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ORDINANCE NO. 018717

AN ORDINANCE AMENDING TITLE 15 PUBLIC SERVICES TO CREATE CHAPTER 15.10 DEPLOYMENT OF NETWORK NODES IN THE RIGHT OF WAY TO ESTABLISH GUIDELINES, PROCEDURES, AND A DESIGN MANUAL GOVERNING NETWORK PROVIDERS' ACCESS TO PUBLIC RIGHTS-OF-WAY AS PROVIDED IN CHAPTER 284, TEXAS LOCAL GOVERNMENT CODE

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

WHEREAS, the 85th Texas Legislature passed Senate Bill 1004 which mandates that all municipalities in the state must now allow the installation of network nodes, network poles, and transport facilities along with other wireless facilities in the public's right-of-way; and

WHEREAS, the Legislature of the State of Texas (the "State") has found that small cell facilities are instrumental to increasing access to advanced technology and information for the citizens of the State and thereby further an important public policy of having reliable wireless networks and services; and

WHEREAS, Senate Bill 1004 will be codified in the Texas Local Government Code by adding a Chapter 284 (Deployment of Network Nodes in Public Right-of-Way), which will become effective September 1st, 2017; and

WHEREAS, in order to comply with the new mandate, it is necessary to amend the City Code to create new regulations for these facilities within City rights-of-way in order to provide a fair and predictable process for their deployment, while enabling the City to manage the rights-of-way consistent with public health, safety and welfare; and

WHEREAS, the City intends to fully comply with state and federal law to the extent it preempts local municipal control;

SECTION 1. That Title 15 (Public Services) be amended to create a new chapter codified as Chapter 15.10 (Deployment of Network Nodes in the Right of Way) of the El Paso City Code as follows:

ARTICLE I. GENERAL

15.10.010 Purpose.

- A. The City has been delegated by the State of Texas the fiduciary duty to manage the Public Rights-of-Way for the benefit of the health, safety, and welfare of the citizens of the City. As proprietor and manager of the Public Rights-of-Way, the City enacts these guidelines, procedures, and Design Manual, as expressly allowed by Tex. Loc. Gov't Code, Chapter 284

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- B. The guidelines, procedures, and the Design Manual codified within this ordinance, are adopted in furtherance of the City's authority to manage the Public Right-of-Way to ensure the health, safety, and welfare of the public, and to require from Network Providers fair and reasonable compensation for use of the Public Right-of-Way and for Collocation on Service Poles.
- C. Any and all facilities selected for the installation of Provider's Wireless Facilities shall not be considered "personal wireless service facilities" as that term is defined at 47 U.S.C. § 332(c)(7)(C)(ii), or a "base station" as that term is defined at 47 CFR § 24.5. The limitations applicable to local governments with regard to the placement, construction, and Modification of "personal wireless service facilities" under 47 U.S.C. § 332(c)(7)(B) shall not apply to City with regard to Locations selected for Wireless Facilities in the Public Right-of-Way. Nor shall any federal regulations limiting the authority of local governments with regard to the placement, construction, and Modification of "base stations" apply to the City with regard to Wireless Facilities located in the Public Right-of-Way.

15.10.020. Applicability. The provisions of this Ordinance apply to any sitings, installations, and collocations in, on, over, or under the Public Rights-of-Way of Network Nodes, Node Support Poles, Micro Network Nodes, Distributed Antenna Systems, Transport Facilities, microwave communications, or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Tex. Loc. Gov't Code Chapter 284, or pursuant to an agreement with the City, or installed as may otherwise be allowed by law.

15.10.030. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meanings.

Abandon: and its derivatives means, with regard to Wireless Facilities and Transport Facilities, and all supporting equipment installed in the Public Right-of-Way (including by way of example but not limited to: Poles, wires, conduits, manholes, handholes, cuts, Network Nodes, Node Support Poles, Ground Equipment, or any portion thereof) that have been left by a Provider in an unused or non-functioning condition for more than 180 consecutive days unless, after notice to Provider, Provider has established to the reasonable satisfaction of City that the applicable facility, or portion thereof, is still in active use.

Affiliate: means each person or entity that falls into one or more of the following categories: (a) a person or entity having, directly or indirectly, a controlling interest in a Provider; (b) a person or entity in which Provider has, directly or indirectly, a controlling interest; or (c) a person or entity that directly or indirectly is controlled by a third party that also directly or indirectly controls a Provider

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

Applicable Codes: means: (i) all applicable City Code provisions, policies, and guidelines; (ii) all applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of all work in or around Public Right-of-Way and includes the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), the Texas Health and Safety Code, Chapter 752, the rules and regulations of the Occupational Safety and Health Act (“OSHA”); and (iii) any applicable lawful rules, requirements or orders now in effect or hereafter issued by City or other authority having jurisdiction.

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

Chapter 284: means Texas Local Government Code, Chapter 284.

Collocate and Collocation: mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a Public Right-of-Way on or adjacent to a Pole.

Days: means calendar days unless otherwise specified.

Decorative Pole: means any 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 City ordinances.

Design District: means an area that is zoned or otherwise designated by the City, and for which the City maintains and enforces unique design and aesthetic standards on a reasonable, uniform and nondiscriminatory basis. Design Districts within the City are: Union plaza, Rim Neighborhood Conservation Overlay, Smart Code Zoned properties, the Downtown District. Additional areas may be designated as Design Districts by the City at any time.

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

Distributed Antenna System or DAS: means a type of Network Node.

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

Excavation Permit: means a permit required under Chapter 13.08, El Paso Code of Ordinances, for cuts or excavations in the Public Right-of-Way and/or any construction activities in the Public Right-of-Way.

Ground Equipment: means any part of a Wireless Facility or associated equipment that is located on the surface of the ground and, if included in an approved Permit Application or otherwise approved by the City in writing, an incidental structure to support the Wireless Facility.

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

Historic District: means “Historic District” as defined in Section 20.20.020 of the City Code, now or hereafter in effect and areas designated as historic under state or federal law. Historic Districts within the City are Austin Terrace, Chihuahuita, Downtown, Magoffin, Manhattan Heights, Mission Trail, Old San Francisco, Sunset Heights, Ysleta, and the several National Register Districts Rio Grande National Register district and the Montana Avenue National Register district. Additional areas may be designated as Historic Districts by the City at any time.

Historic Landmark: means “Historic landmark” as defined in Section 20.20.020 of the City Code, now or hereafter in effect.

Location: means the City-approved and lawfully permitted location for the Network Node or Node Support Pole.

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

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

Modification or Modify: means any work in the Public Right-of-Way, or alteration of a Wireless Facility that is not substantially similar in size or is a change in the Wireless Facility’s location in the Public Right-of-Way or its physical position on the Pole, except those alterations or changes set forth in Section 15.10.330 that are excepted from requiring a Permit under Chapter 284, which do not constitute Modifications hereunder.

Municipal Park: means an area that is zoned or otherwise designated by City ordinance or has been dedicated to the City for use as a public park for the purpose of recreational activity.

Municipally-Owned Utility Pole: means a Utility Pole owned or operated by a municipally-

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owned electric utility, as defined by Tex. Util. Code, § 11.003, and located in a Public Right-of-Way.

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

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a Macro Tower.

Network Provider: means:

(A) a Wireless Service provider; or

(B) a person that does not provide Wireless Services and that is not an electric utility but builds or installs on behalf of a Wireless Service provider:

- (i) Network Nodes; or
- (ii) Node Support Poles or any other structure that supports or is capable of supporting a Network Node.

