

ORDINANCE NO. 4503

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, AS AMENDED, BY DELETING ARTICLE III IN ITS ENTIRETY AND ADDING A NEW ARTICLE III THEREBY ESTABLISHING RULES AND REGULATIONS GOVERNING THE USE AND OCCUPANCY OF THE CITY'S RIGHTS-OF-WAY BY PROVIDERS OF UTILITY, TELECOMMUNICATIONS, WIRELESS AND CABLE SERVICES; PROVIDING FOR CONSTRUCTION WORK REGULATION BY CITY; PROVIDING FOR REGISTRATION, LICENSING AND OTHER APPROVALS; REQUIRING INSURANCE; REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; ADOPTING A DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO TEXAS LOCAL GOVERNMENT CODE, CHAPTER 284; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 15 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by deleting Article III in its entirety and adding a new Article III to read as follows, in all other respects said Code and Chapter to remain in full force and effect.

STREETS AND SIDEWALKS

ARTICLE III. RIGHTS-OF-WAY RULES AND REGULATIONS; REGISTRATION, PERMIT AND LICENSE REQUIRMENTS

DIVISION 1. DEFINITIONS

Sec. 15-191. Definitions.

In this article:

Abandon and its derivatives mean the facilities installed in the 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) that have been left by user in an unused or non-functioning condition for more than 120 consecutive calendar days unless, after notice, user has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

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

Applicable codes mean:

- (1) All applicable Mesquite Code of Ordinance provisions, policies and guidelines;
- (2) All applicable engineering and safety standards governing the installation, maintenance and operation of facilities and the performance of work in or around right-of-way and includes the most current version of the National Electric Safety Code, the National Electrical Code, the Texas Health and Safety Code and regulations of the Occupational Safety and Health Act; and
- (3) Any applicable lawful rules, requirements or orders now in effect or hereafter issued by the City or authority with jurisdiction.

Applicant means the owner of facilities to be constructed in the rights-of-way who makes application for a right-of-way permit hereunder.

City means the City of Mesquite, Texas.

Collocation means the installation, mounting, maintenance, modification, operation or replacement of network nodes on or adjacent to a pole.

Concealment or *camouflaged* means covered, hidden, disguised, painted, camouflaged or otherwise concealed so that the facility blends into the surrounding environment or supporting area and is visually unobtrusive.

Decorative poles mean streetlight poles specially designed and placed for aesthetic purposes and on which no appurtenances or attachments are allowed other than specially designed informational or directional signage or temporary holiday or special event attachments.

Department means the Public Works Department of the City of Mesquite.

Design district means an area zoned or otherwise designated as such by the Code.

Director means the Director of the Public Works Department or designee.

Distributed antenna system means a type of “network node.”

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

Emergency means a reasonably unforeseen situation presenting an imminent hazard to personal or public health, safety or property, and the work necessary to address a service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergencies under this article.

Facilities means personal property, owned by a provider of utility, telecommunications, wireless or cable television services including but not limited to pipe, conduit, ducts, cables, wires, lines, towers, wave guides, optic fiber, microwave, any associated converters and all equipment located in the rights-of-way.

Ground equipment means any part of a wireless facility or associated equipment that is located on the surface of the ground.

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

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

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 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 means work in the 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 permitted location in the right-of-way or its physical position on a pole, except for those alterations or changes that are exempted from requiring a permit under Chapter 284.

Municipal park means an area that is designated by the Code as a public park for the purpose of recreational activity.

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

Network node means equipment at a fixed location that enables wireless communications between a user's equipment and a communications network. A small cell is a type of network node. The term *network node*:

- (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; and
 - c. Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (2) Does not include:

- a. An electric generator;
- b. A pole; or
- c. A macro tower.

Network provider (“*provider*”) means:

- (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 means a pole installed for the purpose of supporting a network node.

Permit means a written authorization for the use of the right-of-way and/or easement pursuant to the Rights-of-Way Ordinance.

Person means natural persons (individuals), corporations, companies, associations, partnerships, firms, limited liability companies, joint ventures, joint stock companies or associations, and other such entities, and includes their lessors, trustees and receivers.

Pole means a service pole, municipally-owned utility pole, node support pole or utility pole.

Pre-permit survey shall mean 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 the 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 private grantor and grantee and their successors and assigns, as opposed to an easement for the benefit of the public.

Public nuisance means a condition dangerous to the health, safety or welfare of the general public.

Residential area means right-of-way that is adjacent to a street or thoroughfare that is not more than 50 feet wide and adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

Right-of-way means the area on, below or above a public roadway, highway, street,

median, bridge, public sidewalk, parkway, alley, access, trail, tunnel, bridge, waterway or utility easement in which the municipality has an interest. The term does not include a private easement or the airwaves above a public right-of-way.

Rights-of-Way Ordinance means the “Rights-of-Way Rules and Regulations,” Article III, Chapter 15 of the Code, as amended.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the public right-of-way, including but not limited to gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines or wastewater.

Service pole means a pole, other than a municipally-owned utility pole, owned or operated by a municipality and located in a 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.

Service provider means any person providing a service, as defined in this article including but not limited to providers of wholesale or retail electric utility, gas utility, telecommunications, cable, water utility, storm water utility, wastewater utility or wireless services, regardless of whether the user is publicly or privately owned or required to operate within the City pursuant to a franchise.

Street means only the paved portion of the right-of-way used for vehicular travel and associated structures such as curbs, being the area between the outside of the curb to the outside of the opposite curb, or the area between the two 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.

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 which traffic is alternately directed to stop and to proceed.

Transport facility means each transmission path physically within a 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 compliance areas means an area where poles, overhead wires and associated overhead or above-ground structures have been removed and buried, or have been

designated or approved for burial underground pursuant to this Design Manual and other City ordinances, including but not limited to zoning and subdivision regulations, state law, private deed restrictions and other public or private restrictions that prohibit installing above-ground structures in a right-of-way.

Use and occupancy means the acquisition, installation, construction, reconstruction, maintenance or repair of any facilities within the rights-of-way for any purpose whatsoever.

User means a person, including a service provider, who uses or occupies, or commences, facilitates or performs construction in, upon above, upon or beneath the right-of-way in a manner governed by this chapter and includes user's representatives, designated agents, contractors and subcontractors, if applicable, unless otherwise indicated.

Utility pole means a pole that provides:

- (1) Electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (2) Services of a telecommunications provider, as defined by Chapter 284 and Section 51.002 of the Texas Utilities Code.

Wireless facilities mean network nodes, node support poles, micro network nodes, distributed antenna systems, microwave communications or other wireless facilities and ground equipment as defined herein and in Chapter 284.

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.

DIVISION II. REGISTRATION, RIGHT-OF-WAY PERMIT, LICENSE AND OTHER REGULATIONS

Sec. 15-192. General provisions; Director's authority.

- (a) No person shall use or occupy rights-of-way within the City for any purpose, including the provision of services, except in compliance with this article. All construction activities in, on and under the rights-of-way shall be undertaken in compliance with the provisions of this article.
- (b) The provisions of this article shall apply to the use and/or occupancy of the rights-of-way by a person under the authority granted by a franchise agreement or ordinance as if fully set forth in the franchise agreement or ordinance. The express terms of this article will prevail over conflicting or inconsistent provisions in a franchise agreement or ordinance unless such franchise agreement or ordinance expresses an explicit intent to waive a requirement of this article.
- (c) The provisions of this article shall be liberally construed in favor of the City in order to effectuate the purposes and objectives of this article and to promote the public interest.

- (d) The Director is authorized to administer and enforce the provisions of this article, and to promulgate regulations, including but not limited to engineering, technical and other special criteria and standards, to aid in the administration and enforcement of this article that are not in conflict with this article, this Code or state or federal law. To further aid in the administration and enforcement of this article, the Director is also authorized to promulgate regulations and operational standards governing the use of the public right-of-way by user, so long as those regulations and standards are not in conflict with this article, this Code or state or federal law.

Sec. 15-193. Registration of users and occupants of rights-of-way.

(a) *Registration required.*

- (1) Except for network providers, persons seeking to use or occupy the rights-of-way shall register with the City prior to initiating use or occupancy.
- (2) All registrations must be renewed annually on or before January 31 of each calendar year using forms developed by and available from the City. For persons with a current franchise from the City, the franchise will be evidence of renewal. If a registration is not renewed, the facilities will be deemed to have been abandoned 90 days after the date of written notice was sent to the facility owner by the City.
- (3) In addition to registering and obtaining permits, persons shall also obtain a franchise or license from the City in accordance with City Charter or ordinances prior to entering into or use of the rights-of-way except:
 - a. Certificated telecommunications providers providing access lines, as defined in Chapter 283 of the Texas Local Government Code, and
 - b. Network providers, to the extent exempted from obtaining a franchise or license under Chapter 284 of the Texas Local Government Code.

