

ORDINANCE NO. O-2023-075

AN ORDINANCE OF THE CITY OF HUTTO, TEXAS, AMENDING HUTTO CITY CODE CHAPTER 18, STREETS AND PUBLIC PLACES ARTICLE 18.03, RIGHT OF WAY MANAGEMENT, TO PROVIDE FOR CONSTRUCTION REQUIREMENTS, INSURANCE, BONDS, ENFORCEMENT AND PENALTIES; AND PROVIDING FOR: FINDINGS OF FACT, ENACTMENT, REPEALER, SEVERABILITY, EFFECTIVE DATE, PENALTY, PUBLICATION, AND PROPER NOTICE & MEETING.

WHEREAS, the City of Hutto, Texas (the “City”), is a home rule city operating under the laws of its Charter and the State and Texas, by and through its duly elected City Council members; and

WHEREAS, the City Council finds certain amendments to the Right of Way Management provisions of the Hutto City Code are necessary to meet changing conditions and are in the best interest of the City; and

WHEREAS, the City finds that this Ordinance was passed and approved at a meeting of the City Council of the City of Hutto held in strict compliance with the Texas Open Meetings Act at which a quorum of the City Council Members was present and voting; and

WHEREAS, the City Council has determined that all prerequisites to adopt this Ordinance have been met.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUTTO, TEXAS, THAT:

Section 1. Findings of Fact: The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 2. Enactment: Chapter 18, Article 18.03, Right of Way Management, of the Hutto City Code is hereby amended to read in accordance with **Attachment “A”** which is attached hereto and incorporated into this Ordinance for all intents and purposes.

Section 3. Repealer: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

Section 4. Severability: Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 5. Codification: The City Secretary is hereby directed to record and publish the attached rules, regulations, and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

Section 6. Passage: Pursuant to Section 3.13 of the Hutto City Charter, the Council determined that the first reading of this Ordinance is sufficient for adequate consideration by an affirmative vote of four or more members of the City Council during the first reading and the requirement for reading this Ordinance on two separate dates with was dispensed with by the affirmative vote of four or more members of the City council; therefore, this Ordinance is adopted and enacted without further readings. In the event a second reading is necessary, this Ordinance is adopted and enacted upon the affirmative vote of four or more members of the City Council upon second reading.

Section 7. Penalty: That a violation of this Ordinance shall be a Class C Misdemeanor as provided for in Section 18.03.006, Penalties; Culpable Mental State of this ordinance and Hutto City Code Section 1.01.009 General Penalty for Violations of Code; Continuing Violations with a fine up to \$500.00 or up to \$2,000.00 if a culpable mental state is alleged in the offense or if the offense is a violation of a rule, ordinance or police regulation that governs fire safety, zoning or public health and sanitation.

Section 8. Effective Date: This Ordinance shall take effect immediately after its final passage and any publication in accordance with the requirements of the City of Hutto and the laws of the State of Texas.

Section 9. Proper Notice & Meeting: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.


READ and APPROVED on the first reading this the **16th** day of **November 2023**.

READ, APPROVED and ADOPTED on the second reading the **14th** day of **December 2023**.

THE CITY OF HUTTO, TEXAS

By: 
Mike Snyder, Mayor

ATTEST:

By: 
Angela Lewis, City Secretary

**ATTACHMENT “A”
ARTICLE 18.03**

**DIVISION 1.
Generally**

§ 18.03.001. Title; policy; purpose.

- (a) This article may be known and cited as the right-of-way management ordinance for the city.
- (b) The purposes and findings of this ~~Article~~article are as follows: To protect the health, safety, and welfare of the public during the installation, operation, and maintenance of facilities by ~~public service provider~~Public Service Providers (defined in section 18.03.004);
- (1) To govern and monitor the orderly use of the public right-of-way;
 - (2) To provide for enforcement;
 - (3) To provide a penalty for violation of any provisions of this ~~Article~~article;
 - (4) To provide for the registration of ~~public service provider~~Public Service Providers with facilities in the public right-of-way;
 - (5) To provide insurance requirements for construction in the public right-of-way;
 - (6) To provide permit requirements and procedures for construction in the public right-of-way;
 - (7) To provide for maintenance and repair of the public right-of-way and of facilities located in the public right-of-way;
 - (8) To provide for emergency activities in the public right-of-way;
 - (9) To provide for coordination with public improvements;
 - (10) To regulate the installation of utility structures; and
 - (11) To provide an effective date.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.002. Construction; governing law; venue.

- (a) This article shall be construed under and in accordance with the laws of the state and the city charter and city code to the extent that such charter and codes are not in conflict with or in violation of the Constitution and laws of the United States or the state.
- (b) All provisions of this article shall apply to all persons involved with the public right-of-way, all work performed therein, any facilities maintained therein or any other matter as applicable.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.003. Scope.

This article shall be effective within the geographical limits of the city, including any areas subsequently annexed by the city.
(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.004. **Definitions.**

The definitions in this section apply to all of this article **18.03**.

Abandon and its derivatives.—The facilities installed in the public right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof or raceways, cables, fiber, hand holes (vaults), pedestals, cabinets, and any and all other appurtenances which make up a fiberoptic communication systems which are or will be installed at locations specified in a permit application within the public right-of-way that have been left by provider in an unused or non-functioning condition for more than one hundred twenty (120) consecutive calendar days unless, after notice to provider, provider has established to the reasonable satisfaction of the city that the applicable facilities, or portion thereof, is still in active use.

Access line.—(1) Unless the commission adopts a different definition under section 283.003, a unit of measurement representing: (A) each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer’s premises within the municipality, that allows the delivery of local exchange telephone services within a municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale; (B) each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or (C) each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the municipality, and in that instance, one (1) path shall be counted for every ten (10) stations served; and (2) may not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer’s premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

Ancillary. Secondary, supporting, or subordinate.

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

Applicable codes.

- (1) Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization as adopted by the City; and
- (2) Local amendments to those codes as adopted by the City to the extent not inconsistent with this article.

Applicant. a person submitting an application or proposal to the city for a license, franchise, permit or notice to install facilities or equipment or work in the public right-of-way.

Application or proposal are synonymous for the purposes of this article. An “application” or “proposal.” The process by which the applicant submits a request and indicates a desire to be granted a license, permit or franchise for all, or a part, of the city. An “application” or “proposal” includes all written documentation, and official statements and representations, in whatever form, made by an applicant to the city.

Assignment of an authorization or transfer of an authorization. Any transaction or action which effectively or actually transfers the authorization or franchise or changes operational or managerial control from one (1) person or entity to another.

Authorization or License Agreement to use the right-of-way. A negotiated privilege pursuant to License Agreement between the city in its discretion and a person, allowing a person to occupy any portion of a street, public right-of-way, or easement owned or controlled by the city, and may be for a limited period of time or for a specific purpose.

Certificated telecommunications provider. A person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.

City. The City of Hutto, Texas or its lawful successor, and includes the Hutto City Council.

City council or council/franchising authority. The city council for the Hutto, Texas or its lawful successor, which is the governing body for the city.

City manager. The Hutto City Manager, or designee.

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

- (1) The installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pre-existing pole or structure; and
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

Commission. The Public Utility Commission of Texas.

Communications network. A component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

Conform. To remove, alter, change, relocate, or adapt the underground or overhead facilities of a ~~public service provider~~ Public Service Provider in the public right-of-way in advance of proposed public improvements financed by the City.

Consumer price index. The annual revised consumer price index for all urban consumers for the state, as published by the Federal Bureau of Labor Statistics.

Concealment or camouflaged. Any wireless facility or pole that is covered, painted, disguised, or blended in-to its environment or otherwise hidden or kept from sight such that the wireless facility

blends into the surrounding environment and is visually unobtrusive. A concealed or camouflaged wireless facility or pole also includes any wireless facility or pole conforming to the surrounding area in which the wireless facility or pole is located and may include, but is not limited to hidden beneath a façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

Construction. Any of the following activities performed by any person within a public right-of-way:

- (1) Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent.
- (2) Modification or alteration to any surface, subsurface, or aerial space within the public right-of-way.
- (3) Performance, restoration, or repair of pavement cuts or excavations.
Other construction work approved in the permit for construction in the public right of way.

County. Williamson County, Texas.

DAS or distributed antenna system. Shall be included as a type of network node and have the same meaning as “network node.”

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

Design district. An area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

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

Easement. Refers to or shall include any public easement or other compatible use, whether created by dedication or by the other means, for uses which include public utility purposes or any other purpose whatsoever. “Easement” may include a private easement used for the provision of utilities, depending upon usage.

Emergency Activity. Circumstances requiring immediate construction or operations by a ~~public service provider~~ Public Service Provider to:

- (1) prevent imminent damage or injury to the health or safety of any person or to the public right-of-way;
- (2) restore service; or
- (3) prevent the immediate loss of service.

Excavation. The removal of dirt, fill, or other material in the public right-of-way including, but not limited to, the methods of open trenching, boring, tunneling, vacuuming, or jacking.

Facilities. Includes, but is not limited to, the plant, equipment, buildings, structures, poles, wires, cables, lines, conduit, mains, pipes, vaults, and appurtenances of a ~~public-service provider~~Public Service Provider located within the public right-of-way and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the ~~public-service-provider~~Public Service Provider.

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

Fiber cable or fiber optic cable. A form of communication transmission that uses light to send data, high quality video and sound.

Franchise or franchise agreement. The initial authorization, or subsequent renewal granted by the city in order for a person to construct, operate, and maintain a system in all, or part, of the city public right-of-way.

Franchise expiration. The date of expiration, or the end of the term of a franchise, permit or license agreement.

Franchise fee. The user fee or charge that the city requires as payment for using the streets, public rights-of-way, public ways, and easements of the city.

Gross receipts. Any and all compensation which is derived from the operation of the system, and which is attributable to the systems operations within the city as allowed by law.

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

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

Law. Common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance

Local. Within the geographical boundaries of the City of Hutto, Texas.

Local exchange telephone service. Has the meaning assigned by section 51.002, Utilities Code.

Mayor. The mayor for the City of Hutto, Texas.

Macro tower.

- (1) A guyed or self-supported pole or monopole greater than the height parameters prescribed by section 284.103 and that supports or is capable of supporting antennas; and
- (2) A facility requiring antenna structure registration under FCC regulations.

Micro network node. A network node that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, and that has an exterior antenna, if any, not longer than eleven (11) inches.

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

Municipal park. An area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity, and includes 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.

MUTCD. Manual of Uniform Traffic-Control Devices.

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

(1) Includes:

- (A) Equipment associated with wireless communications;
- (B) A radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration;
- (C) Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (D) Small wireless facilities as defined in 47 CFR section 1.6002(1); and

(2) Does not include:

- (A) An electric generator;
- (B) A pole; or
- (C) A macro tower.

Network provider.

- (1) A wireless service provider; or
- (2) A person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
 - (A) Network nodes; or
 - (B) Node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole. A pole as defined by ~~Article~~ [Article](#) 284 of the Texas Local Government Code.

Park. Has the same meaning as "municipal park."

Pavement Cut. A cut made into the paved surface of the public right-of-way.

Permit, includes Right-of-Way Permit. A document issued by the city authorizing installation, removal, modification and other work for equipment or facilities in accordance with the approved plans and specifications.

Permittee. The person applying for or receiving a permit to perform construction within the City's public right-of-way under the terms and conditions of this ~~Article~~article. The term includes any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the ~~public service provider~~Public Service Provider.

Person. Any individual, corporation, business, trust, estate, trust, partnership, association of two (2) or more persons having a joint common interest, governmental agency, or other legal entity, including the city.

Pole. A service pole, municipally owned pole, node support pole, or other utility pole, and shall include network node support pole.

Provider. Has the same meaning as "network provider."

PROWAG. Public right-of-way accessibility guidelines.

Public right-of-way management ordinance. This ~~Article~~article **18.03** of the City of Hutto Code of Ordinances.

Right-of-way, public way or public right-of-way or public rights-of-way or rights-of-way. The surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the city (including any street, as defined, which is acquired by eminent domain) for the purpose of public travel and shall include other easements or public rights-of-way now or hereafter held by the city (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the city or utility provider, with proper authorization, to use thereof for the purpose of installing or transmitting utilities over poles, wires, cable, conductors, ducts, conduits, viaducts, manholes, amplifiers, appliances, attachments, and other property as may ordinarily be necessary. The term does not include a private easement or the airwaves above a public right-of-way with regard to wireless telecommunications.

Public Right-Of-Way Permitting and Construction Manual. The manual adopted by the City of Hutto that contains engineering, technical, and other special criteria and standards for permitting and construction within the public right-of-way.

Public Service Provider. Any energy delivery or transport company, telecommunications company, cable company, water utility, storm water utility, or wastewater utility, including any entity engaging in construction pursuant to a franchise agreement or license agreement with the City. ~~Network providers are included in this definition for all purposes except for provisions outlined in section 18.03.101(f).~~ The City, or any person working on behalf of the City under contract, is not included in this definition.