Node Support Pole: means a pole installed by a Network Provider for the primary purpose of supporting a Network Node.

Permit: means the City's written authorization for the use of Public Right-of-Way or collocation on a Service Pole for a Network Provider to perform an action or initiate, continue, or complete a project pursuant to the requirements of this Ordinance. A Permit shall not include an Excavation Permit.

Pole: means a Service Pole, Municipally-Owned Utility Pole, Node Support Pole, or Utility Pole.

Pre-Permit Survey: means all work or operations required by Applicable Codes or the City to determine whether the proposed location of a Network Node has the structural and spatial ability to accommodate Network Nodes and related equipment. Such work includes, but is not limited to, field inspection, loading calculations, and administrative processing. The Pre-Permit Survey shall be coordinated with City and include the Provider's professional engineer.

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

Provider: has the same meaning as "Network Provider."

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

- (A) a Private Easement; or
- (B) the airwaves above a Public Right-of-Way with regard to wireless telecommunications.

Scenic Area: means “Scenic area” as defined in Section 20.02.836 of the City Code, now or hereafter in effect. “Scenic Areas” within the City as also designated as “Design Districts.”

Scenic Corridor: means “Scenic corridor” as defined in Section 20.02.838 of the City Code, now or hereafter in effect. “Scenic Corridors” within the City as also designated as “Design Districts.”

School: means an educational institution that offers a course of instruction for students in one or more grades from kindergarten through grade 12.

Service Pole: means a pole, other than a Municipally-Owned Utility Pole, owned or operated by the City and located in a Public Right-of-Way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a Pole that supports lighting, other than a Decorative Pole; and
- (D) a pole or similar structure owned or operated by the City and supporting only Network Nodes.

Small Cell: is included as a type of Network Node.

Street: means only the paved portion of the Public Right-of-Way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A Street is generally part of, but smaller in width than the width of, the entire Right-of-Way. A Right-of-Way may include sidewalks and utility easements, but a Street does not. A Street does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

Streetlight Pole: means any standard-design concrete, fiberglass, metal, or wooden pole used for street lighting purposes, owned or operated by City, that is capable of supporting Network Nodes.

TAS: means Texas Accessibility Standards.

Traffic Control Device: means all signs, signals, markings, or devices placed or erected by the City or a public body having jurisdiction for the purpose of regulating, warning, or guiding traffic.

Traffic Signal: means any device, whether manually, electrically, or mechanically operated by

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which traffic is alternately directed to stop and to proceed.

Transport Facility: means each transmission path physically within a Public Right-of-Way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for Network Nodes.

Underground Utility District: means an area where poles, overhead wires, and associated overhead or above-ground structures have been removed and buried, or have been approved for burial underground pursuant to City ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing above-ground structures in a Public Right-of-Way.

Utility Pole: means a pole that provides:

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

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

Wireless Service Provider: means a person or entity that provides Wireless Service to the public.

Wireless Facilities: means Micro Network Nodes, Network Nodes, and Node Support Poles, as defined herein and in Chapter 284.

ARTICLE II. APPLICATIONS AND PERMITTING

15.10.040 Access to Public Right-of-Way

- A. Subject to the provisions of this Ordinance, City will issue permits to Providers authorizing Providers to install and maintain Wireless Facilities and Transport Facilities in or on Public Right-of-Way in accordance with Chapter 284. The locations at which Provider's Wireless Facilities and Transport Facilities may be permitted, and the size and appearance of such Wireless Facilities, shall be determined in accordance with this Ordinance. Providers must also obtain an Excavation Permit in accordance with Chapter 13.08, City Code of Ordinances, if the installation of Wireless Facilities, Transport Facilities, or Ground Equipment involves excavation of the Public Right-of-Way. If the requested Location is to Collocate a Network Node on a Service Pole, Provider must also, prior to making application for such Location, enter into a license agreement with the City for such Collocation.
- B. City will issue a Permit(s) to Provider only when City reasonably determines, in its sole judgment, that (i) Provider meets all requirements set forth in this Ordinance, and (ii) such Permit(s) comply with all Applicable Codes.

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- C. No use, however lengthy, of any of Public Right-of-Way, and no payment of any fees or charges required under this Ordinance, shall create or vest in Provider any easement or other ownership or property right of any nature in any portion of the Public Right-of-Way. After issuance of any Permit, Provider shall be and remain a mere licensee. Neither this Ordinance, nor any Permit granted under this Ordinance, shall constitute an assignment of any of City's rights to the Public Right-of-Way.
- D. No part of Provider's Wireless Facilities or Transport Facilities or other equipment constructed, Modified, or erected, or placed on Public Right-of-Way will become, or be considered by the City as being affixed to or a part of, the Public Right-of-Way. All portions of Provider's Wireless Facilities and Transport Facilities and other equipment constructed, Modified, erected, or placed by Provider on Public Right-of-Way will be and remain the property of Provider and may be removed by Provider at any time.
- E. Nothing in this Ordinance or in a Permit granted hereunder shall be construed as granting Provider any right to attach Provider's Wireless Facilities or Transport Facilities at any specific location or facility or to compel City to grant Provider the right to attach at any specific location or facility.
- F. Subject to the provisions in Articles VI through VIII, this ordinance does not in any way limit City's right to locate, operate, maintain or remove Service Poles or other City equipment or property in the manner that the City deems appropriate.
- G. Provider is obligated to obtain all necessary certification, permitting, and franchising from federal, state and local authorities prior to making any installations of Wireless Facilities or Transport Facilities.
- H. Subject to the provisions in Articles VI through VIII, nothing in this Ordinance shall be construed to require City to install, retain, extend, or maintain any Service Poles or other City equipment or property for use by the Provider when such Service Poles or other City equipment or property are not needed for City's own requirements.
- I. Subject to the provisions in Articles VI through VIII, nothing in this Ordinance shall limit, restrict, or prohibit City from fulfilling any agreement or arrangement regarding a Service Pole or other City equipment or property into which City has previously entered, or may enter in the future, with other entities, including, but not limited to, agreements or arrangements for the removal of Wireless Facilities.
- J. Nothing in this Ordinance or in any Permit granted hereunder shall be construed to grant Provider the authority to lease, grant, or otherwise assign any rights under its Permit to any other party without the written consent of the City.
- K. In the event the City determines to deny the use by Provider of any particular Service Poles or other City equipment or property or any particular location in the Public Right-of-Way, such denial shall not be construed to be a prohibition on, or to have the

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effect of prohibiting, the provision of Wireless Services. Any such denial by the City shall be undertaken in its capacity as proprietor of the Public Right-of-Way, and not in its regulatory capacity.

- L. Any Permit granted under this Ordinance is limited to the uses specifically authorized in the Permit and any other use shall be considered a material breach of this Ordinance. Nothing in this Ordinance or in any Permit granted hereunder shall be construed to require City to allow Provider to use the Public Right-of-Way after the termination of the applicable Permit.

15.10.050 Fees and Charges

- A. Provider shall pay the established fee for the following facilities:

- 1. Network Nodes
- 2. Node Support Poles
- 3. Transport Facility

- B. Provider shall pay the established recurring fees for the following facilities:

- 1. Network Nodes
- 2. Transport Facility
- 3. Collocation of Network Nodes on Service Poles

- C. All recurring fees are payable in advance and are due upon approval of the Permit(s) by the City; no Permit shall become effective until the fee has been paid. Initial amounts shall be pro-rated, based upon an annual due date of January 1 of each year.