(b) *Purpose of registration.* The purpose of registration under this section is to:

- (1) Provide the City with accurate and current information concerning the users and occupants of the rights-of-way;
- (2) Assist the City in enforcement of this article; and
- (3) Assist the City in monitoring compliance with applicable laws.

(c) *Contents of registration.* The registration shall include:

- (1) The name of the user and occupant of the rights-of-way, including the following:
 - a. Any business name, assumed name or trade name the user operates under or has operated under within the past five years.

- b. If the user is a certified telecommunications provider, the certificate number issued by the Texas Public Utility Commission, and if so, a statement as to whether the user is providing access lines as defined in Section 283.002(1) of the Texas Local Government Code.
 - c. The ordinance number of any franchise or license issued by the City that authorizes the user to use the public right-of-way.
 - d. Identification of whether the user is a network provider covered by Chapter 284 of the Texas Local Government Code.
- (2) The names, addresses, email addresses and telephone numbers of at least two people who will be contact persons for the user and the officer or agent designated to receive service of process in behalf of the user.
 - (3) Proof of insurance as required in Section 15-198.
 - (4) A description of the type of facilities in the rights-of-way, such as electric conduit, fiber-optic cables, wire cables, coaxial cables, network nodes, node support poles.
 - (5) Digital system maps of the subject facilities in a form acceptable to the City.

Sec. 15-194. Use and occupancy – regulation by City.

- (a) *Access by user.* User's access to the rights-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 user's access shall be as determined by the City. For all activities that impact traffic, user's access shall be conditioned upon City approval of user's traffic control plan. User shall maintain written logs of each instance when user has accessed the rights-of-way; such log shall be made available to the City upon reasonable request by the City.
- (b) *Temporary rearrangement or removal of aerial facilities.* Upon written request a user shall remove, raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the person requesting them, and the user may require payment in advance. The user shall make such temporary arrangement or removal, as soon as practicable, but in all events such rearrangement or removal shall be accomplished within 45 calendar days after notification by moving permit holder.
- (c) *Tree maintenance.* The user, its contractors and agents shall obtain a permit from the City Engineer to trim trees upon and overhanging the rights-of-way to prevent trees from coming in contact with the user's facilities. All trimming shall be done in consideration of the health of the trees and shall be limited to the minimum amount necessary to eliminate the interference with the facilities. When directed by the City, tree trimming shall be done under the supervision and direction of the Parks Department of the City or under the supervision of the City's delegated representative. Under normal circumstances, users shall notify adjacent residents and occupants at least 48 hours in

advance of any trimming. Any tree trimmings generated by the user, its contractors or agents shall be removed within 24 hours. Should the user, its contractors or agents fail to timely remove such trimmings, the City may remove same or have them removed and shall bill user for all costs incurred, which costs shall be promptly paid by the user. Nothing herein shall be construed to grant a user the right of access to private property. The City shall not be liable for any damages, injuries or claims arising from the user's actions under this subsection.

- (d) *City work.* The City shall have the right at all times to lay, and to permit to be laid, sewer, gas, water and other pipelines or cable and conduits, as well as drainage pipes and channels and streets and to do and permit to be done any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any rights-of-way occupied by a user, and to change any curb or sidewalk or the grade of any street and to maintain all of the City's facilities.
- (e) *Removal of facilities.* Whenever it shall be necessary to require a user to relocate its facilities to permit the construction, reconstruction, maintenance, repair, widening or straightening of a right-of-way or construction, reconstruction, maintenance or repair of any communications, traffic control devices, water, sewer or stormwater facilities by the City, the City shall give the user 90 calendar days' notice of such requirement. Such relocation shall be made by the user promptly with consideration given to the magnitude of such alterations or changes without claim for reimbursement or damages against the City. If any such requirements impose a financial hardship upon the user, the user shall have the right to promptly present alternative proposals to the City, and the City shall give due consideration to any such alternative proposals. If the City determines that the preservation and protection of the public health and safety require removal of facilities from the rights-of-way that are being abandoned, the City shall require user to remove its facilities entirely from the abandoned rights-of-way at no cost to the City.
- (f) *Repair.* Whenever the installation, placement, attachment, repair, modification, removal, operation, use or relocation of user's facilities or improvements, or any portion thereof, is required or permitted under this article, and such installation, placement, attachment, repair, modification, removal, operation, use or relocation causes any service pole, City facility or equipment, or any portion of the 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, user, at its sole cost and expense, shall promptly repair and return such service pole, City facility or equipment, or right-of-way to its original condition. If user does not perform such work as described in this paragraph, then the City shall have the option, upon 15 days' prior written notice to user, 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 user and to charge user for the reasonable and actual costs incurred by the City. User shall reimburse the City for the costs within 30 days of receiving an invoice from the City.
- (g) *Public safety.* The City retains the right to move any facilities within the rights-of-way to cure or otherwise address a public health or safety emergency. The City shall cooperate to the extent possible with the user in such instances to assure continuity of service and to afford to the user the opportunity to relocate the facilities.

(h) *Abandonment of facilities.* Whenever a user intends to abandon any of its facilities within the rights-of-way, it shall submit to the Director written notification of such intent, describing the facility to be abandoned and the date of the proposed abandonment. Such notification shall include a statement of waiver of claims against the City for subsequent damages to abandoned facilities. City may require the user, within 60 days of notice from the City, at the user's expense:

- (1) To remove the facility from the rights-of-way; or
- (2) To modify the facility in order to protect the public health and safety or otherwise serve the public interest.

A user shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from the City and shall restore any affected rights-of-way to their former state at the time such facilities and equipment were installed. In removing its facilities structures and equipment a user shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as existed prior to removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article shall continue in full force and effect during the period of removal and until full compliance by a user with the terms and conditions of this section. If user does not remove its facilities within 60 days of receiving notice from the City, the City shall have the option of removing the facilities on behalf of the user and to charge user for the reasonable and actual costs incurred by the City. User shall reimburse the City for the costs within 30 days of receiving the invoice from the City.

- (i) *Graffiti abatement.* As soon as practical, but not later than 14 days from the date user receives notice thereof, user shall remove all graffiti on any of its facilities. The foregoing shall not relieve user from complying with any visual blight ordinance or regulation.
- (j) *Public nuisance abatement.* The City may require the removal or abatement of any facility determined by the City to cause a public nuisance. The City shall give user written notice of the required removal or abatement. No later than 30 calendar days after the user receives written notice, the user shall remove facility or abate the public nuisance to the satisfaction of the City. If the user notifies the Director in writing within such 30-day period requesting additional time for such removal or abatement, or that the user is unable to remove or abate the facility for specified reasons, the Director may, but is not required, to grant additional time to the user or negotiate alternate arrangements with the user. If the user does not so notify the City and fails or refuses to act, the City may remove or abate the facility, at the sole cost and expense of the user, all without compensation or liability for damages to the user. User shall reimburse the City for the costs of public nuisance removal or abatement within 30 days of receiving an invoice from the City.

Sec. 15-195. Right-of-way permits.

- (a) *Permit required.* No person shall perform any construction, repairs, maintenance or installation of facilities or improvement in the rights-of-way without obtaining a right-of-way permit from the City. Application for the permit shall be made by the owner or authorized representatives of the facilities or improvements. The permit application must be completed and signed by a representative of the owner of the facilities or improvement to be constructed. During the term of the permit the user shall be liable for the acts or omissions of any entity involved, directly or indirectly, in the construction, reconstruction, maintenance, repair or installation of the user's facilities or improvement to the same extent as if the acts or omissions of such entity were the acts or omissions of the user. The provisions of this section are solely for the benefit of the City and the user, and are not intended to create, grant or affect any rights, contractual or otherwise, to or of any other person.

- (b) *Emergency exception.* Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, the Department shall be notified within two business days of any construction related to an emergency response including the provision of a reasonably detailed description of the work performed in the rights-of-way. An updated map of any facilities that were relocated, if applicable, shall be provided within 90 calendar days.

- (c) *Application required.*
 - (1) An application shall be submitted to the Engineering Division for a permit pursuant to this article. By submitting an application for a permit, the applicant certifies that the application and proposed work comply with all requirements of this article and all applicable laws.
 - (2) A permit application shall contain all required information in compliance with this article and other applicable right-of-way regulations. No application shall be complete without submission of the applicable permit fee.