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

- (1) A pole that supports traffic-control functions;

- (2) A structure for signage;
- (3) A pole that supports lighting, other than a decorative pole; and
- (4) A pole or similar structure owned or operated by a municipality and supporting only network nodes.

Small cell. Shall be included as a type of network node and have the same meaning as “network node.”

-State. The State of Texas.

Street. Only the portion of the public right-of-way with a specially prepared surface used for vehicular travel, which surface may be concrete, blacktop or other material commonly used to prepare a surface for vehicular travel, and is limited to the area between the inside of the curb (when there is a curb) to the inside of the opposite curb, and does not include the curb area or the area between the two (2) parallel edges of the surface used for vehicular travel where there is no curb. A street is generally part of, but less than, or smaller in width than, the size or width of the public right-of-way. Public right-of-way includes the sidewalks and utility easements and street does not include a sidewalk or utility easement. A street does not include the curb, sidewalk or ditch, if any or present either at time of permitting or if added later.

Spoils or Excavated Material. Construction waste, construction supplies, or excavated dirt, fill, or other similar material that is stored or placed upon the surface of a public right-of-way.

SWPPP. Stormwater pollution prevention plan.

TAS. Texas Accessibility Standards.

Thoroughfare. Shall have the same meaning as “street.”

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

Transport facility. Each transmission path physically within public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes. U.S.C. United States Code.

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

User. A person or organization that owns, places or uses facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole or Structure. A pole that provides:

- (1) electric distribution with a voltage rating of not more than 34.5 kilovolts;

- (2) services of a telecommunications provider, as defined by section 51.002 of the Texas Utilities Code; or
- (3) any above or below ground manhole, hand hole, vault, cabinet, or any other appurtenance other than a pole or device attached to a pole which is owned or used by a ~~public-service provider~~Public Service Provider. The phrase does not include devices or structures used to control or direct pedestrian or vehicular traffic on an adjacent roadway.

Visibility Triangle. A triangle sight area at an intersection of two streets or driveways as shown in the City's Design Criteria Manual, as amended.

Voice service. Voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. section 332(d).

Wireless service. Any service, using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider. A person that provides wireless service to the public.

Wireless facilities. "micro network nodes," "network nodes," and "node support poles" as defined in Texas Local Government Code ~~Article~~article 284, and "small wireless facilities" as defined in 47 CFR section 1.6002(1).

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.005. **Authority; Enforcement.**

(a) Authority

- (1) The ~~city manager~~City Manager is authorized to administer and enforce the provisions of this ~~Article~~article, and the Public Right-of-Way Permitting and Construction Manual approved by the City.
- (2) The ~~city manager~~City Manager is authorized to enter a construction site for which a permit is granted under this ordinance for purposes of inspection to determine compliance with the permit and this ordinance.)
- (3) The ~~city manager~~City Manager is authorized to request from the ~~public-service provider~~Public Service Provider plans of record that show its facilities existing in the public right-of-way as of the date of the request. The ~~public-service provider~~Public Service Provider shall provide the requested plans of record within 90 days of the request, or alternate schedule as agreed to by both parties, to the extent such records are available. Public release of such records shall be in accordance with the Public Information Act as found in V.T.C.A., Government Code, ~~Article~~article 552.
- (4) If the release of the location of any utility, including water and sewer, or of plans of record submitted under this subsection would jeopardize public safety, the information shall be considered confidential. In addition, if plans of record submitted under this subsection include information expressly designated by the ~~public-service provider~~Public Service Provider as a trade secret or other confidential information

protected from disclosure by state law, the City shall not disclose that information to the public without the consent of the ~~public service provider~~Public Service Provider, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a ~~public service provider~~Public Service Provider to designate all matters in its plans of record as confidential or as trade secrets.

(b) Enforcement

(1) A person commits an offense if they:

- A. perform, authorize, direct, or supervise construction without a valid permit issued under this Articlearticle;
- B. fail to comply with restrictions or requirements of a permit issued under this Articlearticle;
- C. fail to comply with a lawful order or regulation issued pursuant to this Articlearticle; or violate any other provision of this Articlearticle.

(2) A person commits an offense if, in connection with the performance of construction in the public right-of-way, they:

- A. A — damage the public right-of-way beyond what is incidental or necessary to the performance of the construction;
- B. damage public or private facilities within the public right-of-way;
- C. fail to immediately clear debris associated with the construction from a public right-of-way after construction is completed; or
- D. fail to stabilize any disturbed area from erosion within 14 days after construction is completed, unless an alternative timeframe is approved by the City.

§ 18.03.006. **Penalties; Culpable Mental State.**

(a) Any violation of this Articlearticle is an offense that is considered a class C misdemeanor and each day the violation continues shall be a separate offense.

(b); ~~a~~A offense under this Articlearticle shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

(c) If the definition of an offense under this Articlearticle does not prescribe a culpable mental state, then a culpable mental state is not required. Although not required, if a culpable mental state is in fact alleged in the charge of an offense under ~~Subsection-subsection (Bb)~~(3), such offense shall be punishable by a fine of not less than Five Hundred Dollars (\$500.00) and not to exceed Two Thousand Dollars (\$2,000.00).

(d) The city may institute all appropriate legal action to prohibit any person from knowingly using the public rights-of-way unless the person has complied with the terms of this article.

-(e) This ~~Article~~article may be enforced by a civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the City has for a violation of this ~~Article~~article.

(f) If a permittee has been convicted of an offense under this ~~Article~~article in municipal court, additional permits from the ~~public service provider~~Public Service Provider may be denied until the offense has been corrected and any direct or indirect costs incurred by the City have been reimbursed. The permittee shall not be granted any additional permits until the offense has been corrected and any direct or indirect costs incurred by the City have been reimbursed unless an exception has been granted by the City due to special circumstances.

(eg) This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any work for which a permit is issued hereunder, nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any work.

(Ordinance O-2021-034 adopted 6/3/21)

DIVISION 2.
Right-of-Way Management

§ 18.03.007. **Right-of-way construction.**

No person shall commence or continue with the construction, installation or operation of facilities within the public right-of-way in the city except as provided by the ordinances of the city and the directives of the ~~city manager~~City Manager. All construction activity in city right-of-way will be in accordance with this article.

§ 18.03.008. **Authorization, Registration Compensation and fees.**

(a) Registration.

All ~~public service provider~~Public Service Providers with existing facilities within the public right-of-way who are not already registered with the city, must register with the City within thirty (30) days of the effective date of any amendments to the registration requirements of this ~~Article~~article. All ~~public service provider~~Public Service Providers shall register each year by the anniversary of the first registration following any amendment to this ~~Article~~article as provided by this ~~s~~Section. Any ~~public service provider~~Public Service Provider who does not have existing facilities within the public right-of-way and who wishes to install new facilities must first register with the City. Registration shall be in accordance with the following requirements:

- (1) Prior to registration, a ~~public service provider~~Public Service Provider must have authorization to place facilities within the public right-of-way through either a franchise, franchise ordinance approved by the City Council, or license agreement with the City; certification by the Texas Public Utilities Commission as a Certificated Telecommunications Provider under ~~Article~~article 283 of the Texas Local Government Code; a state issued cable franchise under ~~Article~~article 66 of the Texas Utilities Code; or other legal authority. Registration shall otherwise be denied.
- (2) The registration must be on a form furnished by the City and made in the name of the ~~public service provider~~Public Service Provider that owns the facilities. The form must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the registration at the City's discretion.
- (3) If information provided as part of the registration changes, the ~~public service provider~~Public Service Provider must inform the City in writing not more than 30 days after the date the change occurs.
- (4) The ~~public service provider~~Public Service Provider shall include the following with the

registration:

(A) The name of the ~~public-service provider~~Public Service Provider using the public right-of-way, including any business name, assumed name, or trade name the ~~public-service provider~~Public Service Provider operates under, or has operated under within the past 5 years.

(B) A copy of the document or other legal authority authorizing the ~~public-service provider~~Public Service Provider to use the public right-of-way such as a franchise, a franchise ordinance issued by the City, or license issued by the City, or any state issued certification or franchise.

(C) The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the ~~public-service provider~~Public Service Provider.

(D) The ~~public-service provider~~Public Service Provider must provide proof of insurance and appropriate bonds. The requirements for insurance and bonds are provided below.

(E). Insurance.

~~(i) Prior to the construction in the public right-of-way, the~~ (i) Prior to construction in the public right-of-way, the ~~public-service provider~~Public Service Provider must provide, and users must maintain, acceptable proof of liability insurance in the total amount listed below, or other provisions as acceptable to the ~~city-manager~~City Manager. The city reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the ~~city-manager~~City Manager determines that changes in statutory law, court decisions, or the claims history of the industry or the applicant or user require adjustment of the coverage. Certificates issued pursuant to Texas Utilities Code ~~s~~Section 53.064 of self-insurance must be reviewed and approved by the ~~city-manager~~City Manager. Proof of existing insurance shall comply with the following requirements:

Workers' Compensation and Employer's Liability Insurance

Workers' Compensation	Statutory Limit
Employer's Liability	\$1,000,000 Each Accident
	\$1,000,000 Disease-Each Employee
	\$1,000,000 Disease-Policy Limit

Liability Insurance

Commercial General Liability	\$1,000,000 Per Occurrence/ \$2,000,000 Aggregate
(No standard coverages are to be excluded by endorsement. XCU and contractual liability are not to be excluded.)	

Automobile Liability Insurance

Commercial Auto Liability \$1,000,000 Combined Single Limit
(including coverage for owned,
hired, and non-owned autos)

Umbrella Liability

(Following Form and Drop \$5,000,000 Each Occurrence
Down Provisions Included)

Any combination of underlying coverages providing equal or better liability limits is acceptable.

- (ii) In addition to the above requirements, the insurance shall:
 - A. be written with The City as an additional insured except on Workers Compensation and Employer's Liability Insurance, and on the General Liability policy, the City shall be named as additional insured for ongoing operations as well as completed operations.
 - B. be written through companies duly authorized to transact that class of insurance in the State of Texas. Insurance is to be placed with insurers with a Best Rating of no less than A:VIII.
 - C. waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against The City. It being the intention that the required insurance policies shall protect all parties and be primary coverage for all losses covered by the policies.
 - D. provide that notice of claims shall be provided to the City by certified mail.
- (iii) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.
- (iv) Each policy must include a cancellation provision in which the insurance company is required to notify the city in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits and ten (10) days' notice of cancellation for nonpayment of premium.
- (v) The applicant shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts. The city may accept a certificate of insurance or the city may require another form of legally binding proof of insurance.

- (vi) An insurer has no right of recovery against the city. The required insurance policies shall protect the person and the city. The insurance shall be primary coverage for losses covered by the policies.
- (vii) The policy clause “other insurance” shall not apply to the city if the city is an additional insured under the policy.

(F) Bonds.

- (i) Each year, the ~~public service provider~~Public Service Provider shall, without cost to the City, provide Performance, Payment and Maintenance Bonds for the construction work anticipated to be performed in the public rights-of-way in the upcoming year. Each bond shall be in the amount of the estimated costs to restore the public rights-of-way for the work anticipated to be done in that year. The Performance Bond shall be conditioned upon the faithful performance of the work in the public rights-of-way. The Payment Bond shall be conditioned upon payment of all persons supplying labor or furnishing materials for said work. The Maintenance Bond shall guarantee the work for two years from the date of its completion. Each bond shall be executed by a surety company authorized to do business in the State of Texas and acceptable to the City.
- (ii) The above requirements may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the city.

(G) Indemnity.