- 1. For example, a Network Node Permit approved by the City in August shall be effective upon payment in advance by the Provider of 5/12 of the annual rental rate, or \$104.17. Thereafter, all payments of annually-recurring fees are due to the City by January 1 for the following calendar year.
- 2. For example, a Transport Facility Permit approved by the City in August shall be effective upon payment by the Provider of five months of the monthly rental amount, or \$140. Thereafter, payments for twelve months at a time are due to the City by January 1 for the following twelve months.

- D. Provider shall maintain and submit annually to the City with each payment to the City, an Inventory of Provider's Network Nodes, Node Support Poles, Node Support Poles connected by Transport Facilities, and Collocated Network Nodes. This information

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shall include complete and accurate GIS location information, maps, plans, equipment inventories, and other records related to Provider's Facilities. An Inventory shall be effective from January 1 of each year. City reserves the right to compare the information contained on the Inventory to any actual field inspection or survey conducted mutually. In the event that Provider fails to submit an Inventory, Provider shall pay City, in addition to the monthly- or annually-recurring fees, all actual costs associated with City's performance of an inventory of Provider's Facilities.

1. If either Provider or City subsequently discovers that Provider has failed to pay the entire or correct amount of compensation due, the correct amount shall be paid by Provider within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded to Provider by the City within thirty (30) days of such determination or offset against the next payment due from Provider. Acceptance by either Provider or City of any payment due under this Section shall not be deemed to be a waiver by either of any claim of violation of this Ordinance, nor shall the acceptance by either of any such payments preclude either from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this Section shall be deemed a waiver by either Provider or City of its rights under law or equity.
 2. Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with the Texas Utilities Code, Section 183.003, as amended for the time period involved.
 3. The compensation payable to the City hereunder shall not be offset by any payment by Provider to the City relating to ad valorem taxes.
- E. The Network Node site rental rate set forth herein shall be adjusted on an annual basis, by an amount equal to one-half of the annual change, if any, in the Consumer Price Index. For purposes of this section, Consumer Price Index shall mean the annual revised Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics. The adjusted rate will be effective sixty (60) days after the City provides written notice to Providers of the new rate.
- F. The recurring fees set forth herein shall be exclusive of, and in addition to, all ad valorem taxes, special assessment for municipal improvements, and other lawful obligations of the Provider to the City.
- G. When the City at its own expense has removed or remediated Provider's Wireless Facilities or Transport Facilities pursuant to Articles VI and VII or Provider is otherwise required to reimburse the City hereunder, the Provider shall remit payment to the City within 30 days of the date of the invoice.

- H. Upon Provider's termination of the use of any Service Pole or Public Right-of-Way in accordance with the terms of a Permit and this Ordinance, and Provider peaceably surrendering the Service Pole or Public Right-of-Way to the City in the same condition it was in on the date the Permit(s) was granted, excepting ordinary wear and tear, there will be no compensation due to the City by Provider for such location.
- I. The City shall not disclose any confidential information reproduced for documentation of the Inventory unless required by law. If the City receives a request to review or copy confidential information under the Texas Public Information Act or related law (the "Act"), the City shall comply with the requirements for handling third party information under the Act, including notifying the Provider that a request to review or copy confidential information has been submitted to the City. Confidential information deemed subject to disclosure under the Act by the Attorney General of the State of Texas shall be disclosed.

ARTICLE III. DESIGN MANUAL

15.10.060 Applicability. The provisions of this Article III, Design Manual, establish guidelines and requirements for the installation and construction of Network Nodes, new Node Support Poles, Transport Facilities, and Ground Equipment in the Public Right-of-Way. In addition, Provider shall comply with all generally applicable ordinances of the City pertaining to the occupancy and use of Public Right-of-Way, unless such provisions conflict with this Chapter, in which case this Chapter prevails. This Article III also governs the installation, construction, and Modification of Collocated Network Nodes on Service Poles.

15.10.070 General Requirements.

- A. Wireless 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 are visually minimized to the extent possible.
- B. Wireless Facilities must conform to the City's aesthetic or design standards for the proposed Location, if any, unless otherwise approved by the City.
- C. In order to minimize negative visual impact to the surrounding area, the hazard of Poles adjacent to roadways, and the effect on property values, the City may deny a Permit for a new Node Support Pole if the requested location for new node support poles is not spaced apart from existing utility poles or Node Support poles at the same spacing as the spacing between utility poles in the immediate proximity, however when no other facilities are present in the location, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.
- D. Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

- E. When a Permit is issued Provider shall install and maintain its Wireless Facilities and Transport Facilities, and all Ground Equipment, in accordance with the City's requirements and specifications. All of Provider's Wireless Facilities, Transport Facilities, and Ground Equipment must comply with all Applicable Codes.
- F. Provider shall be responsible for the installation and maintenance of its Wireless Facilities, Transport Facilities, and related Ground Equipment. Provider shall install such facilities in a good and workmanlike manner and in accordance with the requirements promulgated by the City, as such may be amended from time to time. Provider's work shall be subject to the regulation, control, and direction of the City. All work done in connection with the installation, operation, maintenance, repair, Modification, and/or replacement of the Wireless Facilities, Transport Facilities, and related Ground Equipment shall be in compliance with all applicable City, State, and federal laws, ordinances, codes, rules, and regulations.
- G. Primary Use. The City shall not grant Permits to locate Wireless Facilities on Service Poles or other City facilities or equipment that, in the City's sole determination, will adversely impact the primary use of the Service Pole or other City facility or equipment.
- H. Visual Clutter. The City may not grant Permits to Wireless Facilities that, in the City's sole determination, will contribute to visual clutter, taking into account the proximity of existing Wireless Facilities and the surrounding land use. The Provider is required to submit a photo simulation of the proposed facilities with the permit application.
- I. Wireless Facilities and Ground Equipment shall not impede pedestrian or vehicular traffic or render the Public Right-of-Way non-compliant with Applicable Codes, including the Americans with Disabilities Act and Texas Accessibility Standards.

15.10.080 Placement Preference.

- A. General Guidelines on Placement. In accordance with Chapter 284, 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 City's publicly disclosed ordinances regulating the use and occupancy of Public Rights-of-Way or this Design Manual.

satisfy that the installations are compatible with the regulations applicable to the Historic Landmark or Historic District.

1. Subject to Section 105 of Chapter 284, as a condition for approval of Permits for Network Nodes or Node Support Poles in Historic Districts, the City shall require reasonable design or Concealment measures for such facilities. Therefore, with any request for installations in these areas, Provider shall include proposed Concealment measures in the Permit Application. Thereafter, Provider shall implement the City-approved design concepts, and the use of Camouflage or stealth materials as necessary in order to achieve compliance with historic preservation review, including following the design guidelines for the City's Historic Districts, Historic Landmarks, and other applicable regulations.
2. Prior to submitting an application for a Permit for a Wireless Facility in a Historic District or within 300 feet of a Historic Landmark, Provider shall meet with the Office of Historic Preservation to discuss any potential design modifications appropriate for the installation.

15.10.100 School Zone Lights. Wireless Facilities will not be allowed at locations that interfere with school zone flashing lights. The interference to be avoided is structural, radio frequency, and visual.

15.100.110 Sun Metro Facilities. If the Permit Application is for Service Poles or other City facilities or equipment or Utility Poles serving Sun Metro (the City-owned transit system), the Permit will not be issued by the City without Provider providing documentation that all federal siting permissions have been obtained.