- (d) *Information in application.* An application for a right-of-way permit shall contain the following information:
 - (1) The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction.
 - (2) Engineering plans of sufficient scale and detail to clearly show the type and location of the work proposed in the right-of-way and to clearly show existing facilities within the right-of-way in the area or route of construction. Paper and digital copies of these engineering plans will be required for larger projects where these plans are necessary for proper review.
 - (3) Detail of the location of all rights-of-way and utility easements that applicant plans to use.
 - (4) Detail of all existing City utilities in relationship to applicant's proposed route.

- (5) Detail of what applicant proposes to install such as pipe size, number of interducts, valves and similar information.
 - (6) Detail of plans to remove and replace asphalt or concrete in streets (include standard construction details).
 - (7) Drawings of any bores, trenches, handholes, manholes, switch gears, transformers, pedestals, etc., including depth.
 - (8) Handhole and/or manhole typicals of type of manholes and/or handholes applicant plans to use or access.
 - (9) A description of trench safety measures to be utilized in all excavations as required by federal, state or local requirements.
 - (10) The names and addresses of persons authorized to act on behalf of the applicant with respect to the application. If known, 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 the construction.
 - (11) A description of the construction and installation methods to be employed for the protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way and the estimated dates and times work will occur, all of which (methods, dates, times, etc.) are subject to the approval of the Director.
 - (12) Documents demonstrating compliance with insurance and bonding requirements.
- (e) *Permit fee.* The following permit fees are required:
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| (1) For certificated telecommunications providers providing access lines (as defined in Chapter 283, Local Government Code): | no fee |
| (2) For persons occupying the rights-of-way of the City under a franchise ordinance or agreement: | no fee |
| (3) Transport facilities: | no fee |
| (4) Network node | |
| For each application containing up to five network nodes | \$500 |
| For each additional node beyond five | \$250 |
| (5) Node support pole and other poles | \$1000 per pole |
| (6) For all other applicants: | \$250 |

- (f) *Applicant in non-compliance.* The City may refuse to issue a permit to applicant if City determines that the applicant is presently in a state of non-compliance with this article or if applicant has failed to adequately respond to any notice or request for action from the City under this article. The City may continue to refuse to issue a permit until applicant has corrected its non-compliance or has otherwise adequately responded to such notice or request for action from the City.

Sec. 15-196. Construction work – regulation by City.

All construction shall comply with all applicable local, state and federal laws, including the following:

- (a) *Existing facilities.* Before initiating construction on rights-of-way, a user will make all reasonable efforts to attach its facilities to existing poles and to share existing conduit space as appropriate. Nothing contained in this article shall be construed to require or permit the attachment on or placement in a user's facilities of any electric light or power wires, or facilities or other systems not owned by the user. If the City desires to attach or place electric light or power wires, communications facilities or other similar systems or facilities in or on the user's facilities, then a further separate, non-contingent agreement with the user shall be required. Nothing contained in this article shall obligate the user to exercise, or restrict the user from exercising, its right to enter voluntarily into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with any person authorized to operate in the rights-of-way of the City.
- (b) *Traffic disruptions.* The user shall endeavor to minimize disruptions to the efficient use of the rights-of-way by pedestrian and vehicular traffic, and rights-of-way shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. All lane closures must comply with the Texas Manual on Uniform Traffic Control Devices.
- (c) *Pole placement.* All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber and cables placed and constructed by the user in the construction and maintenance of its facilities in the City shall be subject to the lawful, reasonable and proper control, direction and/or approval of the City.
- (d) *Work in accordance with permit.* All construction and installation in the rights-of-way shall be in accordance with the permit for the facilities. The Director shall be provided access to the work and to such further information as the Director may reasonably require to ensure compliance with the permit. A copy of the right-of-way permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the City at all times when construction or installation work is occurring.
- (e) *Time for completion.* All construction or installation work authorized by permit must be completed in the time specified in the right-of-way permit. If the work cannot be completed in the specified time periods, the user may request in writing an extension

from the Director. So long as the written extension request is made before the permit has expired, work may continue pending a decision by the Director on the extension request.

- (f) *Prior notification.* The Department must be notified 24 hours in advance that construction is ready to proceed by either the user, its contractor or other representative. If not previously provided, such notice shall include information required in Section 15-195(d)(12).
- (g) *Signage.* All utility signage and markers shall be of the flexible vertical fiberglass Carsonite-type and no more than 48-inches above grade, or stickers and plaques placed on existing facilities such as poles, pedestals and cabinets, or placement of marker buttons on curbs, sidewalks or pavement. Generally, separate signage is discouraged. Signage shall be flexible so that it does not present a danger to pedestrians, bicyclists and motorists if the signage is impacted at speed. Metal poles and signs are prohibited. Damaged, dilapidated, defaced or obsolete signage is prohibited and must be removed within 15 days from receipt of notice by the City. Except as required by law, user shall not post any other signage or advertising at the location, including on a pole, wireless facility, ground equipment cabinet or back-up battery. Signage must be updated by the user within 90 days of a company name change of the user. An information sign will be posted at both ends of the construction area unless other posting arrangements are approved or required by the Director.
- (h) *Accessible routes.* Obstructions or protrusions of utility poles, guy lines, pedestals, cabinets or other utility facilities are prohibited over a sidewalk, ramp, trail or other transportation facility if they hinder or prevent full use of the facility or impede full access.
- (i) *Bollards.* Use of bollards in City right-of-way is prohibited. Any facility at risk of impact by the travelling public shall be relocated to a safer location rather than be protected by bollards.
- (j) *Visibility obstructions.* No facility shall be installed in violation of Chapter 9, Article X, Sections 9-305 through 9-308 related to sight visibility and view obstructions.
- (k) *Erosion and stormwater controls.* Erosion control measures (*e.g.*, silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins. User shall be responsible for stormwater management erosion control that complies with City, state and federal guidelines. Upon request user may be required to furnish documentation submitted or received from federal or state governments.
- (l) *Construction traffic control, barricading and signing.* The utility company and their contractors and subcontractors are responsible for design and implementation of a plan during construction and maintenance operations for traffic control, barricading and signage that shall, at a minimum, meet the requirements of the current "Texas Manual of Uniform Traffic Control Devices," Sections 11-104 and 11-105 of this Code, and the City of Mesquite "Work Zone Traffic Control Guidelines," Mesquite City Code Section 9-86. No alley or street shall be closed without 48 hours' notice to the assigned Public Works construction inspector.

- (m) *Obstructions prohibited.* Facilities shall not obstruct, impede or hinder pedestrian or vehicular travel or public safety on a right-of-way, or render right-of-way noncompliant with applicable codes, including the Americans with Disabilities Act. The City's minimum right-of-way dimensions shall be maintained.
- (n) *Damage to utilities.* User, contractor or subcontractor shall notify the Department immediately of any damage to other utilities either City or privately owned.
- (o) *Cuts.* Except in the event of an emergency, when a street or sidewalk cut is required, prior approval must be obtained from the Department and all requirements of the Department shall be followed. Repair of all street and sidewalk removals shall be made promptly to avoid safety hazards to vehicular and pedestrian traffic.
- (p) *City utilities.* Installation of facilities must not interfere with City utilities in particular gravity dependent facilities.
- (q) *Cable or facility burial depth.* All conductor burial depths shall comply with Section 353.D of the National Electrical Safety Code, approved by the American National Standards Institute. Minimum depth for voltages 0 to 600 volts is 24 inches below the bottom of the edge of pavement for streets with curbs and gutters or below the roadway ditch flowline grade for streets without curbs and gutters. New non-municipal facilities must be installed to a depth approved by the Department.
- (r) *Boring.* All directional boring shall have a locator place bore marks and depths while boring is in progress. The locator shall place a mark at each stem with a paint dot and shall mark the depth of at least every other stem.
- (s) *Working hours.* Except in emergencies, the working hours in the rights-of-way are the time period between one hour after sunrise and until sunset Monday through Friday. Non-emergency work that needs to be performed outside these hours must be approved in advance by the Department. Any non-emergency work performed on Saturday must be approved 48 hours in advance by the Department. Directional boring is permitted only Monday through Friday from 7:00 a.m. to 6:00 p.m. unless approved in advance by the Department. No work will be done except for emergencies on Sundays or City holidays.
- (t) *Construction inspection.* The City's Public Works construction inspector shall be notified prior to any trench backfilling or pavement repair within a City right-of-way so that a proper inspection can be made. If City inspection is required outside normal working hours, users shall pay an additional overtime inspection fee based upon a calculation of the actual additional cost to the City of the inspection work required. Upon request, documentation of the overtime inspection fee shall be provided to user before the inspection.
- (u) *Line locations.* Users working in the rights-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the rights-of-way prior to any excavation. Use of Geographic Information System or the plan of record does not satisfy this requirement. User shall be responsible for verifying the location, both horizontal and vertical, of all affected facilities prior to any excavation or boring with the exception of work involving lane closures as set forth above. User shall provide location data of its

facilities to all other utilities when requested to do so by other utilities preparing to work in the area of such facilities. Requests for location of City-owned utilities shall be made no later than 48 hours in advance of construction. The user shall properly mark the proposed location of its facilities in order that City locators can appropriately mark City-owned utilities. Only water soluble paint is permitted for markings using paint.