- (i) **EACH PERSON PLACING FACILITIES IN THE PUBLIC RIGHT-OF- WAY SHALL PROMPTLY DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL DAMAGES, COSTS, LOSSES OR EXPENSES:**
 - A. FOR THE REPAIR, REPLACEMENT, OR RESTORATION OF CITY’S PROPERTY, EQUIPMENT, MATERIALS, STRUCTURES, AND FACILITIES WHICH ARE DAMAGED, DESTROYED OR FOUND TO BE DEFECTIVE AS A RESULT OF THE PERSON’S ACTS OR OMISSIONS; AND**
 - B. FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, SUITS, CAUSES OF ACTION, AND JUDGMENTS FOR:**
 - 1. DAMAGE TO OR LOSS OF THE PROPERTY OF ANY PERSON (INCLUDING, BUT NOT LIMITED TO, THE PERSON, ITS AGENTS, OFFICERS, EMPLOYEES AND SUBCONTRACTORS, CITY’S AGENTS, OFFICERS AND EMPLOYEES, AND THIRD PARTIES); AND/OR**

- 2. DEATH, BODILY INJURY, ILLNESS, DISEASE, LOSS OF SERVICES, OR LOSS OF INCOME OR WAGES TO ANY PERSON (INCLUDING, BUT NOT LIMITED TO, THE AGENTS, OFFICERS AND EMPLOYEES OF THE PERSON, PERSON'S SUBCONTRACTORS AND CITY, AND THIRD PARTIES), ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE NEGLIGENT OR WILLFUL ACT OR OMISSIONS OF THE PERSON, ITS AGENTS, EMPLOYEES, AND/OR SUBCONTRACTORS, IN THE PERFORMANCE OF ACTIVITIES PURSUANT TO THIS ORDINANCE.**
- (ii) THIS INDEMNITY PROVISION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS.
 - (iii) THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON OR ENTITY.
 - (iv) A PERMITTEE WHO IS A CERTIFICATED TELECOMMUNICATIONS PROVIDER AS DEFINED IN ARTICLE 283, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, SHALL GIVE THE CITY THE INDEMNITY PROVIDED IN SECTION 283.057, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED. A PERMITTEE WHO IS A NETWORK PROVIDER AS DEFINED IN ARTICLE 284, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, SHALL GIVE THE CITY THE INDEMNITY PROVIDED IN SECTION 284.302, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED.
 - (v) This section (G), Indemnity, is not applicable to certificated telecommunications providers or network providers under Texas Local Government ~~Article~~articles 283 and 284, respectively. Certificated telecommunications providers shall indemnify the City pursuant to ~~Article~~article 283 of the Texas Local Government Code, as amended. Network providers shall indemnify the City pursuant to ~~Article~~article 284 of the Texas Local Government Code, as amended.
 - (vi) This indemnity provision shall not apply to any liability resulting from the gross negligence of the city, its officers, employees, agents, contractors, or subcontractors.
 - (vii) The provisions of this indemnity are solely for the benefit of the city and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
 - (viii) The above requirements may be met by utilities with a current franchise or license if

their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the city.

(H) Request for Waiver. A ~~public service provider~~Public Service Provider may submit a written request for a waiver from the above-referenced bonding requirements.

- (i) The request shall set forth in detail the ~~public service provider~~Public Service Provider's performance history in the City demonstrating a record of at least four year's performance of work in the public right-of-way free of currently unsatisfied claims for damage to the public right-of-way.
- (ii) Within 30 calendar days of receipt of a written request for a waiver, the City shall grant a waiver to the bonding requirements upon a finding that the ~~public service provider~~Public Service Provider has demonstrated a record of at least four year's performance of work in the public right-of-way free of currently unsatisfied claims for damage to the public right-of-way.
- (iii) The waiver for bonding requirements may be revoked by the City based upon the performance of work within the public right-of-way by the ~~public service provider~~Public Service Provider or its contractor.
- (iv) As an alternative to the Maintenance Bond requirements under ~~s~~Subsection (F), a ~~public service provider~~Public Service Provider may provide funds in escrow or a letter of credit acceptable to the City.
- (v) As an alternative to the ~~public service provider~~Public Service Provider providing Performance, Payment, and Maintenance Bonds under ~~s~~Subsection (F), a ~~public service provider~~Public Service Provider's contractor may provide the required Performance, Payment, and Maintenance Bonds if those bonds comply with this ~~Article~~article and are acceptable to the City.

(I) Existing Franchise or License.

The requirements for Insurance and Bonding may be met by ~~P~~Public ~~S~~Service ~~P~~Providers with a current franchise, a franchise ordinance issued by the City, or license if their current franchise or license adequately provides for insurance and bonds and provides an indemnity in favor of the City.

(b) Authorization.

- (1) Municipal authorization or License Agreement shall be required, except when clearly preempted by state law. Nothing in this ordinance shall be considered to grant authorization to any user. When any state law authorizing right-of-way use is struck down, pre-empted, declared to be invalid or void, in whole or in part, the user relying upon said law for authorization shall seek separate authorization or shall cease using the right-of-way.

- (2) When municipal authorization or agreement is required, permit for construction work may not be submitted until said authorization or agreement is obtained.
 - (3) Municipal authorization does not extend to the use of any property or facilities other than the right-of-way.
 - (4) This article does not constitute or create authority to place, reconstruct, or alter facilities in, on, or over the public rights-of-way, and said authority must be obtained by separate instrument in accordance with this section or by operation of other laws.
- (c) Compensation and fees.
- (1) Municipal right-of-way use shall be compensated as required by the state constitution, state law, franchise, license or other agreement.
 - (2) The city may structure due dates on payments in such a manner so as to be administratively efficient.
 - (3) Application fees, as allowed by state law, for work or installations in the public right-of-way shall be the fees set by the city council. Such fees may be set by ordinance, resolution, in the budget or by any other lawful means.
 - (4) Failure to pay application fees, or failure of any payment to properly process shall result in the denial or ~~withdraw~~withdrawal of a permit.

(Ordinance O-2021-034 adopted 6/3/21)

(d) Right-of-Way Permit. Only authorized representatives of a Public Service Provider may submit a right- of-way permit application on behalf of the Public Service Provider. Each year by ~~March 3~~January 1st, all Public Service Providers shall provide the City with a current list of authorized contractors who may submit permit applications on their behalf. A person shall not perform any construction, except for an emergency activity or for those activities described in ~~Section sections 5.03~~18.03.009 and 18.03.014 below, within a public right-of-way without first obtaining a permit from the City prior to the start of construction. A person who undertakes any work outside of the public right-of-way that will cut, break, or otherwise damage the public right-of-way shall also obtain a permit.

- (1) Registration Required. Prior to obtaining a permit, the ~~P~~public ~~S~~service ~~P~~provider must be registered with the City. All authorized contractors of a Public Service Provider must be registered.
- (2) Exception. A permit is not required if the activity in the public right-of-way consists exclusively of:
 - (A) routine maintenance or repair of facilities that does not involve any of the following: the cutting or breaking of pavement; the closure of a traffic lane for longer than 24 hours; boring; or excavation greater than 100 cubic feet; or

(B) a connection of real property to a utility service on the same side of the public right-of-way, if the connection does not require a pavement cut in the public right-of-way; or

(C) the replacement of a single damaged pole when all work is within ten feet of the damaged pole; or

(D) installation of aerial lines on existing poles.

(e) Right-of-Way Permit Requirements. The following procedures and requirements govern the application for and issuance of a permit to perform construction within the public right-of-way:

(1) A permit application must be made in writing on a form obtained from the City. The application must be signed and submitted by the permittee on behalf of the owner of the facility for which the permit is requested. The application for permit must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the permit at the City's discretion.

(2) A permit application must be submitted to the City in accordance with the timeframes specified in the Public Right-of-Way Permitting and Construction Manual.

(3) The City shall state on the permit any reasonable additional restrictions or requirements determined necessary. These additional restrictions or requirements shall be considered a part of the permitted activity.

(4) The permittee shall, as an express condition of the permit, comply in all respects with the requirements prescribed for the permitted activity in the Public Right-of-Way Permitting and Construction Manual and with all other Hutto ordinances and state or federal laws or regulations affecting the permitted activity.

(5) The permit application must include submittal of construction plan drawings. The plans must conform to the standards set forth in the Public Right-of-Way Permitting and Construction Manual and with all other Hutto ordinances, specifically ~~§~~section 18.03.009(c), and state or federal laws or regulations affecting the permitted activity. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the State of Texas.

(6) Reimbursement of Costs

(A) The permittee shall, as an express condition of the permit, reimburse the City for the actual direct and indirect costs associated with the permit, unless the Hutto Code of Ordinances, a franchise ordinance, or agreement with the City provides otherwise. Reimbursement to the City shall be made within thirty (30) calendar days of the receipt of an invoice from the City.

(B) Reimbursement does not apply to a permittee when state law, the Hutto Code of Ordinances, a franchise ordinance, or agreement with the City provides that a fee may

not be charged for construction within the public right-of-way, establishes the amount of the fee that may be charged, or provides that the City's actual direct and indirect costs may not otherwise be reimbursed, including a permittee that is a certificated telecommunications provider operating under Texas Local Government Code [Article](#) 283, a network provider operating under Texas Local Government Code [Article](#) 284, a cable or video service provider operating under Texas Utilities Code [Article](#) 66, or a gas utility company or electric utility company operating pursuant to a franchise ordinance under the Hutto Code of Ordinances or Texas law.

- (7) Right-of-Way Permit Expiration. If no construction has commenced under a permit within ninety (90) calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public right-of-way. An extension to a permit may be granted by the City only before the permit expires.

§ 18.03.009. **Construction in the right-of-way.**

- (a) No person shall perform any construction or installation of facilities in the public right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who will own the facilities to be constructed. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.
- (1) Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the city should be notified in writing within two (2) business days of any construction related to an emergency response; including a reasonably detailed description of the work performed in the public right-of-way, reasons for the valid need to perform responses, and an updated map of any facilities that were relocated, if applicable.
- (2) The phrase "construction or installation of facilities" does not include the installation of facilities necessary to initiate service to a customer's property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking of pavement; the closure of a nonresidential traffic lane; excavation or boring.
- (b) The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other conditions set out by the ~~city manager~~City Manager or designee.
- (c) The person requesting a permit will provide the ~~city manager~~City Manager or designee with documentation in the format specified by the ~~city manager~~City Manager describing:
- (1) The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for public right-of-way construction should be shown on a set of scaled dimensioned construction plans, plan/profile sheet, a street view and an aerial map. Said plans should indicate the current public right-of-way lines and any existing city facilities. Said plans shall show any proposed underground conduit, type of casing pipe required, if applicable, overhead lines, network nodes,

ancillary equipment, or any other facilities to be installed. The drawings shall show a cross-sectional profile, identify all existing utilities and any existing or potential utility conflicts.

- (2) For installation of any proposed pole applicant shall provide sectional detail showing depth of anchor, scaled dimensional drawings of the proposed pole, as well as any other proposed equipment associated with the proposed installation, and shall indicate spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances.
- (3) All applications shall include a before and after street view image. The after-image needs to include any proposed poles and all proposed attachments, and any associated or ancillary equipment, whether attached or standalone.
- (4) If the project is within the state right-of-way, the applicant must provide evidence of a permit or permission from the state.
- (5) If a city pole or poles or light structure or structures will be used or will be in the area of the proposed construction, the pole or poles or light structure or structures will be identified. No electric meter shall be mounted on a city pole or light structure.
- (6) Provider / applicant shall use two hundred and forty (240) voltage when connecting to any city infrastructure and provide key to meter upon installation.
- (7) All plans shall reflect that no facilities to be installed will obstruct an existing or planned sidewalk, walkway, bicycle lane or lane of vehicular traffic.
- (8) Engineering plans which will be on a scale of one (1) inch equals fifty (50) feet unless otherwise approved by ~~city manager~~ City Manager.
- (9) Detail of the location of all right-of-way and utility easements which applicant plans to use.
- (10) Detail of all existing city utilities in relationship to applicant's proposed route.
- (11) Detail of what applicant proposes to install, such as network nodes, poles, pipes, size, number of innerducts, valves, or other facilities.
- (12) Detail of plans to remove and replace asphalt or concrete in streets.
- (13) Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, network nodes, micro-network nodes, or other facilities, including depth located in public right-of-way.
- (14) Handhole and/or manhole typicals of type of manholes and/or handholes applicant plans to use or access.
- (15) Complete legend of drawings submitted by applicant.

- (16) Five (5) sets of engineering plans must be submitted with permit application.
- (17) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
- (18) The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the public right-of-way, and the dates and times work will occur, all of which (methods, dates, times, and other applicable information) are subject to approval of the ~~city manager~~City Manager or designee.
- (19) A statement that the requirements of section **18.03.008(a)** "~~registration~~" are or can be met. Although it is not required to complete the registration if a permit application has already been submitted, it is encouraged.
- (20) A traffic-control plan approved by the ~~city manager~~City Manager, which shall specify the traffic-control measures to be provided, a SWPPP according to subsection (21) below, and trench safety plan which shall meet U.S. Occupational Safety and Health Administration Standards may also be required based on the proposed scope of work. An approved traffic-control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.
- (21) The permittee shall submit with the permit application two sets of a Storm Water Pollution Prevention Plan (SWPPP) to the City in cases where stream crossings are open cut, unless the work is being performed under an SWPPP submitted by another entity. When working under the SWPPP of another entity, the plan shall identify the SWPPP under which the utility is performing the work. In all other cases, the permittee is required to implement erosion control measures for construction activities in accordance with the Storm Water Pollution Control ~~Article~~article of the City Code, as amended, and other Hutto ordinances and State or Federal laws and regulations.
- (22) No projecting attachments shall be less than eight (8) feet above the ground, if not projecting toward the street. If an attachment is projecting toward the street, the attachment shall be installed no less than sixteen (16) feet above the ground.
- (23) Any proposed work that involves the installation of facilities that will utilize radio frequencies shall not cause any interference with city public safety radio system, traffic signal light system or other city communications systems or components, regardless of whether or not a permit is required. The public right-of-way user shall provide evidence in a form acceptable to the city that the proposed installation will be compatible with said city systems and will not cause any interference with the city public safety radio system, traffic signal light system or other city communications systems or components. No installation shall be allowed to be installed or to remain

in the public right-of-way that causes any such interference.