15.10.120 Pedestrian Impacts.

- A. The City shall not grant Permits for Wireless Facilities that, in the City's sole determination, will adversely impact pedestrian movement or will be in violation of the Americans with Disabilities Act.
- B. A minimum of five (5) foot path of travel and a six (6) foot clear path of travel in the downtown plan area will be provided at all times.
- C. Network Nodes on new or existing Poles must be installed at least eight (8) feet above the ground.
- D. If the Network Node attachment is projecting toward the Street, it must be installed no less than eight (8) feet above the ground for the safety and protection of the public and vehicular traffic.
- E. No protrusion from the outer circumference of the existing structure or Pole shall be more than two (2) feet.

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15.10.130 Airport Proximity. All Permit Applications in or within three miles of the landing area of the airport, the boundaries of which are shown on the latest FAA approved Airport Layout Plan on File at the El Paso International Airport, must be approved by the City Manager or designee.

15.10.140 Scenic Area or Scenic Corridor.

- A. Areas within the City that have been, or are in the future, designated by zoning or other ordinance as Scenic Areas or Scenic Corridors, are also designated as Design Districts in which unique design and aesthetic standards are maintained and enforced by the City.
- B. Subject to Section 105 of Chapter 284, all Wireless Facilities proposed in or within a Scenic Area or Scenic Corridor must be Camouflaged so as to be unobtrusive and to blend in to the natural surroundings as much as possible.
- C. Prior to submitting an application for a Permit for a Wireless Facility in a Scenic Area or Scenic Corridor, Provider shall meet with the City Manager or Designee to discuss any potential design modifications appropriate for the installation.

15.10.150. Decorative Poles.

- A. Subject to Section 105 of Chapter 284, wireless Facilities proposed for Decorative Poles must be Camouflaged so as to not adversely affect the appearance of such poles and comply with the Design Manual.
- B. Prior to submitting an application for a Wireless Facility on a Decorative Pole, Provider shall meet with the City Manager or Designee to discuss any potential design modifications appropriate for the installation.

15.10.160 Residential Areas and Municipal Parks.

- A. Subject to Section 104 of Chapter 284, providers are discouraged from installing a Network Node on an existing Pole in a Public Right-of-Way located in or adjacent to a Street or thoroughfare that is:
 - 1. Not more than fifty (50) feet wide, and
 - 2. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by the City's Zoning Ordinance or private deed restrictions.
- B. As a general rule, subject to Section 104 of Chapter 284, new Node Support Poles will not be permitted in a Public Right-of-Way that is in a Municipal Park or that is adjacent to a Street or thoroughfare that is described in Section A., above.

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- C. The City may, but is not required to, issue a Permit for the installation of a Network Node or Node Support Pole in areas described in this section on terms that are discretionary and nondiscriminatory, and that have the effect of minimizing interference with the aesthetic qualities of such areas, and that are in keeping with the general guidelines of this Design Manual.
- D. If the City approves a Permit for the installation of Network Nodes or Node Support Poles in the areas described in this section, Provider remains under an obligation to determine whether any private deed restrictions or other private restrictions are in place in the area, and to comply with same.

15.10.170 Undergrounding Requirements.

- A. Areas within the City may be designated from time to time by the City as Underground Utility Districts in accordance with filed plats, and/or in connection with the conversion of overhead to underground areas, as may be allowed by law.
- B. Provider will comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a Public Right-of-Way without first obtaining zoning or land use approval.
- C. In Underground Utility Districts as established by the City, Provider shall neither allow nor install Transport Facilities or any other overhead Facilities serving to connect Provider's Network Nodes. In all areas where overhead telecommunications or utility lines are, or are planned to be, buried below ground as part of a City project, all Transport Facilities or any other Wireless Facilities serving to connect Provider's Network Nodes, including ground equipment, shall also be buried below ground.
- D. If a Permitted Location subsequently becomes part of an Underground Utility District, Provider's Permit will be automatically revoked within 90 days after such designation, with removal of Provider's Micro Network Node, Network Node, Node Support Pole, and related ground equipment at such location within 90 days of such designation, or as otherwise reasonably allowed by City for the transition of overhead facilities.

15.10.180 Electrical Supply. Provider shall be responsible for obtaining any required electrical power service to the Wireless Facility. The City shall not be liable to the Provider for stoppages or shortages of electrical power furnished to the Wireless Facility, including, without limitation, stoppages or shortages caused by any act, omission, or requirement of the utility serving the Wireless Facility or the act or omission of any other tenant or licensee of the City Facility, or for any other cause beyond the control of the City. Provider shall not be entitled to any abatement of the Rental Fee for any such stoppage or shortage of electrical power.

15.10.190 Traffic Signals and Street Signage: If allowed by City, installations on Traffic Signals or Street Signage must not interfere with the integrity of the facility or the safety of the public. Any installation allowed by the City will be in accordance with a separate agreement with the

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City. Network Nodes installed on any Traffic Signal or Street Signage structures shall be encased in a conduit separate from the Traffic Light or Street Signage elements, have an electric power connection separate from the Traffic Signal or Street Signage structure, and have an access point separate from the Traffic Signal or Street Signage structure.

15.10.200 Generators. Generators or back-up generators shall not be installed in the Public Right-of-Way. Permits granted to Provider for Network Nodes or Transport Facilities do not include authorization for the installation of generators or back-up generators in the Public Right-of-Way.

15.10.210 Ground Equipment.

- A. In addition to the size restrictions provided in Chapter 284, § 284.003(a)(4), Ground Equipment near Street corners and intersections should be minimal and the least intrusive. Ground equipment at or near street corner or street intersections must comply with Chapter 12.68 of this Code. This set-back is for the purposes of minimizing any obstruction, impediment, or hindrance to vehicular traffic and public safety, maximizing line-of-sight in order to protect the safety of vehicular and pedestrian traffic at Street corners and intersections, and thereby minimizing hazards at those locations.
- B. Ground Equipment near Municipal Parks. For the safety of Municipal Park patrons, particularly small children, and to allow full line-of-sight near Municipal Park property, the Network Provider shall not install Ground Equipment in a Public Right-of-Way that is within a Municipal Park or within 250 feet of the boundary line of a Municipal Park, unless approved by the City in writing.
- C. Ground Equipment density. In order to enhance the safety requirements of line-of-sight of pedestrians, particularly small children, the City may deny a request for a proposed Location for Ground Equipment where existing Ground Equipment within 300 feet of the proposed Location, already occupies a footprint of 25 square feet, or more.

15.10.220 Equipment Dimensions. With each Application and with each request for a Permit, and for each requested Location, Provider shall provide detailed drawings with calculations to show strict conformity to the size limitations as set forth in Chapter 284 for Micro Network Nodes, Network Nodes, Ground Equipment, and maximum Pole height.

15.10.230 Non-Interference.

- A. To the extent not inconsistent with Chapter 284, Provider's Network Nodes shall not cause harmful interference to the City's public service radio frequency, wireless network, or communications operations ("City Operations"), or to third-parties' Network Nodes or similar third-party equipment in the Public Right-of-Way or adjacent City property ("Protected Equipment"). If Provider's Network Node interferes with City Operations, the City shall contact Provider's Emergency Service Contact to provide

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notice of any interference with City Operations pursuant to Section 15.10.720. The Provider shall immediately cease operation of the Network Node causing said interference upon receiving notice from the City and refrain from operating until Provider has eliminated the interference. If after notice Provider continues to operate a Network Node that causes interference with City Operations, such Network Node may be deemed unauthorized and subject to the remediation and termination provisions of this Ordinance. If Provider's Network Node interferes with Protected Equipment, then Provider shall take the steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the City. If Provider is unable to resolve the interference issue within this timeframe, it will voluntarily power down the Network Node causing the interference, except for intermittent testing until such time as the interference is remedied.

