit holders may bill the person on the basis of the information provided. Permit holder shall provide to the city any information regarding the locations to which it is providing service or facilities for use by another person for the provision of telecommunications service to end-user customers, so long as city first obtains written permission of such other person for permit holder to provide the information to the city. Any other provision of this chapter notwithstanding, however, a telecommunications service provider shall not be liable for underpayment of line fees resulting from the permit holder's reliance upon the written information provided by any person that uses permit holder's service or facilities for the provision of telecommunications service to end-user customers.

### **Section 38-202. - Construction and maintenance of facilities.**

- (a) *Construction requirements.* Except where otherwise provided by state law, a provider shall construct and maintain facilities in accordance with the design manual to ensure facilities do not:
- i. Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;

- ii. Obstruct the legal use of a public right-of-way by other utility providers;
  - iii. Violate nondiscriminatory applicable codes;
  - iv. Violate or conflict with the city's publicly disclosed public right-of-way design specifications; or
  - v. Violate the federal Americans with Disabilities Act of 1990 (ADA).
- (b) *Design Manual; Separate agreements.* Facilities to which this chapter applies must conform to the specifications required by the design manual. If the city desires to attach or place electric light or power wires, communications facilities or other similar systems or facilities in or on the permit holder's facilities, then a further separate, noncontingent agreement with the permit holder shall be required. Nothing contained in this chapter shall obligate the permit holder to exercise or restrict the permit holder from exercising its right to enter voluntarily into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with any person authorized to operate as a public utility or a wireless utility or authorized to offer cable service within the city.
- (c) *Requests for temporary moves.* Upon request, the permit holder shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be 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, its 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 and transmission media. When directed by the city, tree trimming shall be done under the supervision and direction of the city or under the supervision of the city's delegated representative.

**Section 38-203. - Administration.**

- (a) *Reasonable inquiries.* The city may, at any time, make reasonable inquiries pertaining to the terms, conditions, rights and obligations of this chapter, and the permit holder shall respond to such inquiries on a timely basis.
- (b) *FCC / PUC documents.* Copies of petitions, applications, and reports submitted by the permit holder to the Federal Communications Commission or the Public Utility Commission of Texas shall be provided to the city upon specific request.
- (c) *Consolidated permit application.* A network provider that wants to install or collocate multiple network nodes inside the limits of the city is entitled to

file a consolidated permit application with the city for not more than 30 network nodes.

(d) *Documents required for application.* The provider shall provide the following information in its permit applications:

- i. The name and address of the person to whom notices are to be sent, a 24-hour per day contact number for the applicant in case of emergency;
- ii. Location map that includes all other structures within 300 feet of the proposed location;
- iii. Applicable construction and engineering drawings and information to confirm that the applicant will comply with the city's design manual and applicable codes;
- iv. A certificate that the network node(s) complies with applicable regulations of the Federal Communications Commission;
- v. Certification that the proposed network node(s) will be placed into active commercial service by or for the network provider not later than the 60<sup>th</sup> day after the date of construction and final testing of each network node is completed;
- vi. A certificate of insurance that provides that the provider and its contractor has at least \$1,000,000.00 in general liability coverage;
- vii. An industry standard pole load analysis certified by a licensed engineer in the State of Texas;
- viii. Geotechnical survey for any proposed new pole;
- ix. Specific location information, including geographic positioning system coordinates;
- x. A complete application and supporting documents for special use permit or other land use approval where required by the design manual;
- xi. Proof of payment of the construction permit fee and prorated rights-of-way fee for the remaining portion of the current calendar year; and
- xii. Any additional information reasonably related to the provider's use of the public rights-of-way to ensure compliance with the design manual and this chapter.

(e) *Determination of Application Completeness.* The city shall determine whether the permit application is complete and notify the applicant of that determination:

- i. *For Network Nodes and Note Support Poles:* no later than 30 days after the date the city receives the permit application.
- ii. *For a Transport Facility:* no later than 10 days after the date the city receives the permit application.

(f) *Approval or Denial of Application.* The city shall approve or deny a completed application after the date it is submitted to the city:

- i. *For Network Nodes:* No later than 60 days after the date the City Manager receives the complete application.
- ii. *For Network Support Poles:* No later than 150 days after the date the city receives the complete application.