- (24) The plans shall demonstrate that all federal and state laws and city ordinances will be obeyed, and that all sections of this article, including division 3 “~~D~~esign ~~M~~anual” will be complied with as applicable. Construction in public right-of-way adjacent to a school shall be required to follow all state law requirements, including the requirements in the Texas Education Code regarding work on school grounds, as applicable.
- (d) All construction and installation in the public right-of-way shall be in accordance with the permit for the facilities. The ~~city manager~~City Manager or designee shall be provided access to the work and to such further information as he or she may reasonable require to ensure compliance with the permit.
- (e) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the ~~city manager~~City Manager or designee at all times when construction or installation work is occurring.
- (f) All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the ~~city manager~~City Manager or designee. The ~~city manager~~City Manager or designee will use best efforts to approve or disapprove a request for permit as soon as possible.
- (g) A copy of any permit or approval issued by federal or state authorities for work in federal or state right-of-way located in the city, if requested by the ~~city manager~~City Manager and a copy of written permission for work in railroad right-of-way from the applicable railroad if requested by the ~~city manager~~City Manager;
- (h) A request for a permit must be submitted at least ten (10) working days before the proposed commencement of work in the request, unless waived by the ~~city manager~~City Manager or designee.
- (i) Requests for permits will be approved or disapproved by the ~~city manager~~City Manager or designee within a reasonable time or receiving all the necessary information. The ~~city manager~~City Manager or designee will use best efforts to approve or disapprove a request for permit as soon as possible.
- (j) The ~~city manager~~City Manager or the applicant can request a pre-construction meeting with the permittee and their construction contractor.
- (k) Permit applications are required for construction on new, replacement or upgrading of the company’s facilities in the public right-of-way either aerial or underground.
- (l) The failure of a person to request and obtain a permit from the city prior to performing any of the above listed activities in, or over any public right-of-way, except in an emergency, will subject the person to a stop-work order from the city and enforcement action pursuant

to the Hutto Code of Ordinances.

- (m) If the person receiving the permit fails to act upon the permit within one hundred eighty (180) calendar days of issuance, the permit shall become invalid, and the person will be required to obtain another permit.
- (n) If state or federal law provides that a permit is not required for certain work to be done, then a person proposing to do such work shall be required to provide notice two (2) working days prior to performing such work. This requirement must be met, even if no permit is required pursuant to state or federal law.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.010. **Construction and maintenance standards.**

- (a) The following shall be required when facilities are constructed in the public right-of-way, regardless of whether a permit is required, and, to the extent applicable, for as long as the facilities remain in the public right-of-way.
 - (1) The city must be notified twenty-four (24) hours in advance that construction is ready to proceed by the public right-of-way user, their contractor or representative. The right-of-way user or contractor must have previously called for any needed locations for public right-of-way facilities. At the time of notification, the public right-of-way user will inform the ~~city manager~~ **City Manager** of the number (or other information) assigned from the one-call system. The provider must have previously contracted the city and obtained all needed locational information for city utilities.
 - (2) All construction shall be in conformance with all city codes and applicable local, state and federal laws and must be done in a good and workmanlike manner and in accordance with all applicable sections of this article.
 - (3) Three by three (3 × 3) feet information signs stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur forty-eight (48) hours prior to the beginning of work in the public right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An informational sign will be posted on public right-of-way one hundred (100) feet before the construction location commences and each one hundred (100) feet thereafter, unless other posting arrangements are approved or required by the ~~city manager~~ **City Manager**.
 - (4) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins. When making a pavement cut or excavation, or placing soils or excavated material in or along a public right-of-way, the permittee shall place barricades, warning signs, and warning lights at the location sufficient to warn the public of the hazard of the open cut, excavation, spoils, or excavated material.
 - (5) Lane closures on major thoroughfares will be limited after 8:30 a.m. and before 4:00 p.m.

unless the ~~city manager~~City Manager grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the specifications of the ~~city manager~~City Manager and must be in accordance with the filed lane closure plan approved by the ~~city manager~~City Manager.

- (6) Permittees are responsible for the workmanship and any damages by contractors or subcontractors. A responsible representative of the permittee will be available to city staff at all times during construction.
- (7) Permittee shall be responsible for stormwater management erosion control that complies with city, state and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request permittee may be required to furnish documentation submitted or received from federal or state government.
- (8) Permittee or contractor or subcontractor will notify the ~~city manager~~City Manager immediately of any damage to other utilities, either city or privately owned.
- (9) It is the city's policy not to cut streets or sidewalks; however, when a street or sidewalk cut is required, prior approval must be obtained by the ~~city manager~~City Manager and all requirements of the ~~city manager~~City Manager shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (10) Installation of facilities must not interfere with city utilities, in particular gravity dependent facilities.
- (11) New facilities must be installed to a depth approved by the ~~city manager~~City Manager.
- (12) All directional boring shall have locator place bore marks and depths while bore is in progress. The boring method and bore pit locations shall be identified. Locator shall place mark at each stem with paint dot and depth at least every other stem.
- (13) The working hours in the public rights-of-way are 9:00 a.m. to 4:00 p.m., Monday through Friday. Work that needs to be performed after 4:00 p.m. Monday through Friday must be approved in advance. Any work performed on Saturday must be approved twenty-four (24) hours in advance by the ~~city manager~~City Manager. Directional boring is permitted only Monday through Friday 9:00 a.m. to 4:00 p.m., unless other hours are approved in advance. No work will be done on Sundays or city holidays, except for emergencies.
- (14) People working in the public right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the public right-of-way prior to any excavation. Use of the Geographic Information System or the plans of records does not

satisfy this requirement.

- (15) Permittee will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the ~~city manager~~City Manager, permittee shall verify locations by pot holing, hand digging or other method approved by the ~~city manager~~City Manager prior to any excavation or boring with the exception of work involving lane closures, as discussed above.
- (16) Placement of all manholes and/or hand holes must be approved in advance by ~~city manager~~City Manager. Handholes or manholes will not be located in sidewalks, unless approved by the ~~city manager~~City Manager.
- (17) Locate flags shall not be removed from a location while facilities are being constructed.
- (18) Construction which requires pumping of water or mud shall be contained in accordance with city ordinances and federal and state law and the directives of the ~~city manager~~City Manager.
- (19) All facilities installed in the public right-of-way shall be in earth tone colors or in colors that blend with the surroundings, or if on a service pole or municipally owned pole shall match the color and finish of the pole, or must be approved by the city.
- (20) All facilities installed in the public right-of-way shall be capable of being identified through a GIS shape file or other means as acceptable to the ~~city manager~~City Manager or designee. Said identification shall be provided at the time of application and shall be visible on the facilities when installed.
- (21) Above ground wires shall be located on only one (1) side of the public right-of-way.
- (22) The public right-of-way user or contractor must obtain any needed permits for electrical work and provide sealed engineered drawings for conduit size, circuit size, calculations for amperage, or any other required information. Provider shall be responsible for obtaining any required electrical power service to any installation. Any such electrical supply must be separately metered and must match city infrastructure voltage.
- (23) Public Right-of-way users shall complete construction as expeditiously as possible and lane closures or work that inconveniences the traveling public shall be minimized. Lane closures shall not last longer than four (4) hours, unless a different period of time is shown on the permit.
- (24) Public Right-of-way work shall be completed in the amount of time shown on the permit; but if no completion time is shown on the permit the work shall be complete in not more than one (1) year.
- (25) All public right-of-way work and facilities installed shall be done in a good workmanlike manner; shall meet all applicable codes; shall be maintained and kept in good repair and shall be aesthetically pleasing. Good repair includes, but is not limited to:

- (A) Location markers shall be no greater than five degrees from vertical;
 - (B) Location markers shall not be rusty and shall be legible;
 - (C) Ground-mounted utility boxes shall not be broken or have missing covers;
 - (D) Temporary repairs shall not remain in place for more than 10 working days, unless otherwise agreed to by the City;
 - (E) Screening fences, landscaping, and irrigation systems shall be maintained in accordance with the City's Unified Development Code;
 - (F) Painted structures and facilities shall be maintained such that the paint is not peeling, chipping, or faded;
 - (G) Damaged/replaced poles shall be removed completely from the public right-of-way and repairs made to the area the poles are removed from. Repairs to the area around the damaged/replaced pole shall be of the same material as that of the area immediately surrounding the damaged/replaced pole.
 - (H) Debris from construction or replacement of poles or other facilities shall be removed in a timely manner.
- (26) All efforts shall be made to avoid or minimize negative visual impact to the surrounding area and to enhance the safety requirement for vehicles and pedestrians, particularly in areas where small children or other vulnerable members of the population may be located.
- (27) Installations which require ancillary ground equipment with a footprint of twenty-five (25) square feet or more shall be spaced at least three hundred (300) feet apart.
- (28) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
- (29) A statement that the requirements of section **18.03.008** "~~registration~~"(a) are or can be met.
- (30) A traffic-control plan, which shall specify the traffic-control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic-control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required, and shall comply with the most current edition of the Texas Manual on Uniform Traffic Control Devices, as amended. The permittee shall submit a site-specific traffic control plan, when applicable, to the Engineering Department and obtain approval prior to the lane closure.
- (31) Any proposed work that involves the installation of facilities that will utilize radio frequencies shall not cause any interference with city public safety radio system, traffic

signal light system or other city communications systems or components, regardless of whether or not a permit is required. The public right-of-way user shall provide evidence in a form acceptable to the city that the proposed installation will be compatible with said city systems and will not cause any interference with the city public safety radio system, traffic signal light system or other city communications systems or components. No installation shall be allowed to be installed or to remain in the public right-of-way that causes any such interference. To the extent applicable, the above requirements shall continue during the entire time that the installed facilities remain in the public right-of-way.

- (32) If a street or alley must be totally closed for any duration, the permittee shall provide for reasonable alternative access to the adjacent properties at all times. If a sidewalk is to be closed or blocked for longer than one day, the permittee shall provide a reasonable alternative for pedestrian access. Sidewalks designated as school routes shall be open at all times, or a reasonable alternative shall be provided before work commences. Reasonable alternatives for sidewalks shall provide thirty-six (36) inches minimum surface width.
 - (33) The permittee and any person responsible for construction shall protect the public right-of-way surface, and all existing facilities and improvements both above and below ground from excavated materials, equipment operations, and other construction activities. Particular attention must be paid to ensure that no excavated material or contamination of any type is allowed to enter or remain in a water or wastewater main or access structure, drainage facility, or natural drainage feature, or floodplain.
 - (34) The permittee has the exclusive responsibility to coordinate with other ~~P~~public ~~S~~service ~~P~~roviders to protect all existing facilities in the public right-of-way in which the construction occurs. Acceptance of the plans and issuance of a permit does not constitute liability on the City's part for any damage to existing facilities.
 - (35) The permittee has the exclusive responsibility to locate the extent of the public right-of-way. Acceptance of the plans and issuance of a permit does not constitute liability on the City's part for any facilities placed on private property. If facilities are placed on private property, it is the ~~P~~public ~~S~~service ~~P~~rovider's responsibility to contact property owners and acquire easements, or move the facilities.
 - (36) The contractor will maintain at all times on the job site a responsible person authorized and capable to receive and relay instructions from the City.
- (b) Above-ground utility structures shall meet the following requirements:
- (1) Above-ground utility structures exceeding two feet in height shall not be placed within any intersection visibility triangle, as defined in the City's Unified Development Code or Design Criteria Manual.
 - (2) Above-ground utility structures, not including poles, less than sixty (60) cubic feet in volume, with no dimension greater than six feet, may be placed within the public right-

of-way without screening.

(3) Above-ground utility structures, not including poles, equal to or greater than sixty (60) cubic feet in volume, and less than 240 cubic feet in volume, and less than seven feet in height shall:

(A) Be placed within a public or private utility easement outside the street right-of-way; and

(B) Be screened on all sides except for the sides containing openings for access to the structure.

(4) Structures equal to or greater than two-hundred forty (240) cubic feet in volume, or more than seven feet in height shall be located in a private utility easement or other private property and shall be screened on all sides except for the sides containing the openings for access to the structure, and shall be subject to requirements of the Unified Development Code.

(5) The dimensions of the supporting foundation or pad shall allow for existing and proposed sidewalks.

(6) Above-ground utility structures shall comply with all requirements of other City ordinances and other state and federal laws and regulations. Public Service Provider shall be responsible for obtaining other permits, as required.

(7) Screening as required in this ~~Section~~ section shall consist of a barrier of stone, brick, pierced brick or block, uniformly colored wood or other permanent material of equal character, density and design, at least six (6) feet in height, or combination of two or more materials. Screening shall not exceed six feet in height. No separate permit will be required for any approved screening wall. Screening shall be placed so that it does not interfere with visibility triangles or create other traffic-related visibility obstructions.

(8) The exterior surfaces of all utility structures and screening shall be maintained free of graffiti and other defacements such as posters, stickers, decals, and signs, except those placed on the structure by the utility company for identification. The exterior finish shall be maintained free of visible deterioration.

(9) The utility structure shall be clearly marked with the owner's name and contact information.

(c) Below-ground utility structures may be allowed in the public right-of-way if space is available.