- B. Following installation or Modification of a Network Node, the City may require Provider to test the Network Node's radio frequency and other functions to confirm that it does not interfere with City Operations or Protected Equipment. If, after notice, Provider continues to operate a Wireless Facility that causes interference with City Operations, such Wireless Facility may be deemed unauthorized and subject to the provisions of Section XI of this Ordinance.

15.10.240 Tree Maintenance. Provider and its contractors and agents shall obtain written permission from the City before trimming trees hanging over its Wireless Facilities and Transport Facilities to prevent branches of such trees from contacting same. When directed by the City, Provider shall trim under the supervision and direction of the City Manager or designee. The City shall not be liable for any damages, injuries, or claims arising from the Provider's actions under this section.

15.10.250 Signage. Provider shall post its name, location identifying information, and emergency telephone number in an area on the Wireless Facility or Ground Equipment that is visible to the public. Signage required under this section shall not exceed 4 inches by 6 inches, unless otherwise required by law (e.g., RF ground notification signs), or the City. Except as required by law, Provider shall not post any other signage or advertising on the Pole, the Wireless Facility, or any Ground Equipment cabinet or back-up battery.

15.10.260 Repair. Whenever the installation, placement, attachment, repair, Modification, removal, operation, use, or relocation of the Wireless Facility or Transport Facility, or any portion thereof is required or permitted under this Ordinance, and such installation, placement, attachment, repair, Modification, removal, operation, use, or relocation causes any Service Pole, and City facility or equipment, or any portion of the Public Right-of-Way, to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Laws, Provider, at its sole cost and expense, shall promptly repair and return such Service Pole, City facility or equipment, or Public Right-of-Way to its original condition. If Provider does not perform such work as described in this paragraph, then the City shall have the option, upon 15 days' prior written notice to Provider or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Provider

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and to charge Provider for the reasonable and actual costs incurred by the City. Provider shall reimburse the City for the costs in accordance with Article XI of this Ordinance.

15.10.270 Damage to Service Pole. Whenever a Service Pole or other City facility or equipment supporting a Network Node is damaged or knocked down, City shall provide prompt notice to Provider through Provider's Emergency Service Contact in Section 15.10.720 of the need to remove or repair Provider's Network Node. Upon receipt of notification from City of such damage, Provider shall promptly respond and shall within one hour of such notification take such measures as are necessary to make the area safe, such as disconnection of the power source to the Network Node and removing damaged equipment from the Public Right-of-Way, if applicable. If the Provider does not promptly respond, the City may take sure measures as are necessary to make the area safe.

15.10.280 Access by Provider. Provider's access to Public Right-of-Way shall be coordinated with the City to schedule such access at times that are least disruptive to the traveling public. The time of day and duration of Provider's access shall be as determined by City, except for emergency circumstances which shall be coordinated with the City to allow the Provider immediate access to the Public Right-of-Way. For all activities that impact traffic, Provider's access shall be conditioned upon City approval of Provider's traffic control plan. Provider shall maintain written logs of each instance when Provider has accessed the Public Right-of-Way; such log shall be made available to City upon reasonable request by City.

15.10.290 Graffiti Abatement. As soon as practical, but not later than 7 days from the date Provider receives notice thereof, Provider shall remove all graffiti on any of its Wireless Facilities, or Ground Equipment. The foregoing shall not relieve Provider from complying with any City graffiti or visual blight ordinance or regulation.

ARTICLE IV. PRIVATE AND REGULATORY COMPLIANCE

15.10.300 Necessary Approvals. Provider shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Wireless Facilities or Transport Facilities on public property before it occupies any portion of the Public Right-of-Way. City retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to Provider. Provider's obligations under this Article include, but are not limited to, the obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all associated costs.

ARTICLE V. PERMIT APPLICATION PROCEDURES

15.10.310 Permit Required. Provider shall not install any Wireless Facility or Transport Facility in any portion of the Public Right-of-Way, or materially Modify the Wireless Facility or Transport Facility, without first applying for and obtaining a Permit in compliance with City's Permit application process.

15.10.320 License Agreement Required. As a precondition to receiving a Permit to Collocate a Network Node on a Service Pole, Provider shall enter into a license agreement with the City.

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15.10.330 Permit Not Required.

- A. Notwithstanding any other provision of this Ordinance, a permit is not required for:
1. routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way;
 2. replacing or upgrading a Network Node or Node Support Pole with a Node or Pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a Public Right-of-Way; or
 3. the installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing Poles or Node Support Poles, in compliance with the National Electrical Safety Code.
- B. For purposes of this section:
1. a Network Node or Node Support Pole is considered to be “substantially similar” if:
 - a. the new or upgraded Network Node, including the Antenna or other equipment element, will not be more than 10 percent larger than the existing Network Node, provided that the increase may not result in the Network Node exceeding the size limitations provided by Chapter 284; and
 - b. the new or upgraded Pole will not be more than 10 percent higher than the existing Pole, provided that the increase may not result in the Pole exceeding the applicable height limitations prescribed by Chapter 284;
 2. the replacement or upgrade does not include replacement of an existing Node Support Pole; and
 3. the replacement or upgrade does not defeat existing Concealment elements of a Node Support Pole.
- C. The determination under this section of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the Network Node or Node Support Pole as approved by the City.
- D. Notwithstanding the above, for activities that do not require a Permit:
1. The Provider shall give the City 30 Days advance notice of the work described above;

2. a Network Provider may replace or upgrade a Pole only with the approval of the Pole's owner; and
3. the size limitations may not in any event exceed the parameters prescribed by Chapter 284 without the City's approval.

15.10.340. Permit Application Requirements.

- A. For each location, Provider shall complete and submit to the City an application to locate a Wireless Facility or Transport Facility, using the Application Form provided by the City. The following items shall accompany the completed Application Form:
1. A one-time, nonrefundable Application Fee for review of the Application in the amount provided in Section 15.10.050.
 2. Documents necessary for the review or as requested by the City, including but not limited to:
 - a. A map showing:
 - (i) the location of the proposed installation, including GIS or street address information;
 - (ii) the proximity of the proposed installation to special districts of the City, including but not limited to Arts District, Historic District, Scenic Areas and Corridors, and Airport Zoning District;
 - (iii) the proximity to Schools, the El Paso Airport, and Municipal Parks;
 - (iv) the proximity to Historic Landmarks;
 - (v) the proximity to Utility Poles, Node Support Poles, and other Network Nodes on a Service Pole, if any, and depicting the sidewalks, and ramps onto sidewalks required by Applicable Codes, TAS, or other law, including the Americans with Disabilities Act, and paved street surface and utility easements; and
 - b. Disclosure if the proposed installation is:
 - (i) In a Residential Area as described in Section 15.10.160;
 - (ii) In an Underground Utility District or other area with undergrounding requirements; and
 - (iii) On any facilities serving Sun Metro.
 - c. A Pre-Permit Survey completed by a qualified and experienced professional engineer in accordance with City's requirements, certifying that Provider's Wireless Facilities or Transport Facilities can be installed on the identified structure in compliance with the Applicable Codes. The professional engineer's qualifications must include

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responsible for them and the Rental Fees payable to the City thereunder.

- (v) If the requested Location has already been approved for Collocation by other entities, the Application for the Service Pole shall be denied.
 - i. If the proposed location lies within a Highway Right-of-Way, the Provider must provide evidence of a permit from the state or federal government.
- 3. City's acceptance of the submitted design documents does not relieve Provider and its engineer of full responsibility and liability for any errors and/or omissions in the engineering analysis.
- B. The City will review applications for the installation of new Node Support Poles to determine if the proposed location is in an area where a new streetlight is needed. If City determines that a new streetlight is needed at the proposed location, it will notify the Provider and request the Provider's assistance and cooperation in including the design and construction elements that will enable the City to attach a streetlight on the Node Support Pole. If Provider and City reach agreement on the streetlight attachment, reasonable incremental costs incurred by Provider shall be reimbursed by City.
- C. The City shall review the Permit Application for completeness and notify the Provider in writing if Provider needs to submit additional or missing information. Such written notice will be provided within 30 days after receipt of a Permit Application for a Network Node or Node Support Pole, or within 10 days for a Permit for a Transport Facility. The notice shall specifically identify the missing information. If Provider does not submit the missing or additional information within 180 days of the notice, the Provider's Permit Application for the requested location shall be deemed withdrawn.
- D. The City shall review the Permit Application to determine if the requested location and proposed installation complies with all Applicable Codes.
 - 1. If the City denies the Permit Application, it will notify Provider by electronic mail on the date the City denies the Permit Application, stating the basis for the denial.
 - 2. Provider may cure the deficiencies identified by the City within thirty (30) days by resubmitting the Application, along with payment to the City for City's actual costs incurred in reviewing the resubmitted Application. Such costs will be identified by City at Provider's request.
 - 3. The City's review of the revised application is limited to the deficiencies cited in the denial documentation.

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- E. The City must approve or deny applications under this Title in the following timeframes:
1. An application for a node support pole not later than the 150th day after the date the municipality receives the complete application.
 2. An application for a network node not later than the 60th day after the date the municipality receives the complete application.
 3. An application for a transport facility not later than the 21st day after the date the municipality receives a complete application.
 4. An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied on or before the applicable date for approval or denial prescribed in this subsection.
- F. The City shall approve or deny the revised completed application after denial not later than 90 days after the date the City receives the completed revised application.

15.10.350 Termination of Permits.

- A. Unless the City grants an extension of time upon Provider's request, a Permit shall expire six months after approval by the City if installation pursuant to the Permit has not begun by that date.
- B. Any Permit shall automatically terminate when Provider ceases to have authority to construct and operate its Wireless Facilities or Transport Facilities on Public Right-of-Way at the location covered by the Permit. Provider shall, at its sole expense, remove the Wireless Facility or Transport Facility from the Public Right-of-Way within thirty (30) days. If Provider fails to remove the Wireless Facility or Transport Facility within thirty (30) days, City shall have the right to remove the facilities at Provider's expense.
- C. Any Permit shall automatically terminate for a Wireless Facility or Transport Facility that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment"). Provider shall, at its sole expense, remove any Nonfunctional Attachment, or part of a Nonfunctional Attachment, within thirty (30) days of the Wireless Facility or Transport Facility becoming nonfunctional. If Provider fails to remove a Nonfunctional Attachment within thirty (30) days, City shall have the right to remove the Nonfunctional Attachment at Provider's expense.
- D. Provider may at any time surrender any Permit. Provider shall, at its sole expense, remove the Wireless Facility, Transport Facility, and related Ground Equipment from the Public Right-of-Way within thirty (30) days of Provider's notice of surrender of a Permit. If Provider fails to remove the Wireless Facility, Transport Facility, or related Ground Equipment, or any part thereof from the Public Right-of-Way within thirty (30) days, City shall have the right to remove same at Provider's expense.

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ARTICLE VI. REMOVAL OF WIRELESS FACILITIES AND GROUND EQUIPMENT

15.10.360 Removal Upon Notice from City for City Project.

- A. The City may determine that it is necessary for Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole, Transport Facilities, and related Ground Equipment, or any portion thereof, from the Public Right-of-Way or a Service Pole for City projects. Whenever the City reasonably determines that relocation or removal is needed for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a Street or Public Right-of-Way, or Service Pole, Provider shall remove or relocate its facilities at its sole cost and expense, except as otherwise provided in existing state or federal law.
- B. Provider shall complete the removal or relocation within thirty (30) days after receiving written notice from City, provided City or a third party has not prevented Provider from completing such work. Provider shall notify City in writing within ten (10) days after the removal or relocation has been completed.
- C. If 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 within thirty (30) days after receiving written notice from City, City shall have the right to remove, or to have removed, the Micro Network Node, Network Node, Node Support Pole or related Ground Equipment, or portion thereof, at Provider's expense.
- D. City shall not be responsible or liable for damage to Provider's Wireless Facilities, Transport Facilities, or related Ground Equipment except to the extent provided in this Ordinance.
- E. Network Provider shall reimburse City for the City's actual cost of removal of Wireless Facilities, Transport Facilities, and related Ground Equipment within 30 days of receiving the invoice from the City.

15.10.370 Removal Required by City for Safety and Imminent Danger Reasons.

- A. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Wireless Facility, Transport Facility, and related Ground Equipment within the time frame and in the manner required by the City if the City reasonably determines that the disconnection, removal, or relocation of any part of a Wireless Facility, Transport Facility, or related Ground Equipment:
 - 1. is necessary to protect the public health, safety, welfare, or public property;
 - 2. if such Wireless Facility, Transport Facility, or related Ground Equipment, or portion thereof, is adversely affecting proper operation of Service Poles or other City facilities or equipment; or

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3. if Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Wireless Facilities, Transport Facilities, and related Ground Equipment, or for the use of any Location under Applicable Codes, except to the extent not consistent with Chapter 284.
- B. If the City reasonably determines that there is imminent danger to the public, then the City may, after attempting to contact Provider's Emergency Service Contact under 15.10.720, immediately disconnect, remove, or relocate the applicable Wireless Facilities, Transport Facilities, or related Ground Equipment at the Provider's sole cost and expense in strict accordance with the City's ordinances, except to the extent not consistent with Chapter 284.

15.10.380 Repair by Provider. Provider shall repair any damage to any Service Pole, Public Right-of-Way, City facility or equipment, and the property of any third party resulting from Provider's removal or relocation activities (or any other of Provider's activities hereunder) within 10 days following the date of such removal or relocation, at Provider's sole cost and expense, including restoration of the Service Pole or other City facility or equipment and any portion of the Public Right-of-Way to substantially the same condition as it was immediately before the date Provider was granted 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.

ARTICLE VII. ABANDONMENT OR REMOVAL

15.10.390 Abandonment by City.

- A. If City desires at any time to abandon or remove any Service Pole or other City facility or equipment to which Provider's Wireless Facilities or Transport Facilities are attached, City shall give Provider notice in writing at least sixty (60) days prior to the date on which City intends to abandon or remove such Service Pole or other City facility or equipment. If, following the expiration of the sixty (60) day period, Provider has not removed all of Provider's Wireless Facilities or Transport Facilities, shall have the right to remove same at Provider's expense.
- B. If any Service Pole or other City facility or equipment must be removed by reason of any Federal, State, County, Municipal or other governmental requirement, including, but not limited, to underground conversion, or the requirement of a property owner, Provider shall remove its Wireless Facilities or Transport Facilities from the affected Location, at Provider's expense, within sixty (60) days of receipt of written notice from City. If Provider does not remove its Wireless Facilities or Transport Facilities within the sixty (60) day period, City shall have the right to remove same at Provider's expense.
- C. Unless requested by City, Provider shall not abandon in place any Wireless Facilities, Transport Facilities, or related Ground Equipment, or any portion thereof. Any Wireless Facility abandoned in place at City's request shall become the property of

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City, and Provider will provide appropriate documentation to the City as evidence of the abandonment in favor of the City

15.10.400 Removal by Provider. If Provider removes or relocates a Wireless Facility, Transport Facility, or Ground Equipment at its own discretion, it shall notify the City Engineer in writing not less than 10 business days prior to removal or relocation. Provider shall obtain all Permits required for relocation or removal of its Wireless Facilities, Transport Facilities, or Ground Equipment prior to relocation or removal. In the event a streetlight has been installed on a Node Support Pole, as provided in Section 15.10.340.B. above, Provider will not remove or relocate the Node Support Pole without the City's permission.

ARTICLE VIII. INSPECTION OF FACILITIES

15.10.410 City reserves the right to inspect Wireless Facilities, Transport Facilities, and related Ground Equipment at any time. The City may perform visual inspections of any wireless facilities located in the public right-of-way as the City deems appropriate without notice. If the inspection requires physical contact with any wireless facilities, the City shall provide written notice to the Provider within five (5) business days of the planned inspection. Provider may have a representative present during such inspection. Provider shall reimburse City for the actual cost of an inspection of each individual Wireless Facility or Ground Equipment for each inspection that reveals that Provider is in violation of the provisions of this Ordinance or its Permit.

15.10.420 City's inspections, or the failure to do so, shall not operate to impose upon City any liability of any kind whatsoever or relieve Provider of any responsibility, obligations or liability for Provider's Wireless Facilities, Transport Facilities, or related Ground Equipment, whether assumed under Provider's Permit or otherwise existing.

15.10.430 City shall provide written notice to Provider if an inspection reveals that all, or any part, of Provider's Wireless Facilities, Transport Facilities, or related Ground Equipment are installed, used, or maintained in violation of this Ordinance or Provider's Permit. Provider agrees to bring its Wireless Facilities, Transport Facilities, and related Ground Equipment into full compliance with this Ordinance and its Permit within thirty (30) days of receipt of notice from City. If Provider does not correct the violation(s) within thirty (30) days as required, City may correct the conditions at Provider's expense. When City reasonably believes that the violation(s) poses an immediate threat to the safety of any person, interferes with the performance of City's obligations, or poses an immediate threat to the physical integrity of Service Poles or other City facilities or the Public Right-of-Way, City may perform work and/or take action as reasonably necessary to eliminate such immediate threat without first giving written notice to Provider. City will advise Provider in writing of the work performed or the action taken, including photographic evidence substantiating the violation and its cause. Provider shall pay City for all costs City incurs in performing the work or taking the action.

ARTICLE IX. UNAUTHORIZED OCCUPANCY OR ACCESS

15.10.440 If any of Provider's Wireless Facilities, Transport Facilities, or related Ground

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Equipment are found occupying any portion of the Public Right-of-Way for which no Permit has been issued and is in effect, City, without prejudice to its other rights or remedies, shall notify Provider of such finding. It will be presumed, subject to Provider providing reasonable evidence otherwise, that such non-Permitted facilities have been in place for six months. In such case, Provider shall pay the City for six months of the appropriate fee, as provided in Section 15.10.050. At City's discretion, City may require the immediate removal of the unpermitted facilities and equipment. However, the applicable fees shall continue to accrue, and Provider shall remain responsible for payment of same, until the unpermitted facilities and equipment are removed.

15.10.450 If Provider attaches Wireless Facilities, Transport Facilities, or Ground Equipment after submittal of a Permit Application but prior to City's final determination on the Permit, such premature attachment shall be deemed to be unauthorized. The appropriate fees will immediately become due to the City. If the City determines to deny the Permit Application for such premature attachment, the premature attachments shall be removed; however, the applicable fees shall continue to accrue, and Provider shall remain responsible for payment of same, until the unpermitted facilities and equipment are removed.

15.10.460 No act or failure to act by City with regard to unauthorized occupancy or access shall be deemed as ratification of the unauthorized occupancy or access. If any Permit should be subsequently issued, said Permit shall not operate retroactively or constitute a waiver by City of any of its rights or remedies. Provider shall be subject to all liabilities, obligations and responsibilities for the unauthorized occupancy or access from inception.

ARTICLE X. LIABILITY AND INDEMNIFICATION

15.10.470 City reserves the right to maintain and operate Public Rights-of-Way in the manner it deems best. Provider agrees to use Public Rights-of-Way at Provider's sole risk except for inconvenience, annoyance, or injury to Provider's Wireless Facilities caused by the City's negligence or willful misconduct. City shall exercise reasonable care to avoid damaging Provider's Wireless Facilities and City shall report to Provider the occurrence of any such damage caused by City's employees, agents or contractors.

15.10.480 Indemnification. PROVIDER SHALL INDEMNIFY CITY AS PROVIDED IN CHAPTER 283, SECTION 283.057(a) AND (b), TEXAS LOCAL GOVERNMENT CODE; EXCEPT, HOWEVER, WHERE A CLAIM OR DAMAGE RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

15.10.490 No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of governmental immunity or other provisions of Texas law limiting municipal liability. No indemnification provision contained in this Ordinance under which Provider indemnifies City shall be construed in any way to limit any other indemnification provision contained in this Ordinance or Texas law.

ARTICLE XI. DUTIES AND RESPONSIBILITIES

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15.10.500 City does not warrant the condition or safety of Public Rights-of-Way or Service Poles. Any Provider issued a Permit to occupy Public Rights-of-Way or Service Poles has an obligation to inspect Public Rights-of-Way or Service Poles, prior to commencing any work. By accepting a Permit from the City for occupancy of Public Right-of-Way, PROVIDER ASSUMES ALL RISKS OF ANY DAMAGE, INJURY, OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF PUBLIC RIGHTS-OF-WAY.

15.10.510 By accepting a Permit, Provider warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Provider will undertake under the Permit and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.

15.10.520 CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO PUBLIC RIGHTS-OF-WAY, SERVICE POLES, OR OTHER CITY FACILITIES OR EQUIPMENT, ALL OF WHICH WARRANTIES ARE HEREBY DISCLAIMED. CITY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15.10.530 In the event that Provider shall cause an interruption of service by damaging or interfering with any equipment of City, Provider at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting from the interruption and shall notify City immediately. To the extent permitted by Texas law, Provider shall be liable for all direct costs resulting from such damage and any necessary repairs.

ARTICLE XII. SECURITY

15.10.540 Security Required. Within 30 days of the approval of Provider's initial Permit under this Ordinance, Provider shall maintain and furnish to the City a Security in favor of the City. "Security" means an executed performance bond acceptable to the City, for the purpose of protecting the City from the costs and expenses associated with Provider's failure to comply with its material obligations under and throughout the time of Provider's occupancy of Public Right-of-Way, including but not limited to:

1. the City's restoration of the Public Right-of-Way;
2. the City's removal of any of Provider's Attachments that are abandoned or not properly maintained or that need to be removed to protect public health, safety, welfare, or City property;
3. the City's recoupment of Rental Fees that have not been paid by Provider in over 12 months, after Provider receives reasonable notice from the City of any of the non-compliance listed above and opportunity to cure.

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15.10.550 Amount of Security. The amount of Security shall be at least \$25,000 for each multiple of five (5) Attachments. The security amount shall be prorated based on the number of attachments.

15.10.560 Form of Bond. The Bond, if any, must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability up to \$100,000.00 by a reinsurer listed on the U.S. Treasury list.

15.10.570 In the event the surety or party issuing the Security cancels or decides not to renew or extend the Security, Provider shall obtain, and provide to the City Attorney for approval, a replacement Security with another surety, authorized to do business in Texas, within 30 days of the date the Security has been cancelled or non-renewed. If Provider fails to provide the replacement Security within the 30-day period, the City may immediately suspend licensee from any further performance under this Agreement and begin procedures to terminate for default pursuant to the terms of Section XVI.

15.10.580 In the event the City draws upon the Security, Provider must replenish the amount of the Security within 30 days. The City will notify Provider in writing as a precondition to drawing on, seeking payment under, or executing against the Security.

15.10.590 In the event that Provider shall relinquish its Permits and remove its Attachments from City Facilities or Public Right-of-Way, the City shall return the Security to Provider, or a portion thereof, within 60 days of the removal of the Attachments.

ARTICLE XIII. INSURANCE

15.10.600 At all times during Provider's use and occupancy of City Facilities or Public Right-of-Way, Provider shall keep in force and effect the same insurance coverage as required for Certificated Telecommunications Providers, as set forth in Section 15.08.130.D., City Code.

15.10.610 Prior to the effective date of any Permit issued hereunder, and upon renewal of each insurance policy during the time of Provider's occupancy of the Public Right-of-Way, Provider will furnish City with a Certificate of Insurance evidencing the insurance coverage required by this Ordinance.

ARTICLE XIV. NON-ASSIGNMENTS OF RIGHTS

15.10.620 Permits granted to Provider may not be assigned, transferred, sold, or disposed of by Provider without the prior written consent of City. Notwithstanding the foregoing, the transfer of the rights and obligations of Provider to an Affiliate or to any entity that acquires all or substantially all of Provider's assets in the market defined by the Federal Communications Commission in which City is located by reason of a merger, acquisition, or other business reorganization ("Exempted Transfers") shall not require the consent of City.

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15.10.630 No assignment or transfer, including Exempted Transfers, shall be allowed unless and until the assignee or transferee assumes all obligations of Provider arising under the Permit. Notwithstanding any assignment or transfer, Provider shall remain fully liable under its Permit and shall not be released from performing any of the terms, covenants or conditions of the Permit or this Ordinance without the written consent to the release of Provider by City.

15.10.640 Provider shall not lease its rights under a Permit to an unaffiliated third party, including but not limited to allowing third parties to place Wireless Facilities, Transport Facilities, or Ground Equipment on Public Right-of-Way, or by placing Wireless Facilities on Service Poles or other City facilities for the benefit of such third parties, without City's prior written consent. Any such action shall constitute a material violation of this Ordinance.

ARTICLE XV. FAILURE TO ENFORCE

15.10.650 Failure of City to take action to enforce compliance with any of the terms or conditions of a Permit or this Ordinance, or to give notice, or to declare a Permit terminated, shall not constitute a waiver or relinquishment of any term or condition of the Permit or this Ordinance.

ARTICLE XVI. TERMINATION OF PERMITS

15.10.660 Provider shall be in default of its Permit(s) when Provider fails to comply with any term or condition of this ordinance or its Permit(s), including but not limited to the following circumstances:

1. Construction, operation or maintenance of Provider's Wireless Facilities in violation of law or in aid of any unlawful act or undertaking; or
2. Construction, operation or maintenance of Provider's Wireless Facilities after any authorization required of Provider has lawfully been denied or revoked by any governmental or private authority; or
3. Construction, operation or maintenance of Provider's Wireless Facilities without the required insurance coverage; or
4. Provider's Wireless Facilities, Transport Facilities, or Ground Equipment are found occupying any portion of any of Public Right-of-Way for which no Permit has been issued and is in effect; or
5. Failure of Provider to timely cure a violation of any Applicable Standard or provision of this Ordinance; or
6. Nonpayment of any undisputed amount due under this Ordinance.

15.10.670 City will notify Provider in writing of any default condition(s) pursuant to Section 15.10.660 above. Provider shall take immediate corrective action to eliminate any such

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condition(s) within thirty (30) days of receipt of notice and shall confirm in writing to City when the noticed condition(s) has ceased or been corrected. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under Provider's control, the period of time in which Provider must cure the violation will be extended for such additional time reasonably necessary to complete the cure, provided that: (1) Provider has promptly begun to cure; and (2) Provider is diligently pursuing its efforts to cure. If Provider fails to discontinue or correct such condition(s) and/or fails to give the required confirmation within the foregoing time periods, City may take any remedy available under the law, including immediately terminating any Permit.

15.10.680 Upon termination of a Permit pursuant to this Article, Provider shall remove the affected Wireless Facilities, Transport Facilities, or Ground Equipment within sixty (60) days after termination, at Provider's sole expense, and shall surrender the Public Right-of-Way to City in the same condition it was in on the date the Permit was granted for same, excepting ordinary wear and tear. If Provider fails to remove the equipment within sixty (60) days of termination of the Permit, City shall have the right to remove the equipment at Provider's expense.

15.10.690 Provider shall be liable for and pay all fees and charges pursuant to this Ordinance to City until Provider's Wireless Facilities, Transport Facilities, or Ground Equipment are actually removed.

15.10.700 After the termination of all Permits, Provider's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Provider's Wireless Facilities, Transport Facilities, or Ground Equipment Attachments as provided for in this Ordinance or applicable law.

15.10.710 If Chapter 284 of the Local Government Code, or any part thereof is at any time, in full or in part, revoked, found to be unconstitutional, struck down, preempted or otherwise becomes void or invalid, then Permits granted under this Ordinance shall automatically terminate, unless an extension is granted by the City. This section shall constitute Notice that in such case, all Network Nodes are to be removed within ninety (90) days from the event that affects Chapter 284. The Parties agree they will negotiate in good faith to assure an ease of transitions as to those parts of Chapter 284 that have been adjudicated as unenforceable, as well as continued compliance with those parts that may remain enforceable, if any.

ARTICLE XVII. EMERGENCY CONTACT

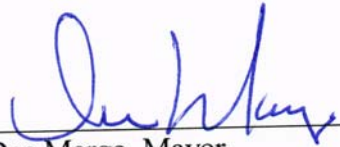
15.10.720 Provider shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where City can contact Provider to report damage to Provider's Wireless Facilities, Transport Facilities, or Ground Equipment or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to City's concerns and requests. Failure to maintain an emergency contact as required shall subject Provider to a penalty of \$100 per incident, and shall eliminate City's liability to Provider for any actions that City deems reasonably necessary given the specific circumstances.

SECTION 2. Except as amended herein, Title 15 (Public Services) shall remain in full force and effect.

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ADOPTED THIS 22nd day of August, 2017.

CITY OF EL PASO

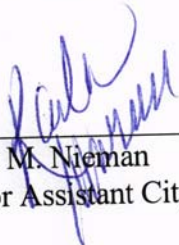

Dee Margo, Mayor



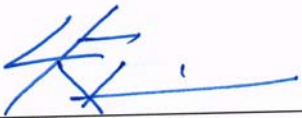
ATTEST:


Laura Prine
Interim City Clerk

APPROVED AS TO FORM:


Karla M. Nieman
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Larry F. Nichols, Director
Planning and Inspections Department

ORDINANCE NO. 018717
15-1004-645 | 712273 Final Floor Amendments
Ordinance Creating New Chapter for Wireless in the ROW
KMN