- iii. *For Transport Facilities:* No later than 21 days after the city receives the complete application.
- (g) *Basis for Denial of Application.* If an application is denied by the city, it 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 Manager denies the application.
- (h) *Resubmission of Denied Application.* The permit holder may cure the deficiencies identified in the denial application.
  - i. The permit holder has 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 costs incurred by the city.
  - ii. The city shall approve or deny the revised completed application after a denial not later than the 90<sup>th</sup> day after the City Manager receives the revised completed application. The city's review shall be limited to the deficiencies cited in the denial documentation.

**Section 38-204. - Indemnification.**

The permit holder shall indemnify and hold the city harmless from all costs, expenses, and damages to persons or property arising directly or indirectly from the construction, maintenance, repair, or operation of the permit holder's facilities located within the rights-of-way found to be caused solely by the negligence of the permit holder. Expenses shall include any reasonable and necessary attorney's fees and court costs. The city shall give the permit holder prompt written notice of any claim for which the city seeks indemnification. The permit holder shall have the right to investigate, defend and compromise any such claim. This provision is not intended to create a cause of action or liability for the benefit of third parties, but rather this provision is solely for the benefit of the city.

**Section 38-205. - Relocation and removal of facilities.**

- (a) *Street widening or straightening.* In accordance with V.T.C.A., Utilities Code § 54.203(c), upon thirty (30) days notice by the city, permit holder shall begin relocation of its facilities within the rights-of-way at its own expense to permit the widening or straightening of streets. The notice by the city shall include a specification of the new location for the permit holder's facilities along the rights-of-way.
- (b) *City's right to relocate.* The city retains the right to move any facilities within the rights-of-way to cure or otherwise address a public health or safety emergency. The city shall cooperate to the extent possible with the permit

holder in such instances to assure continuity of service and to afford to the permit holder the opportunity to make such relocation itself.

- (c) *Expense and timelines for relocation.* Except as otherwise provided in existing state and federal law, upon notice from the city, a network provider shall relocate or adjust network nodes in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.
- (d) *Sidewalks.* Where sidewalks are in existence or required by the city, and except as otherwise provided in existing and state and federal law, upon notice from the city, a network provider shall relocate or adjust network nodes in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.

**Section 38-206. - Future contingency.**

In the event this chapter or any tariff or other provision that authorizes permit holders to recover the fee provided for in this chapter, becomes unlawful or is declared or determined by a judicial or administrative authority exercising its jurisdiction to be excessive, unenforceable, void, or illegal, in whole or in part, then the city and all permit holders shall negotiate a new compensation arrangement that is in compliance with the authority's decision.

**Section 38-207. - Conflicts with other requirements.**

Where this Chapter conflicts with any other provision of the City Code of Ordinances, this Chapter shall control.”

**Section 4.** The Design Manual attached as Exhibit A to this Ordinance is hereby adopted and incorporated herein by reference for all purposes.

**Section 5.** In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the city Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission

of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF AUGUST 2017.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 28TH DAY OF AUGUST 2017.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

Gretchen Fagan  
Gretchen Fagan, Mayor

ATTEST:

Doris Speer  
Doris Speer, City Secretary

## **EXHIBIT A - DESIGN MANUAL**

### **I. Introduction**

#### **A. Purpose**

A municipality may adopt a design manual for the installation and construction of wireless facilities in the public right-of-way that includes additional installation and construction details that do not conflict with chapter 284 of the Texas Local Government Code. The following design specifications are required 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 other 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 network nodes, supporting equipment for network nodes, node support poles, transport facilities, or ground equipment within the rights-of-way shall conform to the following design specifications. The City Manager shall deny any permit application that does not strictly conform to the following design specifications.

#### **C. Application of requirements**

Permit holders shall comply with a design manual, if any, in place on the date a permit application is submitted in relation to work for which the city approved the permit application.

#### **D. Definitions**

Terms defined in Chapter 26 of the Code of Ordinances of the City of Tomball, 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 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. Poles shall be constructed with foundations based on a geotechnical survey completed and submitted to the city indicating that the pole foundation or anchoring mechanism is 1) sufficient for the type of soil in the proposed location, and 2) sufficient to withstand typical area wind loads as identified by the adopted construction codes of the city.

#### **B. Limit on number of network nodes per pole.**

The number of nodes allowed per pole may be designated by the city engineer based on the pole load analysis.