- (v) *Manholes/handholes.* Placement of all manholes and/or handholes must be approved in advance by the Department. Handholes or manholes shall not be located in sidewalks unless approved by the Department.
- (w) *Pumping.* Construction that requires pumping of water or mud shall be contained in accordance with City ordinances, federal and state law, and the directives of the Department.
- (x) *Restoration.*
 - (1) Restoration of rights-of-way shall be to the reasonable satisfaction of the Department. Restoration shall be made in a timely manner as specified by approved Department schedules and to the satisfaction of the Director.
 - (2) If restoration is not satisfactory or is not timely performed, 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 as required herein is complete. If restoration work is not completed in a timely manner, the user is subject to the criminal penalties described in Section 15-205, and the additional following procedures shall be followed:
 - a. The City shall provide the user with reasonable notice of failure to act and request restoration.
 - b. If the user continues to delay, the Director and the user will jointly review the restoration request in an expeditious manner to establish a mutually acceptable completion date for the restoration.
 - c. If the user continues to delay or does not meet the revised completion date, the Director shall provide not less than five calendar days written notice to the user advising of the City's intent to perform the restoration.
 - d. If, after expiration of the written notice required by the preceding sentence, the user continues to delay, the City shall have the right to perform the restoration. The City shall not be liable to the user for any damage to any of its facilities and shall not be liable in any event for any consequential damages relating to service interruptions. If the restoration performed by the City involves the construction or improvement of base or pavement of rights-of-way, user shall not thereafter disturb such rights-of-way for a period of three years after completion of such improvements except when necessary in the event of an emergency.

- (3) User shall warrant all pavement repairs for a period of two years after restoration has been complete. The restoration shall include but not be limited to:
 - a. Replacing all ground cover with the type of ground cover damaged during work, or better, by sodding as directed by the Department;
 - b. Installation of all manholes and handholes as appropriate;
 - c. Filling in or daily covering all bore pits, potholes, trenches or any other holes unless other safety procedures are approved by the Department;
 - d. Leveling of all trenches and backhoe lines (all trench backfill must comply with density requirements per the City standards and the City must be provided with a copy of all density reports); and
 - e. Restoring all landscaping, ground cover and sprinkler systems to the original condition.

- (y) *Nonresidential placements.* In nonresidential zoning districts, facilities shall be located between tenant spaces, storefront bays or other adjoining properties where their shared property lines intersect the right-of-way.

- (z) *Colors and finishes.* All facilities installed in the 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.

- (aa) *Courtesy and proper performance.* User shall make citizen satisfaction a priority in using the 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 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 or designee, user is not interacting in a positive and polite manner with citizens, the City Manager may request user to take all remedial steps to conform to these standards.

- (bb) *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.

- (cc) *Responsibility of user.* Users are responsible for the workmanship and any damages by contractors or subcontractors. A responsible representative of the user shall be available to the Department at all times during construction. The provisions of this section are solely for the benefit of the City and the user and are not intended to create, grant or affect any rights, contractual or otherwise, to or of any other person.

Sec. 15-197. Indemnification.

(a) *General provisions.*

- (1) Except for certified telecommunications providers and network providers, as defined in Chapters 283 and 284, respectively, of the Texas Local Government Code, users shall indemnify and hold the City, its officers and employees harmless from all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorneys' fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or caused by the user's negligent act, error or omission of the user, any agent, officer, director, representative, employee or subcontractor of the user, and their respective officers, agents, employees, directors and representatives while in the exercise of or performance of the rights or duties under this article. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the City, its officers or employees in instances where such negligence causes personal or bodily injury, death or property damage. In the event the user and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- (2) Users who are certificated telecommunications providers and network providers as defined in Chapters 283 and 284, respectively of the Texas Local Government Code, as amended, shall indemnify the City as provided in Section 283.057, Texas Local Government Code, as amended.

- (b) *Notice.* The City shall give the user written notice of any claim for which the City seeks indemnification. The user shall have the right to investigate, defend and compromise any such claim. The user shall promptly advise the City in writing of any claim or demand against the City or the user known to the user related to or arising out of the user's activities under this article.

(c) *Financial security.*

- (1) In the event the Director determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, or the health and safety of the public, then the Director may require a user to post financial security in an amount not to exceed one hundred thousand dollars (\$100,000.00). The Director shall consult with the City's Finance Director prior to imposing the financial security requirement on a user. Factors to be considered in determining reasonable grounds may include, but are not limited to a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article, a failure to provide prompt resolution of claims or the failure to comply with this article. If three years pass from the date that the Director requires financial security from a user and it has not been necessary for the City to seek

performance under the financial security, then financial security will no longer be required pursuant to this section unless the Director makes an additional determination that such security is required. The form of financial security shall be, at the user's option, one of the following:

- a. A surety bond from a surety company authorized to do business in the State of Texas with a registered agent for service in Dallas County, Texas. All bonds shall be on City approved forms;
 - b. A cash deposit.
- (2) Security provided by a cash deposit shall be made to an interest bearing account during the term of the deposit. At the end of the deposit period, all unused amounts, plus interest, shall be refunded to the user.
 - (3) Failure of the user to comply with its obligations under this article or the permit, as determined by the City, shall entitle the City to draw against the financial security required by this section. The rights reserved to the City with respect to the financial security are in addition to all other rights of the City whether reserved by this article or authorized by law, and no action, proceeding or exercise of a right with respect to such financial security shall affect any other rights the City may have.
 - (4) Financial security provided by a surety bond shall not expire or be materially altered without 45 calendar days written notice and without securing and delivering to the City a substitute, renewal and replacement bond in accordance with this article, consistent with the replacement and continuous coverage requirements for insurance found in Section 15-198 hereof. In the event the City draws monies against the bond, City shall so notify user. Within 10 calendar days after such notification the user shall pay such funds to the bonding company as necessary to bring the bond back to the original or adjusted principal amount where it shall continue to be maintained at all times. The bond shall contain the following endorsement:

“It is hereby understood and agreed that this bond may not be reduced, altered or canceled by the user or the bonding company without forty-five (45) calendar days written notice by certified mail to the City.”
 - (5) If the City draws monies out of a cash deposit, the City shall so notify user. Within 10 calendar days after such notification the user shall deposit additional funds in such account sufficient to bring the balance available back to the original or adjusted principal amount.

Sec. 15-198. Insurance requirements.

- (a) *Certificate of insurance.* In order to comply with the registration requirements of this article and prior to the issuance of a right-of-way permit, the user and all contractors and

subcontractors performing work for user shall furnish a completed certificate of insurance to the Department which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Neither the registration nor the right-of-way permit shall be issued until such certificate shall have been delivered to the Department, and no officer or employee shall have the authority to waive this requirement.

- (b) *Coverage amounts.* A user shall obtain and maintain in full force and effect for the duration of the use and occupancy of the rights-of-way or of the work to be performed under the permit, respectively, at the user’s or user’s sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated “A-(VII)” in the Best’s Key Rating Guide in the following types and in no less than the following amounts as evidenced by a certificate of insurance filed with the City:

<u>TYPE</u>	<u>AMOUNT</u>
(1) <u>Workers’ Compensation/ Employers’ Liability</u>	<u>Statutory:</u> \$100,000.00 per occurrence
(2) <u>Commercial (Public) Liability, Including But Not Limited To:</u>	<u>Bodily Injury:</u> \$1,000,000.00 per person \$2,000,000.00 per occurrence and
a. Premises/Operations	<u>Property Damage:</u>
b. Independent Contractors	\$1,000,000.00 per occurrence with
c. Personal Injury	<u>General Aggregate</u> of
d. Products/Completed Operations	\$2,000,000.00
e. Contractual Liability (Insuring Below Indemnity Provisions)	
(3) <u>Automobile Policy:</u>	<u>Combined Single Limit:</u> \$1,000,000.00

- (c) *Required provisions.* All insurance contracts and certificates of insurance will contain the following required provisions:

- (1) A cancellation provision in which the insurance company is unconditionally required to notify the City in writing not fewer than 30 days before canceling, failing to renew or reducing policy limits.
- (2) The certificate shall state:
 - a. The policy number;
 - b. The name of the insurance company;

- c. The name and address of the agent or authorized representative of the insurance company;
 - d. The name, address and telephone number of the insured;
 - e. The policy expiration date; and
 - f. Specific coverage amounts.
- (3) The certificate shall name the City as an additional insured on General Liability.
- (4) A waiver of subrogation in favor of the City on both General Liability and Workers' Compensation.
- (d) *Self-insurance.* With respect to the user's obligations to comply with the requirements for Commercial General (Public) Liability Insurance coverage, the City may allow the user to self-insure upon annual production of evidence that is satisfactory to the City. With respect to the user's obligations to comply with the requirements for automobile liability insurance and for workers' compensation insurance, the user may self-insure, provided the user tender satisfactory evidence of self-insurance as contemplated by the State motor vehicle financial responsibility law, Tex. Transp. Code §601.124, and the Texas Workers' Compensation Act, Tex. Labor Code §407.001, et. seq.
- (e) Users with franchise agreements or licenses from the City may meet the above insurance and bonding requirements if their current franchise adequately provides for insurance or bonds, or provides an indemnity in favor of the City.