(1) In reviewing the utility structures the City will consider the following:

(A) Size, location, and impact of the proposed structure;

(B) The structure's coordination with existing and proposed public facilities; and

(C) Availability of remaining public right-of-way.

(d) Variance. Any request in an Application for a Permit for a variance from the requirements of this ~~Article~~article must be approved in advance by the City. The variance may be granted only if an extreme hardship exists and the public health, safety, welfare, or convenience is not adversely affected by granting the variance. The City may not approve any variance that would give a competitive advantage to one ~~public service provider~~Public Service Provider over another ~~public service provider~~Public Service Provider providing the same or similar service. The City may not grant a variance from the indemnity requirements. Any appeal from the denial of Variance within an application of a Permit may be appealed to the Hutto Board of Adjustment.

(e) If the City determines that the proposed utility structure cannot be placed within the public right-of-way without adversely affecting the integrity of an existing or future facility owned by the City, the City shall have the right to deny the location of a new or replacement utility structure within the said public right-of-way.

(f) In cases where utility structures, except those structures serving solely the City property, will be located on City property other than public right-of-way, the following requirements apply:

- (1) The application shall be made to the City for execution of a use privilege agreement through the City's Engineering Department.
- (2) Nothing contained herein, however, shall ever be held or construed to confer upon any person the right to place a utility structure upon City property. The City reserves the right, at its sole discretion, to enter into a license agreement to allow the placement of a utility structure on City property.
- (3) The City shall not be liable for damages or losses of any kind whatsoever by reason of injury to property or person occasioned by the use of any City property. The City shall have no obligations in regard to the maintenance of any improvements within such City property. The City shall be defended at the cost and expense of the person placing improvements on City property from all claims and demands.
- (4) The ~~public service provider~~Public Service Provider shall pay City a use fee for use of the property based upon the fair market value as determined by the City's Engineering Department. In addition to a use fee, the City may request the ~~public service provider~~Public Service Provider to provide network connectivity or conduit to the City.
- (5) The ~~public service provider~~Public Service Provider shall cooperate with other providers in connection with allowing collocation of facilities within the utility structure.

§ 18.03.011. **Plans of record.**

(a) Public Right-of-way users will provide the ~~city manager~~City Manager or designee with plans of record within ninety (90) days of completion of facilities in the public right-of-way. Users which have facilities in the public right-of-way existing as of the date of this ordinance who

have not provided plans of record shall provide one (1) quarter of the information concerning facilities in city right-of-way within one (1) year after the passage of the ordinance and one (1) quarter each six (6) months thereafter. The plans shall be provided to the city with as much detail and accuracy as required by the ~~city manager~~City Manager. All the requirements specified for the plans submitted for the initial permit, as set forth in section **18.03.009**, shall be submitted and updated in the plans of record. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and welfare concerns. The detail will not include matters such as capacity of lines, customers, or competitively sensitive details. Submittal of “plans of record” shall be in digital format.

- (b) This requirement, or portions of this requirement, may be waived by the director of development services and the ~~city manager~~City Manager for good cause.
- (c) If the release of the location of any utilities, including water and sewer, or of plans of record submitted under this section would jeopardize public safety, the information shall be considered confidential. In addition, if plans of record submitted under this section include information expressly designated by the public right-of-way user as a trade secret or other confidential information protected from disclosure by state law, the director may not disclose that information to the public without the consent of the public right-of-way user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a public right-of-way user to designate all matters in its plans of record as confidential or as trade secrets.
- (d) Network provider shall maintain accurate maps and other appropriate records of its network node facilities, node support poles and related ground equipment as they are actually constructed in the public rights-of-way, including, upon request, the use of Auto CAD/GIS digital format. Network provider will provide additional maps to the city upon request.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.012. Conformance with public improvements.

Whenever by reasons of widening or straightening of streets, water or sewer line projects, or any other public works or city projects, (e.g. install or improve storm drains, water lines, sewer lines, or any other public works or city project) it shall be deemed necessary by the governing body of the city to remove, alter, change, adapt, or conform the underground or overhead facilities of a public right-of-way user to another part of the public right-of-way, such alterations shall be made by the owner of the facilities at their expense (unless provided otherwise by state law or a franchise in effect on August 26, 1999, until that franchise expires or is otherwise terminated or is amended or the tariff is changed) within the time limits set by the ~~city manager~~City Manager working in conjunction with the owner of the facilities, or if no time frame can be agreed upon, within ninety (90) days from the day the notice was sent to make the alterations, unless a different schedule has been approved by the ~~city manager~~City Manager or designee. Facilities not moved after ninety (90) days or the time set forth in the notice shall be deemed abandoned and may be removed in accordance with section **18.03.018** “abandoned facilities.”

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.013. **Improperly installed facilities.**

- (a) Any person doing work in the public right-of-way shall properly install, repair, upgrade and maintain facilities; and
- (b) repair or restore any damage to other facilities or the public right-of-way that occurs as a result of improper construction, installation, repair, relocation, or upgrade of the permittee's facilities; and
- (c) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
 - (1) The installation, repairs, upgrade or maintenance endangers public health or safety;
 - (2) the installation, repairs, upgrade or maintenance damages public property or another ~~public service provider~~Public Service Provider's facilities;
 - (3) The results in the construction, design or configuration of the facilities does not comply with applicable local, state, or federal laws or regulations;
 - (4) The facilities are not capable of being located using standard practices;
 - (5) Underground facilities that are installed less than twenty-four (24) inches in depth;
 - (6) The placement or construction of said facilities remains incomplete or hazardous after construction work is finished or time for completion has passed, including but not limited to holes in paved areas or ground, handholes or manholes that are improperly sealed, and broken equipment or any other incomplete or hazardous condition;
 - (7) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the ~~city manager~~City Manager, including encroachment upon private property, extension outside the public right-of-way location designated in the permit without authorization, or placement in an area that interferes with another ~~public service provider~~Public Service Provider's existing facilities;
 - (8) Above-ground facilities are placed in an existing or proposed sidewalk, or at-grade facilities placed similarly when they can be reasonably placed outside the existing or proposed sidewalk.
 - (9) The facilities cause any interference with city public safety radio system, traffic signal light system, city traffic observation video cameras or other communications.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.014 **Restoration of property.**

- (a) Users of the public right-of-way shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the ~~city manager~~City Manager.

- (b) Temporary restoration of the public right-of-way may not remain for more than ten (10) business days after the completion of a repair or installation of an underground structure or facility, unless a time extension has been granted by the City. The City may, at the expense of the permittee or other responsible person, remove any temporary restoration remaining in the public right-of-way beyond the ten-day time limit and make permanent repairs. Any exception to the ten-day time limit, other than a relocation of a facility in advance of a City construction project in the public right-of-way, must be approved by the City prior to expiration of the time limit.
- (c) Restoration must be to the reasonable satisfaction of the ~~city manager~~City Manager and the property owner. The restoration shall include, but not be limited to:
 - (1) Replacing all ground cover with the type of ground cover damaged during work or better either by sodding or seeding, as directed by the ~~city manager~~City Manager;
 - (2) Installation of all manholes and handholes, as required;
 - (3) Backfilling all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by the ~~city manager~~City Manager;
 - (4) Leveling of all trenches and backhoe lines;
 - (5) Restoration of excavation site to city specifications; and
 - (6) Restoration of all landscaping, ground cover, and sprinkler systems.
- (d) All locate flags shall be removed during the clean-up progress by the permittee or contractor at the completion of the work.
- (e) Restoration must be made in a timely manner as specified by approved city schedules and to the satisfaction of ~~city manager~~City Manager or designee. If restoration is not satisfactory and performed in a timely manner all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any permits not approved until all restoration is complete.
- (f) If a person fails to restore property as set out in this section, the city shall give five (5) days written notice to the person at the address shown on the permit. If the person does not initiate repairs during the five (5) day period, or fails to complete the repairs within thirty (30) days thereafter the city may elect to repair such portion of the public right-of-way as may have been disturbed by the person, its contractors, or agents at the cost of the person performing the public right-of-way work. These time periods may be shorten or waived in cases of a threat to public health, safety or welfare. Upon receipt of an invoice from the city, the person will reimburse the city for the costs so incurred no later than thirty (30) calendar days from the date of the city invoice.
- (g) All construction performed under any permit granted to a permittee by the City under this ~~Article~~article must be maintained to the satisfaction of the City for two years after substantial

completion of construction or repair. Should the city reasonably determine, within two (2) years from the date of the completion of the repair work, that any of the restoration work failed to meet the existing standards of the city, the person shall perform such additional restoration work to the satisfaction of the city, subject to all city remedies.

- (h) Should the City reasonably determine, within two years from the date of the completion of work, that additional restoration work is required, the permittee shall perform such additional restoration work to the satisfaction of the City within thirty (30) days after the City gives written notice to the permittee to correct the damage, defect, or other problem. If the restoration work is not completed within thirty (30) days, the work may be performed by the City at the ~~public service provider~~Public Service Provider's expense. The permittee shall notify the City at least 48 hours before commencing any repair operations. If a construction or excavation site is subsequently disturbed by another party, including another permittee or the City, any continuing obligation to maintain the overlapping area shall cease. If the site is disturbed by another permittee, then that permittee shall be subject to the maintenance period for the overlapping area.
- (i) The City shall notify the permittee in writing if the backfill on a permitted pavement cut or excavation settles at any time during the two-year maintenance period, causing subsidence in the pavement of one-half inch or more, vertically measured in any three-foot horizontal direction. Upon notification, the permittee shall commence repair work within ten (10) days and notify the City forty-eight (48) hours in advance of commencement of the repair work. If the repair work is not commenced within ten (10) days, the repair work may be performed by the City at the ~~public service provider~~Public Service Provider's expense.
- (j) Notwithstanding any of the above sections, if the city determines that the failure of the person to properly repair or restore the public right-of-way constitutes a threat to the public health, safety or welfare, the city may undertake emergency repairs and restoration efforts. The city may attempt to provide emergency notice to the person responsible but is not obligated to do so. The public right-of-way user shall promptly reimburse the city for all costs incurred by the city within thirty (30) calendar days from the date of the city invoice.
- (k) The decision of the City as to the necessity of correcting any damage, defect or other problem is binding on all parties.
- (l) All damage caused directly or indirectly to the public right-of-way surface or subsurface outside the construction area will be regarded as part of the construction and must be included in the total area repaired.
- (m) Upon failure of the permittee to perform any such repair or restoration work described in this ~~Article~~article, the City may repair such portion of the public right-of-way as may be required. The permittee or ~~public service provider~~Public Service Provider shall reimburse the City for the actual direct and indirect costs of the repair work.

§ 18.03.015 **Revocation or denial of permit.**

- (a) Permit Revocation. If any of the provisions of this article are not followed, a permit may be revoked by the ~~city manager~~City Manager or designee. If a person has not followed the terms and conditions of this article in work done pursuant to a prior permit, new permits may be

denied or additional terms required.

(1) The City may suspend construction or revoke an issued permit on the same grounds on which a permit may be denied under ~~Section~~section 18.03.015 or if the permittee:

- (A) commences or performs construction in violation of an applicable requirement of this ~~Article~~article or the permit;
- (B) creates or is likely to create a public health or safety hazard by performance of the construction in question;
- (C) fails to comply with an order or regulation of the City applicable to the construction;
- (D) fails to comply with the restrictions or requirements of other Hutto ordinances or state or federal laws or regulations applicable to the construction; or
- (E) commences or performs work without having prior knowledge and understanding of the applicable repair standards as specified in the Public Right-of-Way Permitting and Construction Manual.

(b) Permit Denial. If a permit is denied upon initial submission for incompleteness or for an issue which is capable of correction, the applicant may complete or correct the application and resubmit the application. Applications not resubmitted within thirty-one (31) calendar days shall be considered withdrawn.

(1) The City may refuse to issue a permit if:

- (A) the ~~public service provider~~Public Service Provider does not have a valid registration on file with the City or the authorized contractor submitting the permit application on behalf of the ~~public service provider~~Public Service Provider is not registered as required by the Construction ~~Article~~article;
- (B) the proposed construction will substantially interfere with vehicles or pedestrians and no procedures, or procedures inconsistent with this ~~Article~~article, have been identified to minimize the interference;
- (C) the proposed construction will substantially interfere with another activity for which a permit has been issued, or will conflict or interfere with existing facilities already in the public right-of-way, or will conflict with proposed public facilities;
- (D) the proposed barricading, channelizing, signing, warning, or other traffic control procedures or equipment do not comply with the requirements of the most current edition of the Texas Manual on Uniform Traffic Control Devices;
- (E) the proposed construction, incidental traffic control, or other permitted activity, or the manner in which it is to be performed, will violate a Hutto ordinance or regulation or a state or federal statute or regulation; or

(F) the permittee:

- (i) fails to furnish all the information required by this ~~Article~~article;
- (ii) knowingly or intentionally furnishes false or incorrect information to the City;
- (iii) fails, except for good cause shown, to file the application on the approved form within the time limits prescribed by the Public Right-of-Way Permitting and Construction Manual;
- (iv) has been convicted of or pled guilty or no contest to an offense under this ~~Article~~article in municipal court and the offense has not been corrected and any direct or indirect costs incurred by the City have not been reimbursed; or
- (v) is not in compliance with applicable requirements of an existing permit issued under this ~~Article~~article.