#### **C. Minimum placement height**

Network node equipment placed on new and existing poles shall be placed more than eight (8) 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**

(1) *Collocated antenna.* Each antenna that does not have exposed elements and is attached to an existing structure or pole:

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

(2) *Exposed antenna.* 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:

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

(3) *Cumulative size limit.* The cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:

- i. be more than 28 cubic feet in volume; or
- ii. protrude from the outer circumference of the existing structure or pole by more than two feet.

(4) *Ground equipment.* 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 Pole-mounted enclosures may not be taller than five feet.

(5) *Exceptions to size limits.* The following types of associated ancillary equipment are not included in the calculation of equipment volume above:

- i. electric meters;
- ii. concealment elements;
- iii. wireless demarcation boxes;
- iv. grounding equipment;
- v. power transfer switches;
- vi. cut-off switches; and
- vii. vertical cable runs for the connection of power and other services.

(6) *Protrusion limit.* Nodes and support equipment attached to poles may not protrude from the outer edge of the node support pole by more than two feet.

#### **E. Compliance with National Electrical Code**

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

**F. New node support pole locations and construction requirements**

New node support poles shall be constructed with break away bases and located as close as possible to the outside edge of the right-of-way. 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 300 feet from a utility pole or another node support pole. New node support poles may not be located within two (2) feet of sidewalks, marked or otherwise designated bicycle paths, streets, or highways. New node support poles may not be located within five (5) feet of driveways.

**G. Installations near intersections**

A provider shall not install network nodes, node support poles, and ground equipment within 150 feet of any intersection, as measured from the closest outside corner of the two intersecting streets. This includes the installation of new facilities or attachment to existing poles.

**H. Installation near schools**

For the safety of pedestrians, particularly small children, and to allow full line of sights near school property, a provider shall not install ground equipment or new node support poles within a right-of-way inside the boundary line of school property or within 250 feet of the boundary line of school property.

**I. Installation of transport facilities**

Transport facilities shall be located underground, except where the City Engineer identifies based on the permit application that existing utility or other facilities prevent the safe and installation of transport facilities underground. Where transport facilities are required to be installed aboveground, those facilities shall be attached to existing poles and wrapped to existing lines where possible. New poles installed to support aboveground transport facilities shall comply with all location and construction requirements for new node support 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. Equipment cabinet and pole height limitation**

Unless specifically approved by City Council upon application, a provider shall ensure that each new, modified, or replacement pole 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 new pole in the same public right-of-way; or
- ii. 55 feet above ground level.

Unless specifically approved by City Council upon application, A network provider shall ensure that the vertical height of an equipment cabinet installed as part of a network node does not exceed:

- i. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- ii. 55 feet above ground level.

**L. Electrical supply**

Providers shall be responsible for obtaining any required electrical power service to the facilities. The city shall not be liable to the provider for any stoppages or shortages of electrical power furnished to the facilities, 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 provider of the structure. Providers shall not allow or install generators or back-up generators in the rights-of-way.

**III. Designated areas**

Facilities are not required to obtain special use permits or other land use approvals for location in city 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 network nodes, node support poles and ground equipment to be located in designated areas as described by this Section. A conditional use permit or other land use approval is in addition to any other permit required by city code.

**A. Historic Areas / Design Areas with decorative poles**

A provider must obtain advance written consent from the city council before installing facilities in an area of the city that has been designated as a historic area or as a design area with decorative poles. The Old Town & Mixed Use District as defined in the city’s zoning regulations is hereby designated a historic area for purposes of this Chapter and Design Manual. The city may designate new historic areas and design areas at a future date.

**B. Underground requirement areas**

In the event a provider submits an application in compliance with all undergrounding requirements, including city ordinances – specifically, without limitation, Section 40-76 of the City of Tomball Code of Ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, no special use permit or other land use approval is required, unless the installations are within other designated areas. All other requirements of the City’s ordinances and building regulations shall apply.

**C. Parks / residential areas**

A provider may not install a new node support pole in a public right-of-way without city council’s written consent if the public right-of-way is in a municipal park or is adjacent to a street or thoroughfare that is:

- i. Not more than 50 feet wide; 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.

**D. Designation of areas under this section**

Design areas with decorative poles, historic areas, underground requirement areas, parks, and residential areas adjacent to streets not more than 50 feet wide are designated herein. A provider’s facilities in a particular location shall be subject to the area designations in place at the time of a permit application for those particular facilities. Any area where all poles within 1000 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.