Sec. 15-199. Inspections.

The City may perform inspections of any work in the rights-of-way, including installations, maintenance, modifications or any other 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 work located in the right-of-way as the City deems appropriate without notice. If the inspection requires physical contact with the work, the City may, but is not required to, notify the user prior to the inspection. If notified, the user may have a representative present during such inspection. The City may take any needed action to remediate an emergency. The City shall notify the right-of-way user as soon as practical after any remediation required in response to an emergency. The City may require the user to undertake construction material testing to verify that soil compaction, concrete strength and other materials used in construction are in compliance with City standards of construction.

Sec. 15-200. Accounts, records, reports and investigations.

- (a) In addition to any requirements that may be contained in a franchise agreement, upon written request, the user shall provide the City information as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance and repair of its facilities performed by the user in the rights-of-way within 10 calendar days of such request.

- (b) *Use by City of plans.* The City will use the information provided by users pursuant to this section only for the purposes of protection and management of the rights-of-way.

Sec. 15-201. Transfer or assignment of facilities.

- (a) Within 30 calendar days after the effective date of a transfer of ownership or control of the facilities in the rights-of-way, the transferee shall register with the City in accordance with the provisions of this article.
- (b) The acceptance by the City of the registration of the transferee does not constitute a waiver or release of any of the rights of the City under this article whether arising before or after the date of the transfer.

Sec. 15-202. Notices.

All notices required herein shall be in writing and shall be delivered in person to the respective parties or sent by certified mail at the addresses set forth in the registration or the permit application.

Sec. 15-203. Revocation or denial of permit.

- (a) If any of the provisions of this article are not followed, a permit may be revoked by the City Engineer 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.
- (b) 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 re-submit the application. Applications not resubmitted within 31 calendar days shall be considered withdrawn.

Sec. 15-204. Appeal from denial or revocation of permit.

- (a) An applicant may appeal from denial or revocation of permit to the City Manager. Appeal shall be filed with the Engineering Division of Public Works within five 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 right-of-way engineering requirements.

Sec. 15-205. Offenses.

- (a) A person commits an offense if the person:
 - (1) Performs, authorizes, directs or supervises construction without:
 - a. Registering and maintaining registration in accordance with this article; or

- b. Obtaining and maintaining a valid permit issued under this article;
 - (2) Violates any other provision of this article;
 - (3) Fails to comply with restrictions or requirements of a permit issued under this article; or
 - (4) Fails to comply with an order or regulation of the Director issued pursuant to this article.
- (b) A person commits an offense if, in connection with the performance of construction in the right-of-way, he:
- (1) Damages the right-of-way beyond what is incidental or necessary to performance of the construction;
 - (2) Damages public or private facilities within the right-of-way; or
 - (3) Knowingly fails to clear debris associated with the construction from a right-of-way after construction is completed.
- (c) It is a defense to prosecution under Subsection (b)(2) if the person complied with all of the requirements of this article and state law and caused the damage because the facilities in question:
- (1) Was not shown or indicated in a plan document, plan of record, record construction drawing or field survey, staking or marking; and
 - (2) Could not otherwise be discovered in the right-of-way through the use of due diligence.
- (d) A person commits an offense if, while performing any construction or other activity along a right-of-way (whether or not a building or other permit is required for the activity), the person:
- (1) Damages the right-of-way or public or private facilities located within the right-of-way; or
 - (2) Fails to clear debris associated with the construction or other activity from the right-of-way.
- (e) It is a defense to prosecution under Subsections (f)(1) and (f)(2) that the person was performing all of the construction or other activity along the right-of-way in compliance with any permit issued for the construction or activity.
- (f) A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized, directed or permitted. A person who knowingly commits an offense under Subsection

- (b)(3) or (d)(2) is punishable by a fine of not less than \$500.00 or more than \$2,000.00. Any other offense under this article is punishable by a fine of \$500.00.
- (g) This article may be enforced by civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the City has for violation of this article.
- (h) Prior to initiation of civil enforcement litigation, the user or any other person who has violated a provision of this article must be given the opportunity to correct the violation within the time frame specified by the Director. This subsection does not prohibit the Director or the City from taking enforcement action as to past or present violations of this article, notwithstanding their correction.
- (i) Failure by the City to enforce any rights under this article does not constitute a waiver of such rights.
- (j) If a user is a franchisee of the City and such franchise expires or is otherwise terminated, if a user fails after receiving written notice from the City to renew its registration as required in Section 15-193(a), or if for any other reason a user abandons its facilities in the rights-of-way, then to protect the public health and safety and to the extent authorized by law, the City may require the user to remove its facilities and equipment at the user's expense upon 15 days' written notice. If the user fails to do so within a reasonable period of time, the City may have the removal done at the user's expense.
- (k) The obligations and undertakings of the parties in this article shall be performed at Mesquite, Dallas County, Texas. Venue of any suits arising hereunder shall be Dallas County, Texas.
- (l) A user shall have the right to appeal to the City Council any decision of the Director relating to registration or a permit. Such appeal must be made by written request within 15 calendar days of the Director's decision that the user seeks to appeal.

Sec. 15-206. License required for use of the right-of-way.

- (a) *License required.* Except for certified telecommunications providers and network providers, as defined and if otherwise provided in Chapters 283 and 284, respectively, of the Texas Local Government Code, a license for any use of the right-of-way, approved by the City Council, is required. If, in the judgment of the City Council, the requested use is not inconsistent with and does not unreasonably impair the public use of the right-of-way, the City Council may by ordinance grant the license.
- (b) *Application.* If a user, including a person or governmental entity operating a utility, desires to make use of any portion of the right-of-way for a private or governmental utility use, the person, or governmental entity operating a utility, must apply in writing to the Director. The application must be accompanied by plans or drawings showing the area to be used, a statement of the purpose for which the right-of-way is to be used, and a nonrefundable application fee in the amount required by Subsection (c) of this section, plus recording fees; except that the application fee is not required for:

- (1) Existing encroachments previously licensed; or
 - (2) A license to place and maintain the facilities of a utility operated by a governmental entity on right-of-way where the governmental entity has previously contracted with the City to provide mutual granting of rights-of-way for utility purposes.
- (c) *Application fee.* Except as otherwise provided in Subsection (b), the application fee is \$750.00 for use of the right-of-way.
- (d) *Annual fee.*
- (1) Except as otherwise provided in Subsection (e), the annual fee for a license to use a right-of-way is \$1,000.00 or is calculated in accordance with one of the following formulas, whichever is greater:
 - a. Fee for use of right-of-way: $\text{area} \times \text{market value} \times 85\% \times 12\%$.
 - b. Fee for subsurface use only: $\text{area} \times \text{market value} \times 30\% \times 12\%$.
 - c. Fee for air rights use only (including awnings and canopies with a premise sign): $\text{area} \times \text{market value} \times 85\% \times 85\% \times 12\%$.
 - d. Fee for commercial parking operation use: 50% of gross receipts (which include receipts for all parking and tips less sales and use taxes, if applicable).
 - (2) The application fee required will be applied to the first year's fee if a license is granted.
 - (3) Whether or not stated in the ordinance granting the license, the City Council retains the right to increase or decrease the annual fee.
 - (4) The market value of the area licensed is based on the per square foot appraised value, as determined by the Appraisal District of the county where the proposed installation is located, of a fee simple interest in a useable tract of abutting property.
 - (5) The Director shall annually review the market values of licensed areas for which fees are based on market value. If it is determined that the market value of a licensed area has decreased, the Director shall notify the licensee in writing that the annual fee has been decreased. If it is determined that the market value of a licensed area has increased, the Director shall notify the licensee in writing that the annual fee has been increased. If a licensee is unwilling to accept the increased fee, the licensee may terminate the license.
- (e) *Special fees.*

