ORDINANCE NO. CO15.19.05.09.E1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS, AMENDING CEDAR PARK CODE OF ORDINANCES CHAPTER 14 SITE DEVELOPMENT, ARTICLE 14.08 LIGHTING REQUIREMENTS, SECTION 14.08.006 LIGHTING IN DESIGN DISTRICTS; CHAPTER 16 TRANSPORTATION REGULATIONS, ARTICLE 16.01 ADOPTION OF CITY OF AUSTIN TRANSPORTATION CRITERIA MANUAL AND ARTICLE 16.03 USE OF RIGHT OF WAY; AND APPENDIX A FEE SCHEDULE, ARTICLE 2.000 DEVELOPMENT SERVICE RELATED FEES, SECTION 2.300 PUBLIC WORKS FEES, AMENDING THE NETWORK NODE DESIGN MANUAL, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS FOR NETWORK NODE FACILITY PLACEMENT ON CITY-OWNED POLES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, SB 1004 related to municipal regulation of network nodes was signed into law during the 85th Legislative Session creating Texas Local Government Code Chapter 284, which severely restricts a municipalities authority in public rights-of-way related to the installation of equipment related to network nodes; and

WHEREAS, pursuant to the proposed Texas Government Code Chapter 284, the City is authorized to regulate specific aspects related to the installation of network nodes and related facilities; and

WHEREAS, Federal Communications Commission Declaratory Ruling and Third Report and Order No. FCC18-133 and resulting federal regulations ("FCC Regulations") that provide additional restrictions on a municipalities authority in public rights-of-way related to the installation of network nodes and related facilities became effective on April 15, 2019; and

WHEREAS, pursuant to Texas Government Code Chapter 284, the City may adopt and require compliance with a design manual for additional installation and construction details that do not conflict with Texas Government Code Chapter 284 of the FCC Regulations; and

WHEREAS, the City finds unfettered proliferation of network nodes and node support poles and the mandated location on City service poles to be contrary to the general health, safety, and welfare of the residents of the Cedar Park and the public in general because the location of these facilities will create distraction along City roads, block lines of sight for drivers and pedestrians, and will result in a more dangerous transportation conditions and detract from the ambiance of the City, and

WHEREAS, the City finds that the implementation of minimum spacing requirements between node support poles to limit the number of network nodes and node

support poles and the concealment of network nodes on new node support poles as proposed to be in compliance with FCC Regulations and Texas Local Government Code Chapter 284, including the provision of sufficient service capacity and the allowance of the deployment of new technologies, and necessary to mitigate the harm from the proliferation of these facilities and protect the residents of the City of Cedar Park, the public in general, and the ambiance of the City; and

WHEREAS, pursuant to Texas Local Government Code Chapter 284, the City is required to allow collocation of network nodes on the City's service poles subject to an agreement with the City that does not conflict with Texas Government Code Chapter 284; and

WHEREAS, the City Council finds that the amendments to the Code of Ordinances, the amendments to the design manual, and authorization of the City Manager to execute agreements for the collocation of network nodes on service poles to be in the best interest of the City and its residents.

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

SECTION 1. That Cedar Park Code of Ordinances Chapter 14 Site Development, Article 14.08 Lighting Requirements, Section 14.08.006 Lighting in Design Districts is hereby amended in accordance with Exhibit A.

SECTION 2. That Cedar Park Code of Ordinances Chapter 16 Transportation Regulations, Article 16.01 Adoption of City of Austin Transportation Criteria Manual is hereby amended in accordance with Exhibit A.

SECTION 2. That Cedar Park Code of Ordinances Chapter 16 Transportation Regulations, Article 16.03 Use of Right-of-Way is hereby amended in accordance with Exhibit A.

SECTION 3. That Cedar Park Code of Ordinances Appendix A Fee Schedule, Article 2.000 Development Service Related Fees, Section 2.300 Public Works Related Fees is hereby amended in accordance with Exhibit A.

SECTION 4. That the Network Node Design Manual is hereby amended in accordance with Exhibit A.

SECTION 5. That the City Manager is hereby authorized to execute license agreements with network providers for the installation of network nodes on City-owned poles and subject to final review by the City Attorney.

SECTION 6. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 7. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 8. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

READ AND CONSIDERED ON FIRST READING by the City Council of Cedar Park at a regular meeting on the 25th day of April, 2019, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED, AND APPROVED ON SECOND AND FINAL READING by the City Council of Cedar Park at a regular meeting on the 9th day of May, 2019, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

PASSED AND APPROVED this the 9th day of May, 2019.

CITY OF CEDAR PARK, TEXAS

Corbin Van Arsdale

Corbin Van Arsdale, Mayor

ATTEST:

LeAnn M. Quinn, TRMC
City Secretary

APPROVED AS TO FORM
AND CONTENT:

J.P. LeCompte, City Attorney

CITY OF CEDAR PARK TEXAS 1973

ORDINANCE NO. CO15.19.05.09.E1

Exhibit A

ARTICLE 14.08 LIGHTING REQUIREMENTS

Sec. 14.08.006 Lighting in Design Districts

(a) All lighting poles in areas designated as a design district, shall be decorative poles, as that term is defined by Texas Local Government Code Chapter 284, as amended.

(b) The zoning districts designated as design districts are set forth below and shall include the city right-of-way adjacent to each zoning district:

(1) Development Reserve (DR)

(2) Estate Residential (ES)

(3) Suburban Residential (SR)

(4) Semi-Urban Residential (SU)

(5) Urban Residential (UR)

(6) Multifamily Residential (MF)

(7) Neighborhood Business (NB)

(8) Local Business (LB)

(9) General Business (GB)

(10) Professional Office (PO)

(11) Heavy Commercial (HC)

(12) Light Industrial (LI)

(13) Heavy Industrial (HI)

(14) Hospital (H)

(15) Public Services (PS)

(16) Open Space Greenbelt (OG)

(17) Open Space Recreation (OR)

(18) Mixed Use (MU)

(19) Town Center (TC)

(20) Planning Area (PA)

(21) Conditional Overlay (CO)

(22) Entertainment Center (EC)

(23) Planned Development (PD)

ARTICLE 16.01 ADOPTION OF CITY OF AUSTIN TRANSPORTATION CRITERIA MANUAL

There is hereby adopted by the city for the purpose of establishing rules and regulations for the design, development, construction, alteration, enlargement, repair, conversion, equipment, use, height, area and maintenance of roadways and thoroughfares, that certain codes recommended by the City of Austin Transportation Criteria Manual, being the most current edition thereof, and the whole thereof, as amended from time to time, including later editions, except such portions as are hereinafter amended, deleted or modified by the city, and except for Exhibit B. All references in the Transportation Criteria Manual to the "City of Austin" shall mean the "City of Cedar Park," and all references to the City of Austin Code Chapter 14-11 shall mean Article 16.03 Use of Right-of-Way for Construction, Excavation, Facility Installation, or Temporary Use, of this Code. One (1) copy of said code is now on file in the office of the city secretary, and the same is hereby adopted and incorporated as fully as if set out at length herein, and the same shall be controlling in the design, development, and construction of all transportation improvements within the city limits and extraterritorial jurisdiction of the city.

ARTICLE 16.03 USE OF RIGHT OF WAY FOR CONSTRUCTION, EXCAVATION, FACILITY INSTALLATION, OR TEMPORARY USE

Division 1. General Provisions

Sec. 16.03.001 Applicability; Director; Permit Required

(a) This article does not apply to City-performed work.

(b) In this division, "director" means the department director or their designee, designated by the city manager.

(c) Unless a person obtains a permit from the director under this article or demonstrates to the director that the person is exempt from obtaining a permit for use or occupation of public right-of-way, a person may not perform any activity in the public right-of-way that includes:

(1) construction;

(2) excavation;

(3) installation, maintenance, or placement of facilities intended for short or long-term occupancy of the public right-of-way; or

(4) temporary use.

(d) A person claiming an exemption from permitting under this article must request and obtain a written exemption determination from the director 30 days prior to commencing any activity in the right-of-way by providing the director evidence in a form determined by the director necessary to make a determination that the person is exempt.

Section 16.03.002 Insurance Required

(a) Before the director grants a permit under this article, an applicant for a permit shall furnish to the director evidence that the applicant has obtained insurance coverage for bodily injury and property damage liability in the amount and under the terms in the following amounts:

(1) For damages arising out of bodily injury to, or death of one person in any one accident: One hundred thousand dollars ($100,000.00).