**E. Land Use Approval process**

The following shall constitute the process for obtaining advance written consent of city council for installation of any facilities required to obtain approval by this section.

(1) *Application.* The provider shall submit an application for special use permit, in addition to any other permits required for construction of facilities and use of the public rights-of-way. This permit application shall include documentation for the following:

- i. plans or design specifications compliant with specific design criteria for an area;
- ii. a special use permit fee, provided the total fees paid by the provider for a facility does not exceed the maximum allowed construction permit fee in chapter 26 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 provider’s application for special use permit shall be processed for review by the City Council using the city’s standard notice procedures, administrative processes, and scheduling procedures for applications.

(3) *Evaluation criteria.* Special 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 facility being requested;
- ii. concealment measures proposed for minimizing the impact of the proposed facilities on surrounding land uses; and
- iii. conditions to the permit requested by landowners within 200 feet of the proposed location.

*Note: Special 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 1000 feet, as determined by the City Council.*

#### **IV. Design requirements in underground areas**

All facilities must be installed underground, or obtain city approval in accordance with section III E. of this manual to install above ground facilities, 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 a special use permit from City Council as provided herein.. Areas may be designated from time to time by the city as underground areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

#### **V. Design requirements in historic and design areas**

##### **A. Concealment measures required**

As a condition for approval of facilities in design areas with decorative poles or in a historic area, the city shall require concealment measures for any above ground facilities. 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 1000 feet of the proposed location, and 3) is not a nonconforming structure. Facilities shall comply with and observe all city, state, and federal historic preservation laws and requirements.

##### **B. Concealment shall comply with other city code requirements**

Concealment measures shall comply with other city code requirements, including zoning requirements, where applicable. Colors in designated areas must be approved by the City Manager 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.

##### **C. Distance required from Historic Landmark**

A provider is prohibited from installing facilities within 300 feet of a historic site or structure or historic landmark recognized by the city, state or federal government (including but not limited to Section 442.001(3) of the Texas Government Code and 16 U.S.C. §470) as of the date of submission of the permit.

#### **VI. Design requirements in parks and residential areas**

##### **A. New node support poles**

(1) *Special use permit required.* A network provider may not install a new node support pole in a public right-of-way without the city's written consent obtained in accordance with section III E. of this manual if the public right-of-way is in a park or is adjacent to a street or thoroughfare that is:

- i. not more than 50 feet wide; 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.

(2) *Deed restrictions.* In addition, a network provider installing a network node or node support pole shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

**B. Ground equipment near parks**

For the safety of park patrons, particularly small children, and to allow full line of sights near park property, a provider shall not install ground equipment in rights-of-way that are within a park or within 250 feet of the boundary line of a park.

**VII. Administrative hearing**

Should a provider desire to deviate from any of the standards set forth in this design manual, or to appeal an interpretation by city staff of the city regulations applicable to facilities located in the rights-of-way, the provider may request an administrative hearing before a board of appeals. The City Council shall act as the board of appeals for a request for variance or appeal of administrative decision.

**VIII. Unauthorized and improperly located facilities**

If any facilities 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 other utility providers, then the provider shall promptly remove the facilities. After 30 days' advance written notice to remove unauthorized or improperly located facilities, facilities that remain noncompliant may be removed and disposed of by the city and costs associated with the disposal shall be the responsibility of the provider.

**Sample Permit Application**

**Legal Name of Applicant:** \_\_\_\_\_

**Address of applicant:** \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**Emergency Contact** name and phone number (must be available at all times):

\_\_\_\_\_

**Type of facility: (select all that apply)**

Network node     Antenna tower     Macro tower     Transport facility

Node support pole     Other \_\_\_\_\_

**Work to be completed:**                     Installation                     modification                      
replacement

**Location:** (include street, cross street and distance/direction from each street or other landmark)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GPS coordinates:** \_\_\_\_\_

**Check all that apply to location:**

Highway right-of-way     Historic area     Design area     park

Underground area     Residential area     school

I certify that the above statements are true to the best of my knowledge. I acknowledge, on behalf of the applicant, that I am an authorized agent of the applicant and that if the above information is found to be incorrect, the applicant shall be required to modify its facilities to comply with any additional requirements of a location. The applicant shall bear all expense and liability for these modifications.

Name (printed): \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_