- (1) Instead of the annual fee charged under Subsection (d), the following one-time fees will be charged for a license to use a right-of-way for the following uses:
 - a. Fee for landscaping and appurtenant irrigation systems: \$100.00.
 - b. Fee for subdivision and monument signs: \$100.00 per sign.
 - c. Fee for other streetscape elements, including planters, crosswalk texturing and coloring, artwork, lighting, benches, flag poles, bollards and trash receptacles: \$100.00.
 - (2) An application fee paid pursuant to Subsection (e) will not be applied to license fees charged under this section.
 - (3) Fee for placement and maintenance of facilities of a utility operated by a governmental entity on right-of-way pursuant to a contract with the City providing for mutual grant of rights-of-way: None.
- (f) *Terms and conditions; duration; right of termination reserved by City.*
- (1) The ordinance shall contain the terms and conditions of the license and shall state the time for which the license exists. Whether or not stated in the ordinance the City Council retains the right to terminate a license whenever in its judgment the purpose or use of the license is inconsistent with the public use of the right-of-way or whenever the purpose or use of the license is likely to become a nuisance.
 - (2) If a private license does not state the time for expiration, it will expire 10 years from the date of the passage of the ordinance granting the license.
 - (3) If a license to place and maintain the facilities of a utility operated by a governmental entity on right-of-way does not state the time for expiration, it will expire upon expiration of the governmental entity's contract with the City providing for mutual granting of rights-of-way.
- (g) *Penalties.*
- (1) A person using or occupying a right-of-way for a private use in violation of this division or without a license or other permit granted by the City is guilty of an offense and, upon conviction, is subject to a fine not to exceed \$500.00 for each day that the violation exists.
 - (2) Any owner, occupant, tenant or licensee who fails to keep the sidewalks, curbs and private structures constructed within or over the licensed area in good repair is guilty of maintaining a nuisance and, upon conviction, is subject to a fine not to exceed \$500.00 for each day the nuisance is maintained.
- (h) *Breach by grantee.* The Director is authorized to terminate a license granted pursuant to this division if the grantee fails to fulfill any of the conditions stated in the license.

- (i) *Waiver.* The provisions of this division that are not required by state law or the City Charter may be waived or modified by the City Council in the ordinance granting the license.

Sec. 15-207. Reservation of rights.

- (a) The City reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) Any additional regulations adopted by the City shall be incorporated into this article and complied with by all users within 30 calendar days of the date of the adoption of such additional regulations.”

DIVISION 3. DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND
NODE SUPPORT POLES PURSUANT TO TEXAS LOCAL GOVERNMENT
CODE, CHAPTER 284

Sec. 15-208. Applicability and conflicts.

- (a) *Applicability.*
 - (1) Compliance with this Design Manual, as amended, is required for all sitings, placements, installations, collocations in, on, over or under the rights-of-way, of network nodes, node support poles, micro network nodes, distributed antenna systems, transport facilities, microwave communications, related ground equipment or other wireless facilities, by whatever nomenclature, whether installed pursuant to Chapter 284 of the Texas Local Government Code (“Chapter 284”), pursuant to an agreement with the City or installed as otherwise allowed by state law. Modifications of all wireless facilities must comply with the Design Manual in effect at the time of the request for modification.
 - (2) Facilities selected for the installation of provider’s wireless facilities shall not be considered “personal wireless service facilities” as that term is defined in 47 U.S.C. Section 332(c)(7)(C)(ii), or a “base station” as that term is defined in 47 CFR Section 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. Section 332(c)(7)(B) shall not apply to the City with regard to locations selected for wireless facilities in the 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 right-of-way.
 - (3) Compliance is required with all placement, size, height and other provisions authorized for regulation by the City under Chapter 284, as amended, and those requirements, in their most restrictive form, are adopted by reference herein unless otherwise provided in this division.

- (b) *Conflicts.* In the event of a conflict between this Design Manual and other provisions of the Code, this Design Manual prevails. In the event of a conflict between this article and Chapter 284, Chapter 284 prevails.

Sec. 15-209. Definitions.

The definitions in Division 1 of the article and Chapter 284 of the Texas Local Government Code apply in this division.

Sec. 15-210. Compliance with applicable codes, right-of-way permit, license and private restrictions.

- (a) *Applicable codes.* The requirements of this Design Manual apply in addition to those of other applicable codes. All providers of wireless facilities in the City's right-of-way must obtain a permit in compliance with this Design Manual and the Rights-of-Way Ordinance unless otherwise provided by Chapter 284.
- (b) *Permit not required.*
- (1) Notwithstanding any other provision of this ordinance, a permit is not required for:
- a. Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a right-of-way;
 - b. Replacing or upgrading a network node or 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 right-of-way; or
 - c. 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.
- (2) For purposes of this section:
- a. A network node or pole is considered to be "substantially similar" if:
 1. The new or upgraded network node, including the antenna or other equipment element, will not be more than 10 percent larger than the original permitted network node, provided that the increase may not result in the network node exceeding the size limitations provided by Chapter 284; and
 2. The new or upgraded pole will not be more than 10 percent higher than the original permitted pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by this ordinance and Chapter 284; and

- b. The replacement or upgrade does not include replacement of an existing node support pole; and
 - c. The replacement or upgrade does not defeat existing concealment elements of a node support pole.
- (3) 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.
- (4) Notwithstanding the above, for activities that do not require a permit:
- a. The provider shall give the City a 30 days' advance notice of the work described above;
 - b. A network provider may replace or upgrade a pole only with the approval of the pole's owner; and
 - c. The size limitations may not in any event exceed the parameters prescribed by Chapter 284 without the City's approval.
- (c) *City property and infrastructure.* Placement of network nodes or node support poles is prohibited on any City property, including but not limited to municipal parks, that falls outside of the definition of public right-of-way as defined in Chapter 284, without a City license, in the discretion of the City Council.
- (d) *Municipal parks and residential areas.* Placement of a new node support pole is prohibited without a City permit if the right-of-way is in a municipal park or residential area. The City is authorized, but not required, to grant a license for placement of a network node or node support pole in a municipal park or residential area, on terms that are discretionary and nondiscriminatory and that have the effect of minimizing interference with the aesthetic qualities of such areas.
- (e) *Collocation on service poles.* Placement and collocation of network nodes on service poles is prohibited without a City pole license agreement.
- (f) *Private restrictions.* A provider installing a network node or node support pole in a right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

Sec. 15-211. Prohibited placements.

- (a) Placement of generators or back-up generators in the right-of-way is prohibited.
- (b) Construction, installation and maintenance of wireless facilities is prohibited if their location or proposed location:
 - (1) Obstructs, impedes or hinders the usual travel or public safety on a right-of-way;

- (2) Obstructs the legal use of a right-of-way by other utility providers;
 - (3) Violates nondiscriminatory applicable codes;
 - (4) Violates or conflicts with the Rights-of-Way Ordinance or this Design Manual, as amended; or
 - (5) Violates the Federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).
- (c) Placement of network nodes is prohibited on City's public safety or other City-owned radio infrastructure. Placements with signals that interfere with City safety communication infrastructure are prohibited.

Sec. 15-212. Approval required in historic and design districts.

- (a) *Designated areas.* The City Council may designate an area as an historic district or a design district at any time, by approval of a zoning ordinance, an amendment to the Code or an amendment to this Design Manual. The list of designated districts in this section is provided for convenience and clarity, but may not reflect all current districts otherwise designated as required by Chapter 284. Decorative poles are located in the design districts listed in this section and those otherwise designated by the City.
- (1) Designated *historic district* areas are:
 - a. Historic District Number 1 is the area referred to as Opal Lawrence Historical Park. Its boundaries are legally described as: Opal Lawrence Historical Park, Block A, Lot 1.
 - b. Historic District Number 2 is the area referred to as Florence Ranch Homestead. Its boundaries are: W.J. Abstract 809, Page 725, Tract 1.
 - (2) Designated *design district* areas are:
 - a. Design District Number 1 is the area referred to as Central Business District. Its boundaries are: The CB District as depicted on the official zoning map of the City of Mesquite.
 - b. Design District Number 2 is the area referred to as Town East Retail and Restaurant Area. Its boundaries are: The TERRA Overlay as depicted on the official zoning map of the City of Mesquite.
 - c. Design District Number 3 is the area referred to as Mesquite Arena Rodeo Entertainment District. Its boundaries are: The MARE Overlay as shown on the official zoning map of the City of Mesquite.
 - d. Design District Number 4 is the area referred to as Military Parkway-Scyene Corridor Overlay. Its boundaries are: The MP-SC Overlay District as depicted on the official zoning map of the City of Mesquite.