(c) Suspension or Revocation Notice. The City shall provide immediate verbal notice to the permittee of the revocation, denial or suspension of a public right-of-way permit. Written notice of a suspension or revocation shall be provided within one business day of the verbal notice. The verbal and written notices under this ~~Section~~section shall also be provided to the Public Service Provider. Construction that is suspended may not resume until the City determines that the permittee has corrected the violation, noncompliance, or hazard that caused the suspension. A permit that has been suspended or revoked may be reinstated by the City if the City determines that:

- (1) The permittee has corrected the violation, noncompliance, or hazard that caused the suspension or revocation; and
- (2) the health or safety of the public is not jeopardized by reinstating the permit.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.016. **Appeal from revocation, denial, or suspension of permit.**

- (a) An applicant may appeal from denial or revocation of permit to the ~~city manager~~City ~~Manager~~. Appeal shall be filed with the city secretary within five (5) calendar days from the date of the decision being appealed.
- (b) A denial or revocation will be upheld unless a person can show that there is an error and that the person was following all of the requirements of this article and all public right-of-way engineering requirements.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.017. **Inspections and ~~Emergency~~emergency ~~Repairs~~repairs ~~During~~during ~~Construction~~construction.**

- (a) The city may perform inspections of any public right-of-way work, including installations, maintenance, modifications or any other right-of-way work, whether such work is subject to permit requirements or allowed to be done without a permit. The city may perform visual

inspections of any public right-of-way work located in the right-of-way as the city deems appropriate without notice. If the inspection requires physical contact with right-of-way work, the city may provide the right-of-way user with notice prior to said inspection. Public Right-of-way user may have a representative present during such inspection. In the event of an emergency situation, the city may, but is not required to, notify the right-of-way user prior to the inspection. The city may take any needed action to remediate an emergency. The city shall notify the public right-of-way user as soon as practical after said remediation.

(b) If the City determines during construction that an emergency repair to a public right-of-way is necessary to correct a situation that is hazardous to the public, the City shall immediately notify the permittee. If the permittee does not commence the emergency repair within twenty-four (24) hours or the City determines that repairs are required sooner for the protection of the health, safety, and welfare of the public, the City may, with sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The permittee, or ~~public service provider~~Public Service Provider, shall reimburse the City for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The permittee shall maintain the emergency repair until the permittee completes construction and final repairs.

(c) If the City determines that a problem with a ~~public service provider~~Public Service Provider's existing facility in a public right-of-way requires an emergency repair to correct a situation that is hazardous to the public, the City shall immediately notify the ~~public service provider~~Public Service Provider. If the ~~public service provider~~Public Service Provider does not commence the emergency repair within twenty-four (24) hours or the City determines that repairs are required sooner for the protection of the health, safety, and welfare of the public, the City may, with sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The ~~public service provider~~Public Service Provider shall reimburse the City for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The ~~public service provider~~Public Service Provider shall maintain the emergency repair until the ~~public service provider~~Public Service Provider completes construction and final repairs.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.018. **Abandoned facilities.**

(a) Duty to remove. A person that has placed facilities in the public right-of-way shall remove said facilities and related equipment when such facilities are abandoned regardless of whether or not it receives notice from the city. If in the judgment of the city, removal of underground facilities would cause damage, this requirement may be waived.

(b) Time for removal.

(1) The city may notify the person that said facilities must be removed immediately when necessary to ensure public health, safety, and welfare.

(2) If immediate removal is not required, the removal must be completed within the time

set forth in the written notice to remove from the city and if no time is set out, then within ninety (90) days for the facilities and related equipment being abandoned.

- (3) If the facilities are not removed after the ninety (90) day notice to remove, the city may remove the facilities thirty (30) days after notice of a final finding of abandonment.
 - (4) When a person removes, or abandons permanent structures in the public right-of-way, the person shall notify the ~~city manager~~City Manager in writing of such removal or abandonment and shall file with the ~~city manager~~City Manager the location and description of each facility and ground equipment removed or abandoned.
 - (5) The ~~city manager~~City Manager may require the person to complete additional remedial measures necessary for public safety and the integrity of the public right-of-way.
- (c) Deemed abandoned. Facilities may be deemed abandoned as set out in this article. Additionally, facilities may be deemed abandoned if:
- (1) A person does not relocate facilities as set out in section **18.03.012** “conformance with public improvements.”
 - (2) A person does not correct or abate improperly installed facilities as set out in section **18.03.013** “improperly installed facilities.”
 - (3) A person utilizing the public right-of-way cannot be found or contacted.
 - (4) A person utilizing the public right-of-way fails to pay the required compensation.
 - (5) A person utilizing the right-of-way fails to comply with the requirements of this article after being given due notice of any deficiencies. The notice requirement shall only apply to persons who have maintained the required registration as set out in section **18.03.008** “registration” and are capable of being contacted.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.019. **Underground installation preferred.**

- (a) The underground placement of facilities is encouraged.
- (b) Facilities shall be installed underground where existing utilities are already underground.
- (c) Underground conduits and ducts shall be installed in the public rights-of-way between the adjacent property line and curb line unless otherwise directed by the city.
- (d) Conduits and ducts shall be installed parallel with the curb line and cross the public rights-of-way perpendicular to the public rights-of-way centerline unless otherwise directed by the city.
- (e) Ducts and conduits shall be installed by trenchless excavation or directional boring whenever

commercially economical and practical. Trenchless excavation shall be used to place facilities under paved public rights-of-way centerline unless otherwise directed by the city.

- (f) Trenchless Technology or Boring. The City may require the use of trenchless technology or boring based on the following criteria:
 - (1) It is in the best interest of the City; and
 - (2) It is technically, commercially, and economically feasible; and
 - (3) It is not in violation of federal or state regulations or industry safety standards.
- (g) All concrete driveways and streets shall be bored rather than open cut. The length of the bore must be sufficient for meeting the fully improved (ultimate) roadway width as specified in the applicable development plan if sufficient public right-of-way exists. If the concrete street is subject to reconstruction within 2 years, or for other good cause, the City may grant an exception upon request.
- (h) No pavement cuts in newly constructed, reconstructed, or resurfaced (greater than one inch) asphalt streets may be made for 60 months after the substantial completion of the street work. With sole discretion, the City may grant an exception based on the ~~public service provider~~ Public Service Provider's written demonstration that the following criteria have been met:
 - (1) Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts; and
 - (2) Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable; and
 - (3) The proposed excavation cannot reasonably be delayed until the five-year deferment period has lapsed.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.020. **As built maps and records.**

User shall maintain accurate maps and other appropriate records of its facilities and equipment as they are actually constructed in the public rights-of-way, including, upon request, the use of Auto CAD/GIS digital format. User will provide additional maps to the city upon request.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.021. **Courtesy and proper performance.**

User shall make citizen satisfaction a priority in using the public right-of-way. User shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its facilities and related ground equipment in the public right-of-way. User's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the

~~city-manager~~City Manager or designee, user is not interacting in a positive and polite manner with citizens, the ~~city-manager~~City Manager may request User to take all remedial steps to conform to these standards.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.022. **Drug policy.**

It is the policy of the city to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by user's employees, contractors, subcontractors, sub-network provider-s, or vendors while on city premises is prohibited.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.023. **Landscape maintenance.**

- (a) Any alteration to landscape material located within any public right-of-way requires prior notification to the adjacent property owner and City. No person shall cut, deface or in any way injure any landscape material located within a public median without prior approval from the Engineering Department. Landscape material shall include, but is not limited to, canopy and ornamental trees, shrubs, ground cover, lawn, earthwork, and irrigation systems. Topping/trimming of trees for overhead utility service is excluded from this subsection.
- (b) User, its contractors, and agents shall provide written notice to the ~~city-manager~~City Manager before trimming or removing any landscape material in the public right-of-way. The city shall not be liable for any damages, injuries, or claims arising from network provider's actions under this section.
- (c) When landscape material are proposed to be removed from the public right-of-way during construction, the permittee shall reimburse the City the value of the tree in accordance with the International Society of Arboriculture's Guide for Plant Appraisal prior to issuance of a permit.
- (d) All landscape material must be restored to a condition that is equal to or better than the condition prescribed by the Public Right-of-Way Permitting and Construction Manual, as amended.

§ 18.03.024. **Signage.**

- (a) User shall post and maintain legible identification showing its name, location identifying information, and emergency telephone number in an area on a cabinet of a facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the ~~city-manager~~City Manager.
- (b) Except as required by laws or by the utility pole owner, user shall not post any other signage or advertising on the facilities or equipment.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.025. **Graffiti abatement.**

As soon as practical, but not later than fourteen (14) calendar days from the date user receives notice thereof, user shall remove all graffiti on any of its facilities and related ground equipment located in the public right-of-way. The foregoing shall not relieve the user from complying with any city graffiti or visual blight ordinance or regulation.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.026. **Alternate means or method; waiver.**

(a) A person may file a request with the ~~city manager~~City Manager to use alternate means or methods in public right-of-way construction or maintenance. The request must contain a detailed justification for the waiver, including the lack of existing sites not within the public right-of-way; alternative sites sought and review; and proof that compliance with the requirements is impractical. In determining whether any requirement under this section may be waived or if an alternate method or means may be used, the ~~city manager~~City Manager may consider all reasonable factors, including but not limited to:

- (1) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in risk;
- (2) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase of service interruption;
- (3) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in potential for liability for accidents;
- (4) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in construction;
- (5) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in availability of services; or
- (6) To any other unreasonable technical or economic burden.

(b) There shall be no right to receive permission to use an alternative means or method and denial by the ~~city manager~~City Manager shall be final.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.027. **Orderly use of the Public Right-of-way by multiple users.**

(a) In the exercise of governmental functions, the city has first priority over all other uses of the public rights-of-way. Traffic uses shall be considered as the primary use and the city reserves the right to lay sewer, water, gas and other pipe lines or cables and or cables and conduits, and to do underground and overhead work, including attachments, restructuring or changes in aerial or underground facilities in, across, along, over, or under a public street, alley or

public right-of-way and to change the curb, sidewalks of the grade of streets. Uses should be designed so as to cause the least interference with traffic, including signalization.

- (b) The city shall assign the location in or over the public rights-of-way among competing users of the public rights-of-way with due consideration to the public health, safety and welfare considerations of each user type, and to the extent the city can demonstrate that there is limited space available for additional users, may limit new users or require removal of abandoned or obsolete facilities, as allowed under state or federal law.
- (c) If the city authorizes abutting landowners to occupy space under the surface of any street, alley or public rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized users of the public rights-of-way. If the city closes or abandons a public right-of-way that contains a portion of a person's facilities, the city may close or abandon such public right-of-way subject to the right of the person, provided said facilities have not been abandoned and provided the person is a registered user of the public right-of-way.

§ 18.03.028. ~~Public Improvement~~ improvement c ~~Coordination.~~

- (a) Public Improvement Coordination. Whenever the City deems it necessary to remove, alter, change, relocate, or adapt the underground or overhead facilities of a ~~public service provider~~ Public Service Provider in the public right-of-way due to the City's reconstruction, widening, or straightening of streets; placement or replacement of water, wastewater, or storm water facilities; installation of traffic signals, traffic signs, and streetlights; or construction of any other City public improvement project, the ~~public service provider~~ Public Service Provider that owns the facilities shall conform its facilities to the City's project.
- (b) Relocation. The facilities must be conformed, at the ~~public service provider~~ Public Service Provider's expense, within 120 days after the City issues notice to the ~~public service provider~~ Public Service Provider, unless a different conformance schedule for the work is approved by the City.
- (c) Abandonment. Facilities of a ~~public service provider~~ Public Service Provider that are not conformed within the 120-day notice period or within the approved schedule will be deemed abandoned, and the City, and any person working under contract with the City, will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, caused by the activity of the City, or its contractors.
- (d) Permit Required. A person performing construction within the public right-of-way for the purpose of conforming facilities at the request of the City in advance preparation for a public improvement project shall obtain a permit in accordance with City ordinances.
- (e) Maintenance of Construction Area. The permittee shall maintain the construction area in accordance with §section 18.03.010(a)(25) or until the work order authorizing the construction of the public improvement project is issued by the City, whichever comes first.