(2) For damages arising out of bodily injury to, or death of two or more persons in any one accident: Three hundred thousand dollars ($300,000.00).

(3) For injury to, or destruction of, property in any one accident: Twenty-five thousand dollars ($25,000.00).

(4) Such insurance shall be kept in full force and effect during the period of time for which a permit shall be issued or the space occupied. No insurance shall be required of a franchise holder if the franchise fee includes the cost of using the City streets, and said franchise includes an insurance or indemnification agreement between the City and the franchise holder.

(b) The director may not require additional insurance of a City franchise holder if the franchise agreement authorizes installation of facilities in the right-of-way and requires the permit holder to maintain insurance coverage meeting or exceeding the requirements of Subsection (a) of this section.

Section 16.03.003 Security Required

(a) The director may not issue a permit under this article unless an applicant furnishes proof of fiscal security in accordance with the requirements of this section.

(b) Fiscal security must be in the form of a surety bond, letter of credit, or cash deposit in the amount of $10,000, unless a different form or amount is prescribed by the Transportation Criteria Manual.

(c) A surety bond must be issued by an insurance company licensed to operate in the State of Texas and with an agent or attorney in the City for service of process and contain an endorsement that no cancellation or restriction of the bond is effective unless the director receives advance written notice, by certified mail, return receipt requested, of the cancellation or restriction.

(d) The permit holder must agree to remove equipment from the right-of-way.

(e) The permit holder must agree to perform and the fiscal security must cover the permit holder's performance of restoration activities, including:

(1) removal of equipment and facilities from the public right-of-way;

(2) replacement and restoration of disturbed or damaged sidewalks, pavement, and other public property and public utilities;

(3) construction and removal of protective railing and other safeguards during the permit holder's occupancy of the right-of-way; and

(4) any restoration or facility removal necessary to restore the right-of-way to its original condition in the event the permit holder abandons its permitted activity.

(f) The director may not require additional security of a City franchise if the franchise agreement authorizes installation of facilities in the right-of-way and requires the franchisee to furnish fiscal security meeting or exceeding the requirements of this section.

(g) A permit holder who damages the City in an amount exceeding the amount of the security required by this section shall be liable to the City for actual damages in excess of the security provided.

Section 16.03.004 Appeal

(a) An applicant may appeal the denial of an application filed under this article to the director by filing a written appeal that provides a reason and supporting evidence for reconsideration no later than the third business day after the applicant receives notice of the denial.

(b) The director shall reconsider the denial based on reasons and evidence provided by the applicant. If the director determines that the application was correctly denied, the director shall forward the appeal to the city manager for final action with the director's recommendation to affirm the denial.

(c) The city manager shall decide an appeal under this section not later than the tenth business day after receipt of the appeal from the director. The city manager's decision is final.

(d) The director will not consider an appeal under this section until an available statutory right to cure a permit denial has been exhausted.

Section 16.03.005 Conditions For Permit Issuance

(a) An application for a permit under this article must:

(1) be submitted in the manner required by this article and according to forms provided by the director; and

(2) be accompanied by a nonrefundable application fee established by separate ordinance.

(b) The director may not issue a permit under this article until:

(1) the applicant pays the applicable fees for use of the right-of-way in accordance with Appendix A Fee Schedule, Section 2.300 Public Works Fees, as amended and provides the insurance and security required by Sections 16.03.002 (*Insurance Required*) and 16.03.003 (*Security Required*); and

(2) the applicant agrees in writing to indemnify, defend, and hold the City harmless against any claims, causes of action, losses, liabilities or damages arising from, or in connection with, the applicant's permitted activity conducted under a permit issued under this article.

(c) In approving a permit under this article, the director may impose any of the following permit conditions that the director determines are necessary to protect the public health and safety:

(1) require the use of barricades, signals, signs, police officer or other traffic control or safety devices in addition to those proposed in the application;

(2) designate hours of the day and days of the week to perform the permitted activity;

(3) designate hours, day, and areas for street closure; and

(4) restrict the location of materials, equipment, and excavated materials.

Section 16.03.006 Permits Required To Be Posted

A permittee under this article shall:

(a) post a copy of the permit at an easily accessible location on or immediately adjacent to the affected sections of right-of-way at all times until the construction, excavation, installation of facilities, or any other permitted activity that disrupts the right-of-way is complete; and

(b) present the permit for inspection on request by a City official.

Section 16.03.007 Permit Not Assignable

Unless otherwise provided by state law, a permit is not assignable without the consent of the director. The director may establish such terms and conditions for assignment of a permit as may be consistent with state law.

Division 2. Temporary Use of Right-of-Way

Section 16.03.008 Permit Required

Unless a person obtains a temporary use of right-of-way permit from the director, a person may not:

(1) block, direct, impede, or reroute pedestrian and vehicular traffic; or

(2) place a barricade or other traffic control device in a right-of-way.

Section 16.03.009 Application Required

(a) Except as provided in Subsection (b), to obtain a temporary use of right-of-way permit or a renewal or extension of a temporary use of right-of-way permit, a person must make written application to the director on a prescribed form not later than the ninth day before the person intends to use the right-of-way.

(b) The director may accept an application after the deadline established in Subsection (a) for good cause as determined by the director.

(c) In an application, an applicant must:

(1) state the reason that use of the public right-of-way is necessary; and

(2) demonstrate that the applicant's proposed use of the right-of-way is the minimum necessary to perform the proposed activity.

(d) In an application, an applicant must agree to:

(1) comply with permit conditions; and

(2) accept service of a written notice of violation presented to the applicant, site manager, site supervisor, project superintendent, or prime contractor by a city official.

(e) An applicant must attach proof of compliance with Sections 16.03.002 (*Insurance Required*) and 16.03.003 (*Security Required*).

(f) If a temporary use of right-of-way permit is necessary to perform work under a building permit, demolition permit, driveway approach permit, or other City permit, an application for the temporary use of right-of-way permit must accompany an application for the building, demolition, driveway approach, or other City permit.

(g) An application submitted under Subsection (a) must be accompanied by a nonrefundable application fee established by separate ordinance.

Section 16.03.010 Action By The Director

(a) Not later than the ninth day after receiving an application, the director shall:

(1) approve the application and issue the permit;

(2) request additional information from the applicant; or

(3) deny the permit.

(b) If the director requests that an applicant provide additional information, the director shall approve or deny the permit not later than the ninth day after receiving the requested information.

(c) In reviewing an application, the director shall consider:

(1) the reasonableness of the amount of right-of-way requested to be occupied given the extent and type of construction to be performed;

(2) the period of time that the applicant requests to occupy the right-of-way;

(3) the safety of pedestrian and vehicle traffic in and adjacent to the right-of-way the applicant requests to occupy; and

(4) traffic congestion and vehicle parking requirements in the vicinity of the location specified in the application.

(d) The director may not approve an application for a temporary use of right-of-way permit if the applicant fails to demonstrate that the applicant will provide adequate protection of pedestrian and vehicle traffic at the location for which the temporary use of right-of-way permit is requested.

(e) The director may deny an application if:

(1) a traffic control procedure or device proposed in the application does not comply with the requirements of the Manual on Uniform Traffic Control Devices or the Transportation Criteria Manual;

(2) the director determines that it is unnecessary to impede traffic or to block or close a street to perform the activity proposed in the application;

(3) the activity proposed by the applicant or the manner in which the applicant proposes to perform the activity will violate a City requirement or a state law;

(4) the applicant fails to furnish information required by this article within the prescribed time period, unless the director determines that the applicant has shown good cause for the failure;

(5) the applicant misrepresents or falsifies information in the application;

(6) the location on which the proposed activity is to occur is reserved for other activity and the director determines that the projects cannot be conducted simultaneously; or

(7) the activity proposed in the application will cause a safety hazard or traffic congestion.

(f) An application is automatically denied if an applicant does not provide additional information before the 31st day after the request is made.

Section 16.03.011 Permit Conditions

As a condition of permit issuance, the director may:

(1) require the use of an additional traffic control or safety device;

(2) require that an activity be performed during a certain time of day or on a certain day of the week;

(3) limit the area or number of traffic lanes that a permittee may block or close at one time or at a certain time of the day;

(4) prohibit the placement of material and equipment in a traffic lane;

(5) unless an emergency conditions exists, require that a permittee coordinate the detouring of traffic with the director before the permittee implements a detour; or

(6) impose another condition considered necessary.

Section 16.03.012 Permit Fee

(a) Except as provided in Subsections (b) and (c), the director may not issue a permit under this division until the applicant pays the permit fee established by Appendix A Fee Schedule, Section 2.300 Public Works Fees, as amended.

(b) A franchise holder is not required to pay a permit fee under this section if the franchise holder has paid a franchise fee that includes the cost of using a City street.

(c) A person applying for a permit to conduct an emergency operation is not required to pay the fee required under this section.

Section 16.03.013 Permit Term

A permit issued under this division may not be effective for more than 180 days. The expiration date of the permit shall be stated on the permit.

Section 16.03.014 Traffic Control Devices

(a) Except as provided by Subsection (b), a permittee must comply with the procedures for erecting and maintaining a traffic control and warning device required by the Transportation Criteria Manual or the Texas Manual on Uniform Traffic Control Devices.

(b) The director may approve the use of a traffic control or warning device that differs from the device required by the Transportation Criteria Manual or the Texas Manual on Uniform Traffic Control Devices on a determination that the alternative equipment is as effective as the

equipment required by the Transportation Criteria Manual or the Texas Manual on Uniform Traffic Control Devices.

Section 16.03.015 Restoration Of Work Site

(a) After completing an activity that requires a permit under this division, the permittee shall restore the right-of-way to its original condition in accordance with the procedures in the Transportation Criteria Manual.

(b) If the director revokes a permit issued under this section, the permittee shall restore the right-of-way to its original condition not later than 24 hours after the revocation.

(c) If the director determines that a permittee has not complied with Subsection (a) or (b), the director may restore the area of activity to its original condition at the permit holder's expense including, if applicable, the cost of labor, material, overhead, equipment rental, and attorney's fees.

(d) The City may recover the cost of restoring a work site from fiscal security filed under Section 16.03.003 (*Security Required*).

Division 3. Excavation and Installation of Facilities in Right-of-Way
Subpart A. General Provisions

Section 16.03.016 Definitions

In this section:

(a) *Applicant*. An owner or authorized agent of an owner, who submits an application for a permit under this division.

(b) *As-Built drawing*. A drawing or plan that shows the horizontal and vertical alignment, facility dimensions, type of encasement, and any other information determined by the director to help identify and protect the facility installed in the right-of-way.

(c) *City business day*. A day on which city offices conduct business.

(d) *Damages*. Actual damages, whether direct or indirect, to the surface or subsurface of the right-of-way or adjacent area.

(e) *Department*. The department designated by the city manager.

(f) *Director*. The department director designated by the city manager or Director's designee.

(g) *Emergency Operations*. Operations or repairs of facilities to prevent imminent harm to the health, safety, or welfare of persons or property.

(h) *Excavation*. An activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way. Excavation does not include routine homeowner maintenance and landscaping activity immediately adjacent to the homeowner's property line, unless the activity removes or disturbs the paved portion of the right-of-way.

(i) *Excavation sequence*. A document describing the order, estimated start and completion dates of all excavation projects approved during a six month period.

(j) *Facility*. Property or equipment permanently located in the right-of-way except equipment related to landscaping activity.

(k) *Installation*. The placement or construction of a facility on-site, whether the placement of construction is on, below, or above the surface of the right-of-way, for a term longer than 180 days, and includes replacement or modification of the facility.

(l) *New street*. The paved portion of the right-of-way that has been constructed or reconstructed:

(i) for at least 300 feet with a minimum of one and a half inches of asphaltic pavement overlay or from joint to joint for concrete pavement; and

(ii) during the preceding seven years for a collector or arterial street; or

(iii) during the preceding five years for a residential street or alley.

(m) *Owner*. A person or entity, other than the City, who owns or controls a facility in a right-of-way.

(n) *Permit*. A permit issued under this division to excavate or to install facilities in the right-of-way.

(o) *Permit holder*. A person who receives a permit under this division and that person's agent.

(p) *Project description*. A document listing the proposed excavation route, the estimated length, width, and depth of the facilities installed along that route, and the projected date that the applicant will begin excavation on a project.

(q) *Right-of-way*. The total surface area, and the area above and below the surface, between property lines that is dedicated, deeded, reserved by plat or otherwise owned or controlled by the City or State as a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest.

(r) *Right-of-way assignment*. A specific portion of right-of-way designated by the director for the placement of a facility.

(s) *Routine work*. An excavation project of 300 linear feet or less.

Section 16.03.017 Administration

(a) The director shall administer and enforce this division and may adopt rules to implement this division, including design standards and guidelines for right-of-way and owner facilities, and may without adopting or amending a rule, issue a statement of policy or procedure that clarifies or provides a non-substantive technical modification to a rule.

(b) The director shall manage the use of, and activities in, the right-of-way in compliance with this division.

(c) The director may require planning and coordination of excavation in the right-of-way.

(d) The director by rule may establish a planning and coordination process including information systems to track excavation in the right-of-way.

(e) The director shall assign locations for facilities in the right-of-way.

(f) The director may require relocation or adjustment of facilities in the right-of-way.

Section 16.03.018 Information Required

(a) An owner shall:

(1) provide to the director information concerning facilities located in the right-of-way, including:

(i) as-built drawings of all facilities installed in the right-of-way by the owner no later than the 35th day after the activity described in the permit is complete, unless otherwise prescribed by the director; and

(ii) the horizontal and vertical location of all facilities previously unrecorded in an owner's drawings, plans or specifications that are discovered in the right-of-way five feet or less from the owner's excavation or facility installation;

(2) notify the director and other facility owners of proposed activities in the right-of-way; and

(3) meet with the director and other facility owners to schedule adjustment or relocation of facilities.

(b) No later than the 14th day before the City begins excavating a City water, wastewater, stormwater, electric facility, and street project, an owner shall provide to the director:

(1) the horizontal and vertical location of the owner's underground facilities in the right-of-way located five feet or less from the City's right-of-way assignment; and

(2) a condition survey of the owner's underground facilities.

(c) Information concerning facilities located in the right-of-way shall be in a format designated by the director.

(d) If an owner fails to provide information to the director on or before the 36th day following the director's request, the director may obtain the information and charge the information collection fee prescribed by separate ordinance except as otherwise provided by law.

Section 16.03.019 Seal of Professional Engineer Required

(a) All drawings, plans, and specifications, including change requests, amendments, additions, deletions, and as-built drawings submitted to the director under this division shall bear the seal of a professional engineer licensed to practice in the State of Texas.

(b) This section does not apply to:

(1) a gas utility;

(2) an excavation project no more than five feet deep, 12 inches wide, and 300 feet long, provided that the trench line does not intersect or extend into the paved portion of another street or alleyway;

(3) a single-point excavation project not exceeding five feet in any dimension;

(4) boring or drilling underneath a driveway or an unpaved area of the right-of-way, if the bore is parallel to the right-of-way, and the bore is no greater than 12 inches in diameter;

(5) excavation under engineered plans or details, produced by the owner and previously approved by the director;

(6) installation of poles, anchors, and utility service connections; and,

(7) an excavation project necessary to expose and repair facilities previously installed by the owner using drawings, plans, and specifications bearing the seal of a professional engineer.

(c) An excavation project may intersect or extend into the paved portion of a residential street if approved by the director.

Section 16.03.020 Project Coordination

(a) At the director's request, an owner shall coordinate excavation or facility installation plans with other excavation and installation and the department's paving and utility program in the right-of-way.

(b) An owner shall follow facilities replacement schedules that avoid construction conflicts and prevent delays of proposed city utility and street projects.

(c) The owner of a permitted facility that is installed in a right-of-way shall identify the facility in a manner approved by the director.

(d) The director shall prescribe rules for the identification of facilities in the right-of-way.

Section 16.03.021 Permit Amendment, Suspension, or Revocation

(a) A permit is subject to amendment, suspension, or revocation by the director for a violation of federal, state, or local law or if the permit holder does not meet the requirements under this division.

(b) In addition to the grounds described in subsection (a) above, the director may also suspend or revoke a permit if:

(1) Owner or permit holder fails to maintain correct and current information with the director regarding the identity, authority, and contact information or the plans, specifications, and as-built drawings of facilities installed in the right-of-way;

(2) Owner or permit holder provides false or misleading information to the director or any officer, employee, or contractor of the City;

(3) Owner or permit holder files bankruptcy, is insolvent, or fails to meet financial obligations on a timely basis, or is unable to obtain or maintain the financial resources needed to properly maintain facilities or provide adequate service;

(4) Owner or permit holder fails to provide the director regular reports;

(5) Owner or permit holder engages in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination;

(6) Owner or permit holder shows a pattern of not responding to inquiries by the director or customer complaints in a timely fashion;

(7) A federal, state, or local registration, certification, or license of owner or permit holder is suspended; or

(8) Owner or permit holder is convicted of a felony by the permit holder, a person controlling the permit holder, or principal employed by the permit holder, or any crime involving theft, fraud, or deceit related to the permit holder's service.