- e. Design District Number 5 is the area referred to as the Sherwood Forest Overlay. Its boundaries are Scyene Road to the north, Peachtree Road to the east, West Bruton Road to the south and South Sam Houston to the west.
- f. Design District Number 6 is the area referred to as Truman Heights Neighborhood District. Its boundaries are: The THN District as depicted on the official zoning map of the City of Mesquite.
- g. Design District Number 7 is the area referred to as North Gus Thomasson Corridor District. Its boundaries are: The NGTC District as depicted on the official zoning map of the City of Mesquite.
- h. Design District Number 8 is the area referred to as Kaufman Interstate 20 District. Its boundaries are: The K-20 District as depicted on the official zoning map of the City of Mesquite.
- i. Design District Number 9 is the area referred to as the Towne Crossing Restaurant Row. Its boundaries are: Interstate Highway 30, North Town East Boulevard, Interstate Highway 635 and a line running parallel and 500 feet west of the west right-of-way line of Towne Crossing Boulevard.
- j. Design District Number 10 is the area referred to as the Mesquite Downtown Market Area. Its boundaries are: West Kearney Street to the north, South Bryan/Belt Line Road to the east, Carmack Street and Walker Street to the west and Norwood Drive to the south.
- k. Design District Number 11 is the area referred to as the Towne Centre Tax Increment Finance (TIF) Reinvestment Zone No. 2. Its boundaries are as depicted in Ordinance No. 3257, as amended.

(b) *Additional requirements for design districts or historic districts.*

- (1) For collocation and installation of new network nodes or node support poles in design districts and historic districts, reasonable design, camouflage or concealment measures for the network nodes or node support poles are required.
- (2) Before submitting an application for a permit in a design district or historic district, the applicant shall meet with the Director to discuss the design proposal and shall provide elevations or other graphic documentation of the proposed design.
- (3) The Director shall insure that all applications under this section comply with ordinances applicable in the respective district as well as design guidelines. In connection with its review, the Director may require a provider to implement measures to insure compatibility and minimize the impact to the aesthetics in design districts and historic districts.

- (4) No permit for installations in a design district or an historic district shall be considered complete until the applicant has submitted and the City approved, in writing, measures responsive to this requirement.
- (5) A provider shall comply with and observe all applicable City, state and federal historic preservation laws and requirements.

Sec. 15-213. Underground compliance areas.

- (a) *Compliance required.* Installations must be buried underground and comply with all applicable undergrounding requirements of the City in underground compliance areas including but not limited to the following:
 - (1) Underground Compliance Area Number 1 is the area referred to as Rodeo Center Boulevard. Its boundaries are: 150-feet from the center of the Rodeo Center Boulevard Compliance Area ROW, from Military Parkway to Sandy Lane.
 - (2) Underground Compliance Area Number 2 is the area referred to as Military Parkway Compliance Area. Its boundaries are: 300-feet from the center of the Military Parkway ROW, from Sam Houston Road to Belt Line Road.
 - (3) Utility Compliance Area Number 3 is the area referred to as Truman Heights Neighborhood District. Its boundaries are: The THN District as depicted on the official zoning map of the City of Mesquite.
 - (4) Utility Compliance Area Number 4 is the area referred to as North Gus Thomasson Corridor District. Its boundaries are: The NGTC District as depicted on the official zoning map of the City of Mesquite.
 - (5) Utility Compliance Area Number 5 is the area referred to as Kaufman Interstate 20 District. Its boundaries are: The K-20 District as depicted on the official zoning map of the City of Mesquite.
- (b) *Underground requirement area transition.* If a location is designated by the City to transition to be an underground requirement area, then a provider's permit for the location of the micro network node, network node, node support pole and related ground equipment at such location will be revoked 90 days after the designation, with removal of said 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 the City for the transition of other overhead facilities.

Sec. 15-214. Placement: permit application and requirements.

- (a) *Issuance of permit.* The Director will issue a permit to a provider only when the Director reasonably determines, in its sole judgment, that provider meets the requirements of this article and all applicable codes.
- (b) *Application requirements.* No application for a permit shall be considered complete until documents compliant with this Design Manual and other applicable codes have been

submitted on a form provided by the Director, including the following application documents, designed and sealed by a professional engineer with experience performing work for similar attachments on similar facilities. The 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.

- (1) *Fee.* The applicable nonrefundable application fee as provided in Section 195(e).
- (2) *Map or plan.* A map or site plan drawn to scale on 11"x17" or 22"x34" paper showing:
 - a. The location of the proposed installation including GIS or street address information;
 - b. The proximity of the proposed installation to design and historic districts of the City;
 - c. The proximity to schools and municipal parks; and
 - d. 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, paved street surface and all existing underground and overhead utilities in the right-of-way and utility easements.
- (3) *Disclosure.* Disclosure if the proposed installation is:
 - a. In a residential area; and
 - b. In an underground compliance area or other area with undergrounding requirements.
- (4) *Pre-permit survey.* A pre-permit survey certifying that provider's wireless facilities or transport facilities can be installed on the identified structure in compliance with the applicable codes.
- (5) *Construction plans.* Detailed, scaled, dimensioned, construction plans for each wireless facility, transport facility and ground equipment, including representative drawings or pictures of the intended network node and other installations and equipment. The plans shall also show a sectional profile of the right-of-way and identify all existing utilities and existing utility conflicts. Such plans shall show strict compliance with this ordinance, with the size limitations set forth in Chapter 284, with maximum pole height limitations set forth herein and in Chapter 284, and with all applicable codes.
- (6) *State and federal rights-of-way permit.* If the project lies within a highway right-of-way, evidence of a permit from the state or federal government.

- (7) *Pole location map.* A map showing the location of a proposed pole as well as an aerial map and a street view image. The map shall show any other pole capable of supporting network nodes and within 300 linear feet from the proposed pole.
- (8) *Other plans.* A traffic control plan, SWPPP and trench safety plan may be required based upon the proposed scope of work.
- (9) *Electrical permit.* An electrical permit, if otherwise required, and sealed engineered drawings for conduit size, circuit size, calculations for Amp, distances running and other related information.
- (10) *Network nodes and appurtenances.*
 - a. *Structural stability evaluation for nodes and appurtenances.* Plans and drawings prepared by a professional engineer licensed in the State of Texas evaluating an existing pole or infrastructure for structural stability to carry proposed network nodes and showing that the pole or infrastructure can bear the wind load without pole modification. If pole re-enforcement is necessary, provider shall provide engineering design and specification drawings for the proposed alteration to the exiting pole. Any pole re-enforcement or replacement shall be at the provider's sole cost. All re-enforcement or replacement poles shall be equivalent to the pre-existing pole in style and substance.
 - b. *Interference study and certification.* A study demonstrating that a proposed network node shall not cause any interference and is compatible with City public safety radio system, traffic signal light system or other City communications components. The applicant must provide certification that the proposed wireless facility complies with applicable regulations of the Federal Communications Commission and that the proposed wireless facility shall not cause any interference with the City's public safety radio system, traffic light system or other City safety communications components.
 - c. *Active service certification.* Certification that the proposed network node will be placed into active commercial service by or for a provider not later than the 60th day after the date the construction and final testing of the network node is completed.
- (11) *Service poles.*
 - a. *Other wireless services.* An application shall identify any other wireless service placed on service poles. If the requested placement has already been approved for collocation by other entities, the application for the service pole shall be denied.
 - b. *Illustration of collocation.* Representative drawings or pictures of the intended network node as intended to be collocated on the service pole shall be provided.

- c. *Plans and drawings.* Engineering and construction plans and drawings related to the collocation of the network node on the service pole, including where the proposed transport facilities will be connected to the network node as electrical power connections, shall also be provided.
 - d. *Pole load study.* For service pole placements, an industry standard pole load analysis shall be submitted with each permit application and attached as an exhibit to the pole agreement.
 - e. *Pole attachment license agreement.* For collocations on service poles, the provider shall enter into a license agreement with the City prior to application for a permit. The permit application will be denied if this license agreement is not in place at the time the application is submitted. If the applicant is not the same as the licensee identified in the license agreement, the licensee shall sign the permit application or provide a letter of agency satisfactory to the City. The licensee in such license agreement shall be presumed to be the owner of the network node and ground equipment, and shall be fully responsible for them and the rental fees payable to the City thereunder.
 - f. *Pole identification.* The City pole identification number or other identifier shall be provided.
- (c) *Application review.* 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) *Generally applicable placement requirements.*
- (1) *Proximity to right-of-way.* Network node facilities, node support poles and related ground equipment shall be placed, to the extent practicable, within two feet of the outer edge of the right-of-way.
 - (2) *Compliance with design standards.* Wireless facilities must conform to the City's aesthetic or design standards for the proposed placement unless otherwise approved by the City.
 - (3) *Electrical supply.*
 - a. Provider shall be responsible for obtaining any required electrical power service to its wireless facilities.