§ 18.03.029 through § 18.03.100. (Reserved)

DIVISION 3
Design Manual

§ 18.03.101 **Purpose.**

- (a) This design manual is for maintenance of, siting and criteria for the installation of wireless facilities, including micro network nodes, network nodes, node support poles and related ground equipment being installed pursuant to Tex. Loc. Gov't Code, chapter 284, the FCC Order, and related federal regulations.
- (b) This design manual shall apply to any and all maintenance, siting, installations, collocations, or other placement of, in, over or under the public rights-of-way of network nodes, node support poles, micro network nodes, distributed antenna system(s), microwave communications or other wireless facilities, by whatever nomenclature, whether they are installed pursuant to chapter 284 of the Local Government Code or installed pursuant to an agreement to use the right-of-way or authorization or installed as may otherwise be allowed by state law.
- (c) The city enacts these design requirements and guidelines in order to meet its fiduciary duty to its citizens, and to give assistance and guidance to network providers in the safe, aesthetically pleasing, efficient, and timely installation of facilities.
- (d) The Federal Communications Commission, by Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, released on September 27, 2018, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Development (FCC Order), adopted new rules affecting the city's review of wireless facility siting applications, located at 47 CFR ~~§§~~sections 1.6001–1.6003. The FCC's Order recognizes the appropriateness of the imposition by municipalities of aesthetic standards on small wireless facilities that are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and published in advance. This design manual meets the guidelines stated by the FCC, and is for the purpose of furthering the public health, safety, and welfare of the citizens of the city by establishing aesthetic standards for the installation of facilities in the public rights-of-way that are reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments in the public rights-of-way. All of the provisions herein, whether specifically stated or not, are for the furtherance of this public purpose.
- (e) The provisions of this design manual are adopted to further the public health, safety, and welfare of the citizens of the city by establishing aesthetic standards for the installation of facilities in the public right-of-way that are reasonable, are technically feasible, and are reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments. The provisions of this design manual are further adopted in order to avoid congestion of the right-of-way caused by multiple pole installations, minimize the hazard of poles adjacent to roadways, minimize the effect on property values, and protect, maintain, and promote the appearance of natural surroundings in public parks and certain residential areas and in areas designated as underground areas.

- (f) A network provider shall comply with the city’s rights-of-way management ordinance except where in conflict with this design manual or chapter 284, subchapter C, or the FCC order and rules adopted thereby.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.102. **Prohibited or restricted areas for wireless facilities in the right-of-way.**

- (a) Municipal parks and residential areas. A network provider may not install a new node support pole in the following locations:

- (1) In a municipal park; or
- (2) In right-of-way that is adjacent to a street that is:
 - (A) Not more than fifty (50) feet wide at average width, measuring vehicular traveled portion only as set out in the definition of “street” and the measurement does not include intersection and refers only to the main traveled portion measured at mid-block or mid-point between intersections; and
 - (B) Adjacent to developed or undeveloped single-family residential lots, other multifamily residential area or land that is designated for residential use by zoning or deed restrictions.
- (3) Construction in right-of-way adjacent to a school is prohibited, unless all contractors, sub-contractors, or other workers follow all statutory requirements in the Texas Education Code regarding work on school grounds, as applicable.

- (b) Undergrounding district.

- (1) A network provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining the appropriate zoning, land use approval or other required approval.
- (2) Areas may be designated from time to time by the city as underground required areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.
- (3) Each permit application shall disclose if it is within an area that has undergrounding requirements.

- (c) Historic district and design districts.

- (1) A network provider must obtain advance written approval from the city before collocating network nodes or installing node support poles in a design district with

decorative poles or in an area of the city zoned or otherwise designated as a design district or historic district.

(2) Concealment required:

(A) As a condition for approval of network nodes or node support poles in design districts with decorative poles or in a historic district, concealment measures are required for network nodes or node support poles or related ground equipment or any portion of the nodes, poles, or equipment.

(B) Said concealment measures shall minimize the impact to the aesthetics in a historic district or design district.

(3) Network provider shall comply with and observe all applicable city, state, and federal historic preservation laws and requirements.

(d) Historic preservation laws and requirements. Network provider shall comply with and observe all applicable city, state, and federal laws and requirements, including historic preservation laws and requirements.

(e) Historic landmarks. Network provider is discouraged from installing a network node or node support pole within three hundred (300) feet of a historic site or structure or historic landmark recognized by the city, state or federal government (see, for example, and not limited to [§section 442.001\(3\)](#) of the Texas Government Code, and 16 U.S.C. [§section 470](#)), as of the date of the submission of the permit.

(f) Designated areas.

(1) The council may designate an area as a historic district, design district or underground district at any time.

(2) Underground district. Underground districts or underground requirement areas are not limited to those designated above and any area that meets the definition of underground district or underground requirement area shall be considered to be an underground district or underground requirement area. An area does not need to be designated by this article to be considered to be within an underground district. Such designation does not require a zoning case. Any area declared to be an underground district by city council or any area that meets the definition of underground district or underground requirement area shall be subject to all requirements and protections for an underground district.

(3) Historic district. Historic districts are not limited to those designated above and any area that meets the definition of historic district shall be considered to be a historic district. An area does not need to be designated by this ordinance to be considered to be within a historic district. Such designation does not require a zoning case. Any area declared to be a historic district by city council or any area that meets the definition of historic district shall be subject to all requirements and protections for a historic district.

(4) Design district. Design districts are not limited to those designated above and any area that meets the definition of design district shall be considered to be a design district. The city council may designate an area as a design district at any time. An area does not need to be designated in this ordinance to be considered to be within a design district. Such a designation does not require a zoning case. Any area designated by city council as a design district or any area that meets the definition of a design district shall be subject to all requirements and protections for a design district.

(g) Defense.

(1) It shall be a defense to the above requirements prohibiting or restricting location of facilities in a park, residential area, historic district, design district or underground district that the network provider obtained advance written approval or waiver of restrictions from the city before collocating new network nodes or installing new node support poles or ground equipment in a prohibited or restricted location. In any prosecution herein for such prohibition or violation of any restrictions, it shall be an affirmative defense to have an agreement with the city that approved such location or waived the applicable restriction.

(2) If an agreement is granted to locate in a prohibited location, the network provider shall be required, as a condition for approval of new network nodes or new node support poles in a prohibited location, to install reasonable design or concealment measures for the new network nodes or new node support poles. Therefore, any request for installations in a prohibited location, must be accompanied with concealment measures in the permit applications.

(3) The city requests that a network provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the network nodes, node support poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in all locations of the city.

(h) Private deed restrictions and property owners association rules. A network provider installing a network node or node support pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

(i) Ground equipment.

(1) Ground equipment shall be minimal and the least intrusive at all sites.

(2) In order to maximize line of sight at street corners and intersections and minimize hazards at those locations, ground equipment may not be installed within two hundred fifty (250) feet of a street corner or street intersection.

(3) Ground equipment may not be installed at street corners or intersections within a visibility triangle.

(4) Ground equipment shall not be installed near a driveway.

- (j) Each permit application shall designate if the requested area for installation is within a residential area, a municipal park, an underground district or underground requirement area, or a historic district or a design district.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.103. **Preferred location.**

- (a) The following locations, in the order listed, are the preferred locations for installation of poles or wireless facilities:

- (1) Industrial areas.
- (2) Areas designated by the city as a highway rights-of-way area, provided that such areas are not adjacent to a municipal park, residential area, historic district, design district or any prohibited area set out above.
- (3) Retail and commercial areas, provided such areas are not in a prohibited location, such as an underground district, design district or historic district.

- (b) In the absence of state law or an agreement or municipal authorization providing otherwise, network nodes shall be restricted to preferred locations set out in this section.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.104. **Order of preference regarding attachment to existing facilities.**

- (a) The following shall be the order of preference for the attachment of network nodes to existing facilities, beginning with most preferred location and ending with least preferred location. In addition to the preference set out by the city, existing facilities may be owned by third parties and may not be available for attachment of facilities or may require authorization from other parties.

- (b) Order of preference from most preferable to least preferable.

- (1) *Most preferable.* Existing telephone or electrical lines between existing utility poles. Micro network nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on utility poles, node support poles or service poles.
- (2) *Preferable.* Existing utility poles (electric poles or telephones poles), shall be the preferred support facility for network nodes and related ground equipment.
- (3) *Least preferable.* Municipal service poles, which shall require an agreement with the city. Municipal service poles includes (in order of preference):

(A) Non-decorative street lights.

(B) Traffic signal structures. Network nodes may only be attached to traffic signal structures when such installation will not interfere with the integrity of the facility and will not interfere with the safety of the public. Any installation of network node facilities on any traffic signal structures shall:

- (i) Be encased in a separate conduit than the traffic light electronics;
- (ii) Have a separate electric power connection than the traffic signal structure;
- (iii) Shall not puncture or drill into the structure; and
- (iv) Have a separate access point than the traffic signal structure.

(C) Other municipal service pole use is discouraged.

(4) New node support poles shall also be least preferred. Collocation shall generally be preferred over new poles. New poles shall not be installed in prohibited areas and shall only be allowed in restricted areas to the extent all requirements are followed or a waiver is granted. Any new poles shall be camouflaged to the extent allowed by law as set out in this article.

(c) Ground equipment should be minimal and the least intrusive.

(d) In the absence of state law or an agreement or municipal authorization providing otherwise, network nodes, if allowed, shall be restricted to most preferable locations set out in this section and shall be prohibited in the least preferable.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.105 **Placement requirements.**

(a) A network provider shall construct and maintain network nodes and node support poles in a manner that does not:

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

(b) Network node facilities shall be installed in accordance with section **18.03.010** and all other

applicable requirements of this article.

(c) Right-of-way.

- (1) Network nodes installation shall follow all applicable requirements of this article, including section **18.03.010**.
- (2) Network node facilities, node support poles and related ground equipment shall be placed, as much as possible, within two (2) feet of the outer edge of the right-of-way line.
- (3) Node support poles and related ground equipment shall not impede pedestrian or vehicular traffic in the right-of-way.
- (4) No protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

(d) Parks. For the safety of park patrons, particularly small children, and to allow full line of sights near park property, the network provider shall not install ground equipment in a right-of-way that is within a park or within two hundred fifty (250) feet of the boundary line of a park. The network provider may request a waiver of the requirement that such equipment not be within two hundred fifty (250) feet of a park from the board of adjustment.

(e) There shall be no more than one (1) network node on any one (1) pole.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.106. **Camouflage required when possible.**

- (a) Camouflage is required by the city when wireless facilities are allowed, as set forth above, in design districts with decorative poles or in historic districts.
- (b) It is the city's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial or in a designated highway district area.
- (c) Companies shall submit their proposal for camouflage with the permit application.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.107. **General requirements.**

(a) Confirmation of non-interference with city safety communication networks.

- (1) The network provider shall provide analysis that the proposed network node shall not cause any interference with city public safety radio system, traffic signal light system, or other city safety communications components.
- (2) It shall be the ongoing responsibility of the network provider to evaluate, prior to making application for permit and while network nodes remain in the right-of-way, the

compatibility between the existing city infrastructure and provider's proposed network node. A network node shall not be installed in a location that causes any interference and any network node that causes destructive interference post-installation shall correct such interference or be removed and shall follow all federal regulations regarding interference.

(3) Network nodes shall not be allowed on city's public safety radio infrastructure.

(b) Size limits.

(1) Network providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this article.

(2) To the extent authorization is provided by franchise or license, the franchise or license controls.

(3) To the extent authorization is provided by state law which sets out size limits, the size limits in the state law control.

(4) If authorization is provided through a state law with no size limits, or other authorization with no size limits, the size limits of this section shall control.

(5) Unless otherwise provided by state law or municipal authorization, license, franchise or agreement, the following maximum size limits are applicable (required):

(A) Micro network node dimensions:

(i) Maximum length: ~~Twenty~~twenty-four (24) inches;

(ii) Maximum width: fifteen (15) inches;

(iii) Maximum height: twelve (12) inches.

(B) Network node shall meet the requirements as set out in chapter 284 of the Local Government Code.

(C) Pole height not higher than ten (10) feet above the average height of utility poles within five hundred (500) linear feet of a new pole or fifty-five (55) feet, whichever is least.

(D) Ground equipment, separate from the pole, shall meet the requirements of chapter 284 of the Local Government Code or if such requirements are not applicable, may not be higher than three feet six inches (3'6") from grade, wider than three feet six inches (3'6").

(E) When not otherwise set out in this ordinance or in a municipal authorization, the size limits shall not be greater than size limits set forth for structures or equipment in chapter 284 of the Local Government Code, where applicable.

(F) Size limits may be reduced when necessary for public health, safety or welfare.

(c) Size limits provided by state law are only applicable for so long as required by state law. If said state law is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the city, either in the municipal authorization or an amendment to the municipal authorization or the directives of the city or this article, shall be required and such standards shall be subject to individualized review.

(d) Concealment. The network node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

(e) New node support pole spacing.

(1) New node support poles shall be at a minimum three hundred (300) feet from a utility pole or another node support pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area, unless a lesser distance is approved by the ~~city manager~~ City Manager.

(2) New poles shall be placed a minimum of five (5) feet from a street curb or travel lane and eighteen (18) inches from a sidewalk to minimize the potential of being struck by a motor vehicle or bicycle.

(3) New poles shall be placed on breakaway anchor bolt supports or bases to minimize the impact severity to motor vehicles that strike the pole.

(4) In order to meet the definition of a small wireless facility under federal regulations, the facilities:

(A) Must be mounted on structures fifty (50) feet or less in height, including their antennas; or

(B) Must be mounted on structures no more than ten (10) percent taller than other adjacent structures; or

(C) May not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater.

For purposes of this paragraph, “structure” means a pole or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

(f) Minimize ground equipment concentration. In order to minimize negative visual impact to the surrounding area, the city’s designee may deny a request for a proposed location if the network provider installs network node ground equipment where existing ground equipment already occupies a footprint of twenty-five (25) sq. ft. or more.

- (g) Allowed colors. Colors shall meet the requirements set out in section **18.03.010(a)(19)**.
- (h) If any network node facilities, node support poles or ground equipment is installed in a location that is not in accordance with the plans approved by the ~~city manager~~ City Manager and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the right-of-way non-compliant with applicable laws, including the American Disabilities Act, then network provider shall remove the network node facilities, node support poles or ground equipment.
- (i) Ground equipment.
- (1) Ground equipment should be minimal and the least intrusive. To minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to minimize hazards at those locations, ground equipment may not be installed within two hundred and fifty (250) feet of a street corner or a street intersection.
 - (2) Ground equipment near municipal parks. For the safety of municipal park patrons, particularly small children, and to allow full line of sights near municipal park property, the network provider shall not install ground equipment in a right-of-way that is within a park or within two hundred and fifty (250) feet of the boundary line of a park, unless approved by the ~~city manager~~ City Manager and parks director in writing.
 - (3) To enhance the safety requirements of line of sight of pedestrians, particularly small children, the city's designee may deny a request for a proposed location if the network provider installs network node ground equipment where existing ground equipment within three hundred (300) feet already occupies a footprint of twenty-five (25) square feet or more.
 - (4) Ground equipment shall not be installed in such a manner as to interfere with a sight visibility triangle.
- (j) Municipal service poles.
- (1) An agreement shall be required for all installations on municipal service poles and all such installations shall be in accordance with the agreement.
 - (2) Installations on all service poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the service pole to which the network node is to be attached will safely support the load.
 - (3) Height of attachments:
 - (A) All attachments on all service poles shall be at least eight (8) feet above grade;

- (B) If a network node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground; and
- (C) And meet all applicable requirements of state law and this article.
- (4) Installations on all traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the agreement with the city. Installation of network node facilities on any traffic signal structures shall:
 - (A) Be encased in a separate conduit than the traffic light electronics;
 - (B) Have a separate electric power connection than the traffic signal structure;
 - (C) Have a separate access point than the traffic signal structure;
 - (D) Shall not puncture or drill into the structure;
 - (E) Shall not be installed on the mast arm; and
 - (F) Meet all other requirements of state law and this article.
- (5) Installations on street signage: Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the agreement with the city. Installation of network node facilities on any street signage structures that has electrics shall:
 - (A) Be encased in a separate conduit than any city signage electronics;
 - (B) Have a separate electric power connection than the signage structure;
 - (C) Have a separate access point than the signage structure; and
 - (D) Meet all other requirements of state law and this article.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.108. **Electrical supply.**

- (a) Network provider shall be responsible for obtaining any required electrical power service to the micro network node, network node facilities, node support poles and ground equipment. The city shall not be liable to the network provider for any stoppages or shortages of electrical power furnished to the micro network node, network node facilities, node support poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or network provider of the structure, or for any other cause beyond the control of the city.

- (b) Network provider shall not allow or install generators or back-up generators in the right-of-way.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.109. **Installation and inspections.**

- (a) Installation. (1) Network provider shall, at its own cost and expense, install the micro network node, network node facilities, node support poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the ~~city manager~~City Manager, as such may be amended from time to time. Network provider's work shall be subject to the regulation, control and direction of the ~~city manager~~City Manager. (2) All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the micro network node, network node facilities, node support poles and related ground equipment shall be in compliance with any agreement with the city as applicable and all applicable laws, ordinances, codes, rules and regulations of the city, county, state, and the United States ("laws").
- (b) Standard pole load analysis on attachments to a service pole. All applications for permits to collocate or attach to any service pole must have included in its permit application a completed industry standard individual pole load analysis performed and sealed by an engineer licensed by the State of Texas that indicates that the service pole to which the network node is to be attached will safely support the load. Such analysis shall also address safety of pole and attachments in regard to wind loads, collision with motor vehicle, supporting weight of the node, interference with city communications systems, and all other pertinent information.
- (c) Inspections. The ~~city manager~~City Manager may perform visual inspections of any micro network node, network node, node support pole or related ground equipment located in the right-of-way as the ~~city manager~~City Manager deems appropriate without notice. If the inspection requires physical contact with the micro network node, network node, node support poles or related ground equipment, the ~~city manager~~City Manager shall provide written notice to the network provider within five (5) business days of the planned inspection. Network provider may have a representative present during such inspection.
- (d) No installations shall be placed on the mast arm of a traffic-control signal.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.110. **Requirements in regard to removal, replacement, maintenance and repair.**

- (a) Removal or relocation by network provider.
 - (1) If the network provider removes or relocates a micro network node, network node facilities, node support pole or related ground equipment at its own discretion, it shall notify the ~~city manager~~City Manager in writing not less than ten business days prior to removal or relocation. Network provider shall obtain all permits required for relocation or removal of its micro network node, network node facilities, node support poles and

related ground equipment prior to relocation or removal.

- (2) The city shall not issue any refunds for any amounts paid by network provider for micro network node, network node facilities, node support poles or related ground equipment that have been removed.
- (3) Any abandoned or obsolete micro network node, network node, node support pole or other related equipment shall be removed in strict accordance with this article and all other applicable ordinances and state law.
- (4) Network provider shall remove micro network node, network node facilities, node support pole or related ground equipment when such facilities are abandoned regardless of whether or not notice is received from the city. Such removal must occur within ninety days from the date of abandonment, unless additional time is allowed by the city. The network provider shall provide advance written notice of such removal which must be received by the city at least two working days prior to the removal, except in case of emergency. Such notice shall specify the location and description of each micro network node, network node facilities, node support pole or related ground equipment to be removed.
- (5) The ~~city manager~~City Manager may require the network provider to complete additional remedial measures necessary for public safety and the integrity of any city facilities and the right-of-way.

(b) *Removal or relocation required for city project.*

- (1) A network provider shall relocate or adjust micro network node, network node, node support pole and related ground equipment in a public right-of-way in a timely manner in accordance with sections 18.03.012 and 18.03.028 and without cost to the municipality managing the public right-of-way.
- (2) Pursuant to state law and as a condition for occupancy of the right-of-way, the network provider may be required by the city to remove or relocate any of its facilities, including but not limited to, its micro network node, network node, node support pole and related ground equipment, or any portion thereof from the right-of-way, and network provider shall, at the ~~city manager~~City Manager's direction, remove or relocate the same at network provider's sole cost and expense, whenever the ~~city manager~~City Manager reasonably determines that the relocation or removal is needed as set out in sections 18.03.012 and 18.03.028.
- (3) If network provider fails to remove or relocate the micro network node, network node, node support pole or related ground equipment, or portion thereof as requested by the ~~city manager~~City Manager within ninety (90) days of network provider's receipt of the request, then the city shall be entitled to remove the micro network node, network node, node support pole or related ground equipment, or portion thereof at network provider's sole cost and expense, without further notice to network provider, and network provider shall, within thirty (30) days following issuance of invoice for the same, reimburse the

city for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the micro network node, network node, node support pole or related ground equipment, or portion thereof.

(c) Removal required by city for safety or due to imminent danger; or for improper permitting or licensing.

(1) Network provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable micro network node, network node, node support pole and related ground equipment within the time frame and in the manner required by the ~~city manager~~City Manager if the ~~city manager~~City Manager reasonably determines that the disconnection, removal, or relocation of any part of a micro network node, network node, node support pole and related ground equipment:

(A) is necessary to protect the public health, safety, welfare, or city property,

(B) the micro network node, network node, node support pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or city property, or

(C) network provider fails to obtain all applicable licenses, permits, and certifications required by law for its micro network node, network node, node support pole and related ground equipment, or use of any location under applicable law.

If the ~~city manager~~City Manager reasonably determines that there is imminent danger to the public, then the city may immediately disconnect, remove, or relocate the applicable micro network node, network node, node support pole and related ground equipment at the network provider's sole cost and expense.

(2) The ~~city manager~~City Manager shall provide ninety (90) days written notice to the network provider before removing a micro network node, network node, node support pole and related ground equipment under this section, unless there is imminent danger to the public health, safety, and welfare.

(3) Network provider shall reimburse city for the city's actual cost of removal of micro network node, network node, node support pole and related ground equipment within thirty (30) days of receiving the invoice from the city.

(d) Restoration. Network provider shall repair any damage to the right-of-way, or any facilities located within the right-of-way, and the property of any third party resulting from network provider's removal or relocation activities (or any other of network provider's activities hereunder) within ten (10) calendar days following the date of such removal or relocation, at network provider's sole cost and expense, including restoration of the right-of-way and such property to substantially the same condition as it was immediately before the date network provider was granted a permit for the applicable location or did the work at such location (even if network provider did not first obtain a permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and

replacement shall be subject to the sole, reasonable approval of the ~~city manager~~City Manager.

- (e) Network provider responsible. Network provider shall be responsible and liable for the acts and omissions of network provider's employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, sub-network provider's and subcontractors in connection with the installations of any micro network node, network node, node support pole and related ground equipment, as if such acts or omissions were network provider's acts or omissions.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.111. **Requirements upon abandonment.**

- (a) Upon abandonment or upon being deemed abandoned, network provider has a duty to promptly remove its facilities from the right-of-way. Notice from the city is not a prerequisite to the requirement for removal.
- (b) If the network provider does not promptly remove its facilities, removal procedures as set out in section **18.03.018** may be followed.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.112. **General provisions.**

- (a) All requirements of this article, including division 2, shall be met as applicable.
- (b) No city allocation of funds for removal and storage. All costs of any removal or storage of micro network node, network node, node support pole and related ground equipment, as authorized under this division, shall be the responsibility of the network provider and the city is not required to expend no funds to meet the requirements of the network providers. Any funds expended by the city due to an emergency or failure of a person to abide by these requirements shall be reimbursed to the city.
- (c) Ownership. No part of a micro network node, network node, node support pole and related ground equipment erected or placed on the right-of-way by network provider will become or be considered by the city as being affixed to or a part of, the right-of-way. All portions of the micro network node, network node, node support pole and related ground equipment constructed, modified, erected, or placed by network provider on the right-of-way will be and remain the property of network provider and may be removed by network provider at any time, provided the network provider shall notify the ~~city manager~~City Manager prior to any work in the right-of-way.
- (d) Size limits.
 - (1) Network providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this article or state law with each application, notice of work to be performed or request for a permit for each location; provided, however, where possible providers are encouraged to reduce the size of

installed facilities.

- (2) The size limits in this article are only applicable for so long as required by state law. If chapter 284 of the Local Government Code is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the city, either in the municipal authorization or an amendment to the municipal authorization or the directives of the city or this Division then such standards shall be subject to individualized review.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.113. Insurance, indemnity, bonding and security deposits.

Insurance, indemnity, bonding and security deposits shall be in strict accordance with ~~the city's rights-of-way management ordinance~~section 18.03.008, and other applicable ordinances, except to the extent not consistent with state or federal law.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.114. Design manual - updates.

Placement or modification of micro network node, network node, node support pole and related ground equipment shall comply with ~~the city's design manual~~this section at the time the permit for installation or modification, and as ~~said design manual~~this section may be approved or amended from time to time.

(Ordinance O-2021-034 adopted 6/3/21)

§ 18.03.115 through § 18.03.150. (Reserved)

DIVISION 4
Exemption Process

§ 18.03.151. **Administrative hearing - request for exemption.**

- (a) Should any person utilizing or proposing to utilize the right-of-way desire to request an exemption from a specific standard set forth in this article, and section **18.03.026** is not applicable, the person may request an administrative hearing before a board of appeals. The zoning board of adjustment shall act as the board of appeals for a request for exemption under this article.
- (b) Any person requesting an exemption from any of the requirements shall file such a request with the ~~city manager~~ **City Manager** within fifteen (15) calendar days from the time that need for an exemption arose. If an exemption is requested prior to construction, the request should be submitted prior to filing for a permit.
- (c) An exemption shall only be granted if:
 - (1) Such exemption is not contrary to the public interest;
 - (2) Such exemption will not increase the burden on the right-of-way or other right-of-way users;
 - (3) Such exemption shall not increase the right-of-way management or administrative duties for city staff;
 - (4) The exemption shall fit within the spirit of this article; and
 - (5) The application of the ordinance in the particular circumstances would create an unnecessary hardship.
- (d) It shall take an affirmative vote of six (6) members of the board to grant the exemption.

Commented [MC1]: Should this reference the permit denial, revocation, suspension appeal provision (18.03.016)? If a if a permit appeal is denied, should that be subject to further Administrative review?
Or, should the .016 ordinance, empanel a hearing like this?