Section 16.03.022 No Warranty of Title; Property Claims

(a) The City disclaims any warranty, title, or use for a particular purpose. This includes any warranty that the City's title to public right-of-way is free and clear of any impairment or superior claim that may prohibit a permit holder from undertaking any activity for which a permit is issued. The City will not undertake an action to clear title on behalf of a permit holder necessary for the permit holder to undertake any permitted activity.

(b) If a permit or application for a permit is challenged by a person, other than the City, claiming a superior right to the public right-of-way or claiming the activity conflicts with that person's property interests, the applicant or permit holder will be held entirely responsible, to the exclusion of any responsibility of the City and without contribution from the City, for defending against the claim until final resolution of the claim. If an applicant or permit holder receives notice of a claim, the applicant or permit holder shall cease all activity related to the permit and notify the City of the claim within 24 hours of receiving the claim. During the pendency of a claim and for as long as the claim remains unresolved, permitted activity or any activity for which a permit has been submitted but not granted is suspended.

(c) A permit holder or applicant for a permit may not assert or imply in any response to a claim described by subsection (b) above that:

(1) the City claims a superior right, title, or interest to that claimed by the person;

(2) a permit issued by the City is an easement or other possessory interest in real property; or

(3) a permit from the City entitles the permit holder to rights in the right-of-way that are superior to the rights claimed by the person.

(d) A permit granted under this division is terminable at the director's sole discretion if the permit holder violates one or more of the conditions in subsection (c) above.

(e) The area on, above, or below a utility easement or waterway is not public right-of-way that may be used for facility installation, or for which a permit may be requested for such

installation, unless the terms by which the utility easement or waterway was acquired by the City or granted, deeded, or dedicated to the City expressly state that the rights granted to the City include the right to use the waterway or utility easement for the purpose, in the manner, and to the extent of the proposed activity.

(f) A person claiming a right to use a public utility easement may not use that part of public right-of-way deeded, dedicated, reserved by plat, or restricted as a public utility easement unless the person is defined by state or federal law as a public utility and the person's use of the public utility easement is exclusively for the provision of public utilities such as water, sewer, power, or gas. The director is not authorized to issue a permit or an exemption from permitting for an activity that uses or occupies a public utility easement unless the requested permit is for use by a public utility to provide public utility services.

Section 16.03.023 Graffiti Abatement

The owner of a facility placed in the right-of-way is responsible for maintaining the facility's appearance. Upon notice by the director, the owner shall promptly and not later than 30 days following notice, remove graffiti from a facility.

Subpart B. Excavation and Facility Installation Permits

Section 16.03.024 Permit Required

(a) Except as provided in Section 16.03.025 (*Emergency Operations*), before excavating or installing a facility in a right-of-way a person or that person's agent shall obtain a permit under this division.

(b) A person who obtains a permit under this division is not required to obtain a temporary use of right-of-way permit required by Section 16.03.008 (*Permit Required*).

Section 16.03.025 Emergency Operations

(a) An owner may begin emergency operations without a permit, provided the owner notifies the director of the location and nature of the emergency condition prior to or at the time the emergency operation commences, and provided the emergency operation is necessary to prevent an imminent threat to public health or safety.

(b) An owner who begins emergency operations shall apply for a permit not later than noon of the next city business day.

(c) An owner must comply with the procedures prescribed in the Transportation Criteria Manual in performing an emergency operation.

Section 16.03.026 Application For Permit

(a) An applicant for a permit to excavate or install a facility in the right-of-way shall submit an application on a form and in the manner prescribed by the director.

(b) An application must include:

(1) the name, address, telephone, and facsimile telephone number, if any, of the applicant or applicant's agent;

(2) an emergency telephone number at which the applicant, or person who intends to excavate may be contacted on a 24 hour basis;

(3) the proposed beginning and ending dates of any activity requiring use or occupation of public right-of-way;

(4) a schedule for restoration of the right-of-way;

(5) the proposed area, method, and location, including street address, cross streets, or other applicable description of the excavation or facility installation;

(6) proof of insurance and security as required by this Article (7) proof that the owner has a franchise, license, or other legal right to install facilities in a right-of-way, if the proposed activity is installation of a facility;

(7) a quality assurance and damage mitigation plan, if required;

(8) a certification from the applicant that a pre-application site assessment for a facility installation has been completed and that the application being submitted addresses all comments received and issues raised during the site assessment, if applicable;

(9) a statement that the applicant has complied with applicable state and federal laws and regulations; and

(10) any other information required by the director to evaluate and process the application.

(c) The application must be accompanied by drawings, plans, and specifications, as applicable, bearing the seal of a professional engineer licensed to practice in the State of Texas. The suggested format for documents is 11 inches by 17 inches at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view. Each document must include:

(1) horizontal alignment of all proposed facilities in relation to all existing public and private facilities in plan view;

(2) representation of the vertical alignment of the facilities in profile view including location of existing public and private facilities; and

(3) a note instructing the contractor to verify the location of the underground utilities using nondestructive methods, including subsurface utility engineering where reasonably practical, as determined by the director, at least 100 feet in advance of all proposed utility crossings, and also at locations where the proposed facilities are depicted to run parallel to and within five feet of existing facilities.

(d) Except as otherwise provided by law, an applicant for a permit shall pay the permit fee and street damage restoration fee prescribed by separate ordinance, if applicable.

Section 16.03.027 Review of Application

In reviewing an application for a permit, the director shall consider the following:

(1) the size of surface and subsurface area to be affected;

(2) the period of time the applicant proposes to occupy the area;

(3) the safety of the pedestrian and vehicular traffic in and adjacent to the occupied area; and

(4) the traffic congestion and the vehicular parking requirements at the location.

Section 16.03.028 New Street Excavation

(a) The director may not issue a permit for excavation in a new street except as provided in this section.

(b) The director may approve a permit to excavate a new street under this section only if the director determines that an economical alternative route is not available to the applicant.

(c) The director shall make a determination under this section promptly after receipt of an application.

(d) The director's determination under this section may be appealed as provided in Section 16.03.004 (*Appeal*).

Section 16.03.029 Action on Permit Application

(a) The director shall review an application promptly after it is filed.

(b) If the director denies an application the director shall provide the applicant a written reason for the denial.

(c) The director shall deny an application if:

(1) the proposed traffic control procedures or equipment do not comply with the requirements of the Manual on Uniform Traffic Control Devices and the Transportation Criteria Manual;

(2) the director determines that the applicant can perform the excavation or installation without blocking or closing the street or without excavation in a right-of-way;

(3) the proposed activity violates a city ordinance, applicable criteria manual, or a state law;

(4) the applicant fails to furnish the information required by this division;

(5) the application contains misleading or false information;

(6) the proposed activity conflicts with a permit previously approved by the director;

(7) the proposed activity would cause a safety hazard or impede traffic flow unless the application provides adequate protection for pedestrian or vehicular traffic at the location of the proposed activity;

(8) the owner does not have a franchise, license, or other legal right to place facilities in the right-of-way, if applicable;

(9) the applicant's proposed restoration method and schedule do not meet the requirements of all applicable City Codes and Ordinances.;

(10) the applicant failed to restore the right-of-way as required;

(11) the applicant owes the City unpaid fees imposed by this division;

(12) the director determines that the applicant has failed to demonstrate that an excavation or facility installation is necessary considering any unused capacity of facilities existing in the right-of-way or permitted or pending permit approval for installation in the right-of-way; or

(13) the applicant does not have an agreement with a pole owner allowing the applicant to attach the facilities for which the applicant is seeking a permit for facility installation.

Section 16.03.030 Facility Installation Permit Term

(a) Unless a permit expires sooner for non-performance or is terminated before expiration, a permit issued for installation of a facility in the public right-of-way expires at midnight on the fifth anniversary of the date of its issuance.

(b) The director may extend the expiration date for successive periods of up to five years each if the permit holder requests an extension not later than 30 days before the expiration of the then-current permit term.

(c) A permit is not eligible for an extension if, on the date the extension request is made:

(1) the owner has been notified that it is not in compliance with applicable federal, state, or local law and has not, in the opinion of the director, diligently pursued action to comply with the law;

(2) the permitted facility is attached to a pole in the public right-of-way and the facility owner has not provided to the director a valid and binding agreement with the pole owner granting the facility owner a right to attach to the pole for a period that extends beyond the requested extension period; or

(3) the then-current permit expires in less than 30 days.

Section 16.03.032 Excavation Sequence And Permit Term

(a) An excavation permit is valid during the period prescribed by the director.

(b) If a permit holder does not begin excavation according to the excavation sequence, the director may reschedule the excavation activity for the end of the excavation sequence and permit the next scheduled excavation to begin.

(c) If the director determines that an excavation activity is 14 or more days behind the approved schedule in the excavation sequence, the director may order that all work on the excavation activity be stopped. The director may discontinue the project until a later time period in the excavation sequence or until a later excavation sequence.

(d) The director may extend the finish date if the extension does not interfere with the coordination of projects within the excavation sequence.

Section 16.03.033 Excavation or Installation Performed Under Permit

(a) A permit holder shall comply with the terms and conditions of the permit, the applicable criteria manuals, including the Transportation Criteria Manual, and applicable law.

(b) A facility may not be installed 24 inches or more from an approved right-of-way assignment, or 24 inches or less from an existing facility in the right-of-way, without first submitting a project description for and obtaining approval of a right-of-way assignment change.

(c) A permit holder shall provide and maintain traffic control devices required by the Manual on Uniform Traffic Control Devices, the Transportation Criteria Manual, or the permit. The devices must be in good condition, clean, and legible.

(d) A permit holder shall perform permitted activities in accordance with the plans and specifications approved by the director.

(e) A permit holder shall perform jacking and boring operations in a manner that does not weaken or impair the right-of-way.

(f) A permit holder shall post a sign at each entrance to an excavation site that is clearly visible to motorists and pedestrians traveling near the excavation site. The sign must be at least 36 inches by 36 inches, with black lettering at least two inches in height on a white high intensity reflective background. The sign must contain the name of the owner, the permit holder, and an emergency contact name, address, and telephone number.

Section 16.03.034 Relocation of Facilities

(a) A facility owner shall remove, relocate, or alter a facility in a public right-of-way if the director determines that removal, relocation, or alteration of the facility is necessary for the construction, operation, repair, maintenance, or installation of a City or other governmental entity's facility.

(b) Except as provided by Subsection (c), a facility owner shall remove, relocate, or alter the location of its facility in a public right-of-way not later than the 120th day after the director sends written notice.

(c) An owner shall remove, relocate, or alter a facility in a public right-of-way by no later than the deadline assigned by the director:

(1) if the facility is located outside of the approved right-of-way assignment; or

(2) if the director determines the action is necessary to abate a risk to public health, safety or welfare.

(d) If an owner fails to remove, relocate or alter a facility by the deadline described in Subsections (b) or (c), the City may remove or relocate the facility at the owner's sole expense.

(e) The owner shall pay all relocation and alteration expenses, including consequential damage that results from locating a facility outside the assigned area.

(f) This section does not prevent an owner from recovering the cost of relocating or removing a facility in the public right-of-way from a non-governmental third party that initiates a request for relocation or removal, or from a governmental entity that has authorized payment for relocation or removal costs.

(g) The owner shall provide the director with documentation and field location records for a relocated facility.

Section 16.03.035 Maintenance of Excavation Repairs

(a) A permit holder shall maintain repairs in the right-of-way. The director may require a permit holder to enter a maintenance agreement for a period not to exceed two years and provide a surety bond in the amount of $10,000 for maintenance of the repair.

(b) A permit holder shall warrant, and by acceptance of a permit, does warrant for a period not to exceed two years, pavement repairs made by the permit holder until the City or another permit holder reconstructs the street or overlays the repair. An owner shall warrant backfill for the lifetime of the facility.

(1) The director shall notify a permit holder of repairs required under this subsection.

(i) A permit holder shall make the repairs within one week of notification.

(ii) If repairs are not made by the permit holder within one week of notification, the City may repair the street and the permit holder, by accepting the permit, agrees to pay the City's actual cost of making the repair.

(c) An owner shall adjust and maintain adjustments of utilities in advance of City capital improvements for a period of six weeks following the adjustment or until the City begins construction of the improvement, whichever period is less.

Section 16.03.036 Restoration of Excavation Site

(a) Except as otherwise provided by law, a person who excavates a street, sidewalk or driveway shall pay the City's cost to inspect and restore the pavement.

(1) On completion of a permitted activity, a permit holder shall restore and maintain the right-of-way to its original condition in accordance with the procedures and time the Transportation Criteria Manual, as determined by the director.

(2) The director shall inspect the excavation and may finish the excavation and bill the owner or the permit holder, or apply the security, for the entire cost, if the permit holder does not finish the excavation within four weeks after the director makes a final inspection.

(b) If the director revokes a permit under this Section, the permit holder shall immediately restore the affected areas to their original condition. The permit holder must complete the restoration within 24 hours after the revocation and shall remove equipment, persons, materials, and debris from the right-of-way. The permit holder shall restore the area in compliance with the procedures contained in the Transportation Criteria Manual or other applicable City Codes and Ordinances.

(c) If the director determines that the owner has not restored the right-of-way as required by this division or that the restoration is not complete, the director may restore the area to the condition that existed before the permitted activity. The City may recover from the permit holder and the owner, jointly and severally, the actual expenses incurred in the restoration including, the cost of labor, materials, overhead, rental of equipment used in restoring the site, and attorney's fees. The City may institute procedures to forfeit bonds or other security furnished in connection with the permit.

Subpart C. Excavation and Installation Permits for Wireless Communication Facilities in the Right-of-Way

Section 16.03.037 Applicability of Subpart

(a) Activities associated with installing and maintaining wireless network facility equipment in the public right-of-way pursuant to Chapter 284 of the Texas Local Government Code, in addition to being subject to Subparts A (*General Provisions*) and B (*Excavation and Installation Permits*) above, are subject to and required to comply with this Article, the City's Network Node Design Manual and applicable requirements of the City's Transportation Criteria Manual, both on file at the City. In instances of conflicts between requirements in the Transportation Criteria Manual and the Design Manual, the more restrictive shall apply. Terms used in this subpart have the meaning provided in Section 284.002 of the Texas Local Government Code unless specified otherwise.

(b) This subpart is adopted to comply with Chapter 284 of the Texas Local Government Code as enacted by the passage of Texas Senate Bill 1004 during the 85th Texas Legislature. This chapter and any right granted to a network provider by its application, including any by an administrative rule, policy, or agreement in furtherance of a rule or policy authorized by the adoption of this subchapter, are only effective for so long as the City is obligated pursuant to Chapter 284 of the Texas Local Government Code to grant permits in the manner prescribed by that chapter. Upon the effective date of any state legislation or upon the effective date of any judicial order or decree that modifies or invalidates in whole or in part Chapter 284 of the Texas Local Government Code, this subpart and any permitted right granted to a network provider by the application of this subpart is modified or invalidated and any conflicting permit, contract, or contract term granted or executed in furtherance of the modified or invalidated statute is void, except to the extent that the director determines that rights may still exist under state law, in which case the permit, contract, or contract term is voidable by the director.

Section 16.03.038 Pre-Application Permit Eligibility and Application Review Process

(a) Before filing an application for a permit for installing a network node, node support pole, or transport facility, a network provider proposing to apply for a permit shall:

(1) provide the director copies of:

(i) all of the owner's valid federal licenses and authorizations necessary to install, operate, or maintain facilities as a wireless service provider; or

(ii) if the owner is not a wireless service provider, an agreement between the owner as agent and a wireless service provider as principal showing that the owner is an authorized agent of the principal for building or installing facilities on behalf of the principal along with a copy of the principal's valid federal licenses and authorizations;

(2) provide the director a schedule of projected facility installations and a network node deployment plan for the coming calendar year, and for as long as the owner holds a permit, update every calendar quarter a schedule previously provided, stating the number, type and estimated date for projected installations;

(3) provide and maintain accurate contact information of the owner's designated primary authorized representative and, at a minimum, a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address, or any other contact information that the director determines is necessary submitted in a form and manner established by the director;

(4) obtain from the City a pre-application site-specific assessment for suitability, safety, and conflicts from the City that includes a site walk and interview with the director's representative and review of preliminary architectural and engineering design drawings;

(5) Notification to adjacent residential developments/neighborhoods within 300 feet is required on all new Network Node installations and shall state that the proposed work is not paid for or endorsed by the City. Such notice shall be submitted to the City's Engineering Department for approval prior to issuance.

(6) demonstrate to the director that no part of a proposed facility will encroach beyond right-of-way into a municipal park by providing information that the director determines is necessary, including a sealed survey by a professional registered surveyor, clearly showing that the proposed facility does not encroach beyond the public right-of-way line into the municipal park as that line is shown of public record by deed or plat.

(b) If a network provider proposes to perform an activity for which the network provider intends to claim an exemption from permitting under Section 284.157 of the Texas Local Government Code, the network provider shall comply with the pre-application requirements of Subsection (a) of this section and provide written proof in a form satisfactory to the director demonstrating that the activity qualifies for the permitting exemption at least 30 days prior to performing the activity.

Section 16.03.039 Placement Requirements

(a) Unless otherwise stated, requirements or prohibitions on network nodes, node support poles, or transport facilities in the public right-of-way under this subpart apply regardless of whether a network node, node support pole, or transport facility located in the public right-of-way is permitted by the City.

(b) All network nodes, node support poles, and transport facilities shall comply with all applicable City Ordinances, the Transportation Criteria Manual, and the Network Node Design Manual, and in no event are they allowed to exceed the limits on size and placement established by Section 284.002(9), Subsection (a), (c), and (d) of Section 284.003, and Section 284.103 of the Texas Local Government Code.

(c) All network nodes, node support poles, and transport facilities must comply with applicable design, aesthetic, and concealment requirements, including undergrounding requirements, established by all applicable City Ordinances, the Transportation Criteria Manual, and the Network Node Design Manual. City regulations.

(d) The initial charge for the public right-of-way rate for a network node, node support pole, or transport facility will be due and payable before the issuance of a permit and is a condition for permit approval. The initial charge is the sum of the initial year's prorated public right-of-way rate due through the end of the initial calendar year plus the public right-of-way rate due for the first full calendar year, following permit approval.

(e) Unless otherwise provided by state law, a network provider claiming an exemption from permitting is nonetheless obligated to compensate the City for the network provider's use of public right-of-way. The initial charge under this subsection for the public right-of-way rate for a network node, node support pole, or transport facility will be due and payable before the network provider occupies public right-of-way. The initial charge is the sum of the initial year's prorated public right-of-way rate due through the end of the initial calendar year plus the public right-of-way rate due for the first full calendar year, following occupation of the public right-of-way.

(f) No Network Node shall be placed within 1,000 feet of any other permitted Network Node to minimize the hazard of poles adjacent to roadways and to minimize effect on property values and aesthetics on the area.

(g) Network Provider may not install a new Node Support Pole in a Public Right-of-Way without the City's discretionary, nondiscriminatory, and written consent if the Public Right-of-Way:

(1) is in a municipal park; or

(2) is adjacent to a street or thorough fare 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 restriction.

(h) As a condition for approval of new network nodes or new node support poles in a historic district or a Design District in accordance with Local Government Code Chapter 284, the City will require reasonable design or concealment measures as described in this Design Manual for New Network Nodes or New Node Support Poles located in Design Districts. The Design Districts designated by the City are set forth in Article 14.08, as amended.

(i) To receive the City's discretionary, nondiscriminatory, and written consent to install a new Network Node or Node Support Pole pursuant to subsection (a) or (b), a Network Provider must meet all applicable concealment requirements.

Section 16.03.040 Permit Expiration for Non-Performance

(a) A permit for a network node, node support pole, or transport facility expires due to non-performance:

(1) on midnight of the 183rd day following the date the permit is approved if installation has not commenced by that date;

(2) on midnight of the 90th day following the date installation of the permitted node, node support pole, or transport facility commenced if installation is not completed by that date; and

(3) on midnight of the 65th day following the date installation is complete if the node, node support pole, or transport facility is not in providing or supporting the provision of wireless services as of that date.

(b) The director may grant a one-time extension for up to 30 days to an expiration date in this section, provided the director determines in his sole discretion that the network provider has shown good cause for granting the extension. Good cause is determined in the director's sole discretion and, in any event, must be due to circumstances entirely outside of the network provider's control and may not in any way be the result of a business decision or market forces.

Section 16.03.041 Facility Abandonment and Removal

(a) A network node, node support pole, or transport facility is abandoned if: it ceases providing or supporting the provision of wireless services for a period of 60 continuous days or, if the permit for a network node, node support pole, or transport facility expires or is terminated.

(b) If on the 30th day after a network node, node support pole, or transport facility is abandoned, the responsible network provider or its contractor has not removed the facility from the public right-of-way, the director may remove the facility at the network provider's cost and, at the director's option, invoice the network provider for the removal and storage costs or draw on the fiscal security required by Section 16.03.003 (*Security Required*) and invoice the network provider for any difference. The right of the director to remove facilities is in addition to the right set out in Section 16.03.034 (*Relocation of Facilities*).

Section 16.03.042 Interference

(a) If a network node or the operation of a network node causes interference with the radio frequency, wireless network, or communications operations of a governmental entity, the network provider or the responsible wireless service provider shall promptly cease operation of the network node causing the interference and refrain from operating the network node, except

for intermittent testing to be coordinated with the governmental entity as part of the remedial process, until the network provider or responsible wireless service provider has eliminated the interference. If the network provider or the responsible wireless service provider continues to operate the network node that causes interference with the governmental entity's radio frequency, wireless network, or communications operations, the director may deem the use unauthorized, revoke the network node's permit and remove the network node in accordance with Section 16.03.034 (*Relocation of Facilities*) of this code.

(b) Following installation of a network node, the director may require the network provider or responsible wireless service provider to test the network node's radio frequency and other functions to confirm it does not interfere with the City's radio frequency, wireless network, or communications operations.

(c) A network provider or responsible wireless service provider is responsible for interference with the wireless network, communications operations, or equipment used by another network provider or wireless service provider. The City is not responsible for interference among permitted facilities.

(d) A network provider or responsible wireless service provider shall comply with all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off the permitted location, including without limitation, all applicable standards adopted by the Federal Communications Commission, whether such RF or EMF presence or exposure results from network provider's or wireless service provider's facilities alone or from the cumulative effect of network provider's or wireless service provider's facilities added to all other sources at a permitted location. Network nodes that would cause an increase in RF or EMF levels such that the cumulative levels exceed allowable levels are prohibited, subject to permit revocation, and facility removal or relocation in accordance with Section 16.03.034 (*Relocation of Facilities*) of this code. If the cumulative effect of RF or EMF levels exceed allowable levels, director may suspend or revoke applicable permits and notify network providers or wireless service providers to take remedial action within 24 hours. The City may from time to time require network providers or wireless service providers to document RF or EMF levels.

Section 16.03.043 Application

To obtain a permit under this division, a person must submit a written application to:

(a) the building official for construction on private property; and

(b) the director for construction in the right-of-way.

Section 16.03.044 Permit Term

(a) Except as provided in Subsection (b), a permit issued under this division is valid for the period of time estimated to complete the proposed construction activity.

(b) A permit issued under this division expires if:

(1) construction does not begin before the 91st day after the permit is issued; or

(2) construction stops for more than 30 consecutive days.

Sec. 2.300 Public works fees

(f) Network nodes, node support poles, and transport facilities in public right-of-way.

A Network Provider shall pay the fees as provided below upon submission of an application for installation of a Network Node and/or Node Support Pole:

Network Node Application Fee	$500	Up to five Network Nodes, with an additional $100 for each Network Node beyond five
New Node Support Pole Application Fee	$1,000	New Node Support Pole
Annual Fee	$270/Network Node/year	For all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW

CITY OF CEDAR PARK
NETWORK NODE DESIGN MANUAL

I. Purpose and Applicability

a. Purpose. The City of Cedar 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. Local Government Code Chapter 284 allows Network Providers to install in the Public Rights-of-Way their wireless facilities, described and defined in Chapter 284 as "Micro Network Nodes," "Network Nodes," and "Node Support Poles."

b. Applicability. This Design Manual governs siting and the installation of Network Nodes, Node Support Poles and related Ground Equipment pursuant to Local Government Code Chapter 284. This Design Manual shall apply to any sitings, installations, collocations of Network Nodes, Node Support Poles, Micro Network Nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature they are known, in, on, over or under the public rights-of-way, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law. A Network Provider shall comply with the City's Use Of Right-Of-Way For Construction, Excavation, Facility Installation, Or Temporary Use Public Rights-of-Way Management Ordinance, including the Traffic Criteria Manual, this Design Manual, and all other applicable City regulations except where in conflict with Chapter 284.

II. Definitions.

The terms used in this Design Manual have the meanings attributed to them by Texas Local Government Code Section 284.002, as amended, if defined therein, and as stated below.

a. "Antenna" means communications equipment transmitting or receiving electromagnetic radio frequency signals used in providing Wireless Service.

b. "Applicable Code" means: (1) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and (2) COCP amendments to those codes.

c. *"Cantenna"* means a waveguide antenna, directional in nature, used to better detect or broaden a wireless network's range generally in the shape of a can.

d. *"City"* means the City of Cedar Park, Texas and the City's officers and employees.

e. *"City Manager"* means the City of Cedar Park City Manager or their designee.

f. "*City Pole*" means a service pole, as defined by Chapter 284 of the Texas Local Government Code.

g. "Collocation" means the installation of a Network Node on an existing Service Pole.

h. "*CPCO*" means the Cedar Park Code of Ordinances, as amended.

i. *"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 according to Applicable Codes.

j. *"Design District"* means an area zoned or otherwise designated by the City and for which the City maintains and enforces unique design and aesthetic standards.

k. " Director" means the City's Director of Engineering, or their designee.

l. *"Facilities"* any equipment or infrastructure supporting a Network Node, including Transport Facilities, Network Nodes, Node Support Poles, and Ground Equipment.

m. "*Ground Equipment"* means a Wireless Facility that is located on the surface of the Public Right-of-Way in an approved permit that is immediately adjacent to the Pole on which the Network Node is located.

n. *"Historic District"* means an area zoned or otherwise designated as a historic district under city, state or federal law.

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

p. *"Municipal Park"* means an area zoned or otherwise designated by the City as a public park for recreational activity.

q. *"Network Node"* means equipment at a fixed location enabling wireless communications between user equipment and a communications network, and 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 immediately adjacent to and directly associated with a particular collocation

Network Node does not include:

iv. An electric generator;
v. A pole; or
vi. A macro tower.

r. *"Network Node Facility"* means Network Node(s), Node Support Pole(s), Transport Facilit(ies), ground equipment, Antenna(s), Cantenna(s), and any other equipment used to facilitate the implementation of Network Nodes and related technology.

s. "*Network Provider*" means:

i. A Wireless Service Provider; or
ii. A person who does not provide Wireless Service and 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 supporting or capable of supporting a Network Node.

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

u. *"Permit"* means written authorization to use Public ROW 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 City has police power authority.

v. *"Park"* means the various properties under the direction, control and supervision of the City's Director of Parks and Recreation Department pursuant to the authority granted by City Council and the City Code of Ordinances.

w. *"PEC"* means Pedernales Electric Cooperative, Inc.

x. *"Pole"* means Service Pole, Node Support Pole, or Utility Pole.

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

z. *"Public Right-of-Way"* means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include a private easement or the airwaves above a public Right-of-Way with regard to wireless telecommunications.

aa. "*Right-of-Way Management Ordinance*" means Cedar Park Code of Ordinances Articles 16.01, Adoption of City of Austin Transportation Criteria Manual; Article 16.02, Right-of-Way; and Article 16.03, Use of Right-of-Way, and any amendments thereto.

bb. *"Service Pole"* means a Pole, owned or operated by the City and located in the Public ROW, including:

- **i.** A Pole supporting traffic control functions;
- **ii.** A structure for signage;
- **iii.** A Pole supporting lighting, other than a Decorative Pole; and
- **iv.** A Pole or similar structure owned or operated by the City and supporting only Network Nodes.

cc. *"Special District"* means a Design District or Historic District.

dd. "Streetlight Pole" means any streetlight located in the public right-of-way that is owned by the City, Texas Department of Transportation (TxDOT), Central Texas Regional Mobility Authority (CTRMA), any property owner's association, or private party.

ee. *"TCM"* means the Transportation Criteria Manual adopted by the City pursuant to Cedar Park Code of Ordinances Article 16.01.

ff. "*Traffic Pole*" means a Pole supporting traffic control functions owned by either the City, TxDOT or CTRMA.

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

hh. *"Transport Facility"* means each transmission path physically within a Public ROW, extending with a physical line from a Network Node directly to the network for providing backhaul for Network Nodes.

ii. "Utility Pole" means a Pole providing: (i) electric distribution with a voltage rating of not more than 34.5 kilovolts; or (ii) services of a telecommunications provider.

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

kk. "Wireless Service Provider" means a person providing Wireless Services to the public.

III. Applicable Materials

a. Applicable Regulations

i. Cedar Park Code of Ordinances Chapter 16, Transportation Regulations Article 16.01, Adoption of City of Austin Transportation Criteria Manual & Article 16.03, Use of Right-of-Way

ii. Cedar Park Code of Ordinances, Section 14.08 Lighting regulations

iii. Cedar Park Code of Ordinances, Article 14.06 Electrical and Communication Utilities

iv. Cedar Park Code of Ordinances Appendix A, Fee Schedule Section 2.300 Public Works Fees

v. Transportation Criteria Manual

b. Forms and Agreements

i. Right-of-Way Use Permit Application

ii. License Agreement

iii. Network Provider Eligibility Form

iv. Application Checklists

IV. Application Process, Review Timelines & Fees

a. Permit Eligibility and Application. Before filing an application for a permit to install a Network Node Facility, a Network Provider shall provide the Director the information required by CPCO Section 16.03.038, as amended. An application for a permit to install a Network Node Facility shall not be deemed received unless the applicant first receives the pre-application site-specific assessment, as required herein.

b. Permit Required. No person shall place a Network Node, Transport Facility or Node Support Pole in the public right-of-way, without first filing a permit application and obtaining a permit, except as otherwise provided in this Article.

c. Permit Application. All permit applications filed pursuant to this Design Manual shall be filed electronically with the City through the City's official website (www.cedarparktexas.gov).

d. Pre-Application Site-Specific Assessment. A Network Provider, prior to submitting a Network Node Facility Permit Application, shall obtain from the City a pre-application

site-specific assessment for availability, suitability, safety, and conflicts that includes a site walk and interview with the Director's representative and review of preliminary architectural and engineering design drawings, in accordance with CPCO Section 16.03.038, as amended.

e. Permit Application. The Permit application shall include all of the required information in accordance with all applicable CPCO requirements and shall include the following items with the submitted application:

i. Map showing proposed location of the Network Node.

ii. Aerial Map showing the location of the proposed Network Node, and a current street view image. This shall include a before and-after image of the Network Node and all proposed attachments and associated standalone equipment.

iii. Analysis showing that the proposed Network Node is spaced at least 1,000 feet from another existing or previously permitted Network Node.

f. Review of Applications. City staff shall review applications for Network Nodes, Node Support Poles and Transport Facilities to verify compliance with applicable law and CPCO in conformance with the timeline set forth below.

i. Within 10 days of receiving an application for a Network Node or Node Support Pole, or a Transport Facility, the City shall determine and notify the Applicant whether the application is complete. If the application is incomplete, the City will specifically identify the missing information in such notification. The timelines pursuant to Subsections IV(f)(ii) shall be reset upon the resubmission by the applicant with the supplemental information requested by the City. For subsequent determinations of incompleteness, the timelines pursuant to Subsections IV(f)(ii) shall be tolled if the City provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.

ii. The City shall make its final decision to approve or deny a complete application no later than:

1. 21 days after receipt of a complete application for a transport facility;

2. 60 days after receipt of a complete application for a network node; and

3. 90 days after receipt of a completed application for a new node support pole.

iii. The City shall advise the Applicant in writing of its final decision. If the application is denied, the City shall provide the basis for that denial, including

specific provisions of City Code or applicable law on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the application.

g. Fees

Network Provider shall pay the fees set forth in Cedar Park Code of Ordinances, Appendix A Fee Schedule, Section 2.300 Public Works Fees, Subsection (f), which is restated below.

Network Node Application Fee	$500	Up to five Network Nodes, with an additional $100 for each Network Node beyond five
New Node Support Pole Application Fee	$1,000	New Node Support Pole
Annual Fee	$270/Network Node/year	For all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW

h. Permit Expiration for Non-Performance. Any permit issued by the City shall expire in accordance with CPCO Section 16.03.040, as amended.

V. Restricted Placement

a. Spacing. No Network Node shall be placed within 1,000 feet of any other permitted Network Node to minimize the hazard of poles adjacent to roadways and to minimize effect on property values and aesthetics on the area.

b. No Network Provider may install a new Node Support Pole in a Public Right-of-Way without the City's discretionary, nondiscriminatory, and written consent if the Public Right-of-Way:

i. is in a municipal park; or

ii. is adjacent to a street or thorough fare that is:

1. Not more than 50 feet wide; 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 restriction.

c. As a condition for approval of new network nodes or new node support poles in a historic district or a Design District in accordance with Local Government Code Chapter 284, the City will require reasonable design or concealment measures as described in this Design Manual for New Network Nodes or New Node Support Poles located in Design Districts. The Design Districts designated by the City are set forth in CPCO Article 14.08, as amended.

d. To receive the City's discretionary, nondiscriminatory, and written consent to install a new Network Node or Node Support Pole pursuant to subsection (a) or (b), a Network Provider must meet all applicable concealment requirements.

VI. Requirements Applicable to Network Node Facilities

a. Concealment & Design.

i. All Network Node equipment installed on a new Node Support Pole (excluding replacement Streetlight Poles) shall be installed internal to the pole.

ii. All Network Node equipment installed on an existing Utility Pole, Streetlight Pole or Traffic Pole shall be either internal to the Pole or shrouded or a combination.

iii. Network Node equipment not installed internal to the pole shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with this Design Manual and other applicable City ordinances.

iv. Decorative transition between the equipment cabinet and upper Pole shall be installed over the equipment cabinet upper bolts or decorative base cover installed to match the equipment cabinet size.

v. All hardware connections shall be hidden from view.

vi. Each Pole component shall be architecturally compatible to create a cohesive aesthetic.

vii. All concealment of Network Node Facilities, including installation within Poles, shall account for not only concealment of 4G technology, but also for 5G technology.

viii. Network Nodes and Node Support Poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. When shrouding equipment, the applicant shall avoid using enclosures that are bulky or include distracting materials.

1. Network nodes and equipment shall be grouped or stacked closely together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.

2. The color of a network node placed on any existing pole must match the color of the existing pole.

3. Network Providers shall size Network Node components to meet the City's design criteria below:

    a. A decorative transition shall exist between the equipment cabinet and upper Pole installed over the equipment cabinet upper bolts or decorative base cover to match the equipment cabinet size.

    b. The upper pole shall be scaled to 0.5 to 0.75 the size of the equipment cabinet, with a 10-inch minimum outer diameter.

    c. All hardware connections shall be hidden from view.

    d. No horizontal flat spaces greater than 1.5 inches shall exist on the equipment cabinet.

    e. Each Pole component shall be architecturally compatible to create a cohesive aesthetic.

    Components generally include a: foundation, equipment cabinet, upper pole, Cantenna or Antenna enclosure, and all hardware and electrical equipment necessary for a complete assembly. Streetlight Poles will also include an LED luminaire, mast arm, and luminaire control node.

b. Placement and Installation of New Node Support Poles. Prior to installation or modification of a new or existing Node Support Pole, including replacing an existing Streetlight Pole with a new Pole, a Network Provider shall comply with the installation and placement requirements below:

i. Freestanding Node Support Poles. All freestanding Node Support Poles shall be privately owned and shall be placed:

1. To not impede, obstruct or hinder pedestrian or vehicular travel;

2. To not significantly create a new obstruction to property sight lines;

3. At the intersection of property lines or along secondary property street facing;

4. In alignment with existing trees, utility poles, and streetlights;

5. So as not to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.

6. Equidistant between trees when possible, with a minimum 15 foot separation;

7. With required clearing from existing utilities;

8. 10 feet from the triangle extension of an alley way flare;

9. No closer than 18 inches from the curb face;

10. Not within 100 feet of the apron of a fire station or other adjacent emergency service facility; and

11. No closer than 1,000 feet, radially, from another network node; and

12. Not encroaching into a municipal park beyond the Public Right-of-Way line.

ii. Replacement Streetlight Poles.

1. Network Providers shall only locate Replacement Streetlight Poles:

   a. Where an existing Streetlight Pole can be removed and replaced; or
   b. At a new location requiring a Streetlight Pole.

2. The replacement Streetlight Pole shall be placed in the same location as the existing street light pole it is replacing or at an alternate location as may be approved by the Director at their discretion and shall be substantially similar as the Streetlight Pole being replaced in terms of materials, color, finish, etc. and shall include an LED luminaire and mast arm meeting the requirements of this Design Manual and applicable CPCO, as approved by the Director, or owner of the Pole.

3. If the replacement Streetlight Pole is owned by an entity other than the City, approval shall also be obtained from the owner of the pole prior to permit issuance.

c. Collocation of Network Node equipment on a Traffic Pole. Network providers may request to collocate network nodes on Traffic Poles provided that Network Nodes or associated equipment may only be installed and enclosed in accordance with the design, installation, and construction details for a Traffic Pole collocation shown and described in the TCM and other applicable CPCO.

d. Collocation of Network Node equipment on a Streetlight Pole, Utility Pole or other City-owned Pole. Prior to collocation on a Streetlight Pole, Utility Pole or other City-owned Pole a Network Provider shall provide the following:

i. An evaluation prepared by a professional engineer licensed in the State of Texas, which confirms the existing Pole and/or foundation infrastructure is structurally stable to carry proposed Network Nodes and can bear the wind load without pole modification, or whether the installation will require pole re-enforcement. If pole re-enforcement is necessary, the Network Provider shall provide engineering design and specification drawings for the proposed alteration to the existing pole. Any pole re-enforcement or replacement pole shall be at the Network Provider's sole cost. Structural reinforcement or replacement poles (if necessary) shall substantially match the color, and character of the pre-existing Pole in order to blend into the surrounding environment and be visually unobtrusive. If a replacement pole is proposed, it shall comply with all applicable concealment requirements and the above stated requirements of this Design Manual.

ii. Scaled dimensioned drawings, in plan and profile view, supplemented with pictures and drawing, of the proposed attachments to the Network Node to the existing poles as well as any other proposed equipment associated with the proposal, indicating the spacing from existing curb, driveways, sidewalk, and other existing light poles and any other poles or appurtenances. This shall include a before and-after image of the pole and all proposed attachments and associated standalone equipment.

iii. Scaled dimensioned construction plans indicating the current Right-of-Way line and showing the proposed underground conduit and equipment, and its spacing from existing utilities. The drawings shall also show a sectional profile of the Right-of-Way and identify all existing utilities and existing utility conflicts.

iv. If the Pole is owned by an entity other than the City, approval shall also be obtained from the owner of the Pole prior to permit issuance.

e. Maximum Pole Height. A network provider shall ensure that each new, modified, or replacement utility pole or node support pole installed in a public right-of-way in relation to which the network provider received approval of a permit application 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.

f. State and Federal Rights-of-Way Permit. If the project lies within the right-of-way adjacent to a state or federal highway, the applicant must also provide evidence of a permit from the State or Federal Government.

g. Electrical Power Supply.

i. Applications for a Network Node Facility permit shall include all plans, specifications and other applicable information as is required for all facility installations in the Public Right-of-Way in accordance with CPCO Article 16.03 and the TCM.

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

iii. All electrical equipment, hardware, devices, etc. necessary for the network node shall be approved by the entity providing the electrical service (i.e., PEC) prior to the City issuing a Permit.

h. Standard Specifications. Network Node Facility design, installation and materials shall comply with standards, criteria, rules and regulations as set forth in the City of Austin Standards Manual and the City of Austin Standard Specifications Manual per COCP Section 12.12.001, being the most current addition thereof, as amended from time to time, including later editions, except such portions as are hereinafter amended, deleted or modified by the City of Cedar Park

i. Water, Sewer and Storm Drainage Lines. Special precautions must be taken where underground fiber optic cable or electrical power service ("cables") is installed in Public Rights-of-Way commonly used for utility corridors.

i. Underground utilities and service connections must be identified prior to excavation. "Dig Alert," "One Call," or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.

ii. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.

iii. At locations where the cables will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable and the existing utility, the proposed cable must be encased in steel pipe of avoid future damage.

iv. Existing Water Lines: No cables shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line. When crossing a water line, a 12- inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.

v. Existing Sewer Lines: No cables shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line. When crossing a sewer line, a 12- inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.

vi. Existing Storm Drainage Lines: No cables shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

j. Inspections.

The Director, or designee, may perform visual inspections of any Network Node Facility or related ground equipment located in the Right-of- Way for compliance with this Design Manual, the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.