- b. Provider's electrical supply shall be separately metered from the City and must match City infrastructure voltage. In no event shall provider's electrical meter be mounted on City's poles or structures.
 - c. The City shall not be liable to the provider for any stoppages or shortages of electrical power furnished to its wireless facilities, including but not limited to 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, provider, licensee or person, or for any other cause beyond the control of the City.
 - d. Provider shall not be entitled to any abatement of the fees for any such stoppage or shortage of electrical power.
- (e) *Additional provisions for network node facilities.*
- (1) *Minimum height above grade for attachments.* Network node attachments to any pole shall be installed at least eight feet above grade.
 - (2) *Minimum clearance.* A network node attachment projecting toward the street shall be installed at least 16 feet above grade.
 - (3) *Protrusions.* No protrusion from the outer circumference of the existing structure or pole shall exceed two feet.
 - (4) *Limit on number of network nodes per pole.* There shall be no more than one network node on any service pole.
 - (5) *Decorative poles.* Wireless facilities on decorative poles must be camouflaged or concealed.
 - (6) *Network node facility concealment and enclosure.* Network node facilities shall be concealed or enclosed as much as practicable 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.
 - (7) *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 right-of-way or adjacent City property ("Protected Equipment").
 - b. If provider's network node interferes with City Operations, then 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 Design Manual and other applicable codes. 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.

- c. 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 this article.
 - d. The City shall be authorized to temporarily cut-off electricity to its facilities for the safety of maintenance personnel. In the event of failure of components of the traffic signal system, City will respond to restore operations. Should the events result in damage or failure of provider's facilities, provider shall have the sole responsibility to repair or replace its facilities and shall coordinate its emergency efforts with those of the City.
- (f) *Additional provisions for new, modified or replaced utility or node support poles.* The following restrictions apply as necessary to protect the public health and safety, minimize the hazard of poles adjacent to roadways and to minimize the detrimental effect on property values and aesthetics in the area.
- (1) *New poles.* Wooden poles are prohibited. New poles shall be break-away and black powder-coated. Attachments shall match the support pole.
 - (2) *Pole spacing.*
 - a. All new, modified or replaced poles shall be spaced apart from existing utility poles or node support poles at the same distance as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another node support pole.
 - b. No new, modified or replaced poles shall be within 45 linear feet of a street intersection.
 - (3) *Pole height.* In areas other than residential areas, new, modified or replaced utility or node support poles, including equipment cabinets, may not exceed the lesser of:

- a. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same right-of-way; or
 - b. 55 feet above ground level.
- (g) *Additional provisions for placement on City infrastructure.* In addition to other requirements in this manual, the following apply for placements on City infrastructure:
- (1) *Impact on primary use.* No permit shall be issued for 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.
 - (2) *Pole load.* Placement on a service pole is prohibited unless the pole load analysis demonstrates that the service pole to which the network node is to be attached will safely support the load.
 - (3) *Installations on traffic signals and street signs with electronics.* Installation of network node facilities on traffic signals and street signs with electronics shall:
 - a. Be in accordance with a separate agreement with the City;
 - b. Be encased in a conduit separate from the signal or sign electronics;
 - c. Have an electric power connection separate from the signal or sign structure;
 - d. Have an access point separate from the signal or sign structure; and
 - e. Use 240 voltage when connecting to City infrastructure and provide a key to the meter upon inspection.
- (h) *Additional provisions for ground equipment.* The following restrictions apply as necessary to protect the public health and safety, minimize the hazard of ground equipment adjacent to roadways and to minimize the detrimental effect on property values and aesthetics in the area.
- (1) Ground equipment shall provide an adequate line of sight for safe travel of vehicular and pedestrian traffic. In no event may ground equipment be installed within 250 feet of a street corner or a street intersection.
 - (2) Ground equipment shall not be installed in a right-of-way within a municipal park or within 250 feet of the boundary line of a park, unless prior written approval is obtained from the City Manager and Director of Parks and Recreation or their designees.
 - (3) The City may deny a request for placement of ground equipment where existing ground equipment located within 300 feet of the proposed placements already occupies a footprint of 25 square feet or more.

- (i) *Permit review.* 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 of the basis for the denial.
 - (2) Provider may cure the deficiencies identified by the City within 30 days by resubmitting the application along with payment to the City for the City's actual costs incurred in reviewing the resubmitted application. The original application fee will cover up to three reviews then each subsequent review will require a new application fee.

Sec. 15-215. - Removal required for safety and imminent danger.

- (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
 - (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 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.

Sec. 15-216. Damage to service pole.

Whenever a service pole or other City facility or equipment supporting a network node is damaged or knocked down, the City shall endeavor to provide prompt notice to provider 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 right-of-way if applicable.

Sec. 15-217. – Expiration and automatic 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 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 right-of-way within 30 days. If provider fails to remove the wireless facility or transport facility within 30 days, the 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 30 days of the wireless facility or transport facility becoming nonfunctional. If provider fails to remove a Nonfunctional Attachment within 30 days, the 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 right-of-way within 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 right-of-way within 30 days, the City shall have the right to remove same at provider's expense.

Sec. 15-218. Implications of permit.

- (a) No use, however lengthy, of any of right-of-way, and no payment of any fees or charges required under this article, shall create or vest in provider any easement or other ownership or property right of any nature in any portion of the right-of-way. After issuance of any permit, provider shall be and remain a mere licensee. Neither this article, nor any permit granted under this article, shall constitute an assignment of any of the City's rights to the right-of-way.
- (b) No part of provider's wireless facilities or transport facilities or other equipment constructed, modified or erected, or placed on right-of-way will become, or be considered by the City as being affixed to or a part of, the right-of-way. All portions of provider's wireless facilities and transport facilities and other equipment constructed, modified, erected or placed by provider on right-of-way will be and remain the property of provider and may be removed by provider at any time.
- (c) Nothing in this article 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 the City to grant provider the right to attach at any specific location or facility.

- (d) This article does not in any way limit the 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.
- (e) 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.
- (f) Nothing in this article shall be construed to require the 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 the City’s own requirements.
- (g) Nothing in this article shall limit, restrict or prohibit the City from fulfilling any agreement or arrangement regarding a service pole or other City equipment or property into which the 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.
- (h) Nothing in this article 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.
- (i) 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 right-of-way, such denial shall not be construed to be a prohibition on, or to have the effect of prohibiting, the provision of wireless services. Any such denial by the City shall be undertaken in its capacity as proprietor of the right-of-way and not in its regulatory capacity.
- (j) Any permit granted under this article is limited to the uses specifically authorized in the permit and any other use shall be considered a material breach of this article. Nothing in this article or in any permit granted hereunder shall be construed to require the City to allow provider to use the right-of-way after the termination of the applicable permit.

Sec. 15-219. Annual fees, inventory, reimbursements, termination.

- (a) Provider shall pay the City the applicable annual fees as follows:

Collocation Fee for Network Nodes on Service Poles	
Annual fee for each service pole	\$20
Network Node Annual Site Rental Fee -	
For each network node site	\$250* * adjusted on an annual basis, by an amount equal to one-half of the annual change, if any, in the Consumer Price Index.

Transport Facility Monthly Rental Fee	
For each network node site	\$28* *not to exceed the monthly aggregate per-node fee

- (b) 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 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. The 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 the City, in addition to the monthly or annually recurring fees, all actual costs associated with the City’s performance of an inventory of provider’s facilities.
- (c) The annual fees are in addition to all ad valorem taxes, special assessment for municipal improvements and other lawful obligations of the provider to the City. The compensation payable to the City hereunder shall not be offset by any payment by provider to the City relating to ad valorem taxes.
- (d) When the City at its own expense has removed or remediated provider’s wireless facilities or transport facilities 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.
- (e) Upon provider’s termination of the use of any service pole or right-of-way in accordance with the terms of a permit and this ordinance, and provider peaceably surrendering the service pole or 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.

SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.


SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed Five Hundred (\$500.00) Dollars for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the

maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

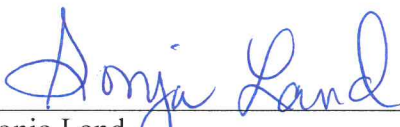
SECTION 5. That the present ordinances of the City of Mesquite are inadequate in providing for rules and regulations concerning the rights-of-ways, creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 21st day of August, 2017.



Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney