

AN ORDINANCE 2017-08-31-0609

AN ORDINANCE AMENDING CHAPTER 29 AND CHAPTER 37 OF THE CITY CODE OF THE CITY OF SAN ANTONIO, TEXAS TO PROVIDE A FRAMEWORK FOR THE DEPLOYMENT OF NETWORK NODES AND NODE SUPPORT POLES IN THE RIGHT-OF-WAY BY NETWORK PROVIDERS IN ACCORDANCE WITH SENATE BILL 1004 AND TEXAS LOCAL GOVERNMENT CODE CHAPTER 284; AND AMENDING CHAPTER 29 TO REQUIRE RIGHT-OF-WAY USERS TO CONTACT SAN ANTONIO WATER SYSTEM PRIOR TO EXCAVATION.

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WHEREAS, Texas Local Government Code Chapter 284, approved in SB 1004, goes into effect September 1, 2017; and

WHEREAS, SB 1004 granted wireless providers, "network providers" in SB 1004, access to city right-of-way and the authority to construct, install, and operate "network nodes" (small cell antennas and related equipment) on municipally owned utility poles, city light poles, city traffic signal poles, and structures for signage, as well as their own proprietary poles, referred to as "node support poles" in SB 1004, for the purpose of supporting network nodes; and

WHEREAS, SB 1004 also regulates the type of information a municipality may require as part of the permitting process, establishes a fee structure, and sets deadlines that municipalities must follow as part of the permitting process; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Code of the City of San Antonio, Texas, Chapters 29 and 37 are hereby amended by adding the language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

Chapter 29, Article IV "Excavations", Division 1 General Provisions", Section 29-107 entitled "Definitions" is hereby amended as follows:

Excavation means an activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way and does not include landscaping activity unless the activity removes or disturbs the paved portion of the right-of-way.

Facilities means the plant, equipment, and property, including but not limited to lines, poles, mains, pipes, conduits, ducts, cables, micro network nodes, network nodes, node support poles, and wires located under, on, or above the surface of the ground within the right-of-way and valves, and related facilities and equipment used or useful for the provision of utility services.

FCC means Federal Communications Commission.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Texas or of any other state of the United States and any agency or instrumentality of the State of Texas or of any other state of the United States or of the United States.

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.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes: equipment associated with wireless communications; a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation. The term does not include: an electric generator; a pole; or a macro tower.

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

New street means the paved portion of the right-of-way that has been constructed, reconstructed, or resurfaced with an asphalt overlay, hot in place recycling, full-depth reclamation, reconstruction or other structural street maintenance treatment. "New street" includes all concrete paved streets, streets constructed or structurally resurfaced during the preceding seven years, for a collector or arterial street or during the preceding five (5) years for a residential street or alley or any street with a pavement condition index greater than eighty-five (85) as defined herein.

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

Pavement condition index (PCI) means a measure of the condition of the right-of-way on a scale of 1-100. The PCI is available through the department.

Person means any person, company, partnership, agency or other public or private entity, excepting the city.

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

Registration means the application process of a ROW user to use any portion of the right-of-way.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

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 right of way, including, but not limited to, gas,

telephone, cable television, internet services, wireless service, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including: a pole that supports traffic control functions; a structure for signage; a pole that supports lighting, other than a decorative pole; and a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Street means the pavement and sub-grade of a city residential, collector or arterial roadway.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend a permit that has already been issued.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

TMUTCD shall mean Texas Manual on Uniform Traffic Control Devices, latest edition.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility locate in order to further identify the site.

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

Wireless service provider means a person that provides wireless service to the public.

Chapter 29, Article IV "Excavations", Division 1 General Provisions", Section 29-109 entitled "Field utility coordination" is hereby amended as follows:

(b) The ROW user shall mark the site of the proposed excavation with white lining and/or flags prior to making a request for locates and actual excavation. White lining is not required for excavations of more than sixty (60) feet long unless the excavation is located in pavers, cobblestone, pavements, sidewalks, or other public flatwork.

(c) The ROW user shall make a request for a utility locate not more than fourteen (14) days and not less than forty-eight (48) hours prior to the commencement of the proposed excavation. Such request shall be made to the state One-Call Center and the San Antonio Water System ("SAWS"). A request made using the One-Call Center (811) ~~Such requests~~ shall be made by telephone or facsimile and shall include the date, location, extent and reason for such proposed excavation. A request to SAWS shall be done via SAWS's website, www.saws.org.

(d) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of "non-washable" markers is prohibited.

(h) All barricades, plates, cones, traffic directional equipment, and all other traffic control devices owned by the ROW user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or ROW user, as applicable, at all times such equipment is used on or near the right of way. An exception to the marking requirement may be made in the event the traffic control equipment is not owned by the permittee or ROW user.

(i) A Network Provider conducting routine maintenance on network nodes, including micro network nodes, or network support poles that do not require excavation or closing of sidewalks or vehicular lanes in the right-of-way as provided for in Chapter 284.157 of the Local Government Code, shall provide the Right-of-Way Manager notice not more than fourteen (14) days and not less than forty-eight (48) hours prior to commencement of the planned routine maintenance.

Chapter 29 Article IV "Excavations", Division 2 "Technical Specifications", Section 29-139 entitled "Attachments to Poles" is hereby amended as follows:

(b) A ROW user shall utilize existing poles, conduits, and other facilities whenever reasonably and/or economically possible. Prior to the utilization of any right-of-way for the placement of any of its facilities, the ROW user shall make available to the director any utility pole usage agreement with each utility within the city currently owning poles, conduits, and other facilities, whose poles, conduits and facilities are to be used.

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

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

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

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

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

(d) Where anticipated construction activities will involve service pole re-enforcement or replacement, network providers shall notify the city Right-of-Way Manager before submitting application materials. Replacement pole must comply with Texas Department of Transportation specifications and standards, TMUTCD requirements, and applicable federal or state standards. Prior to construction, network provider shall agree that all replacement service poles will be owned by the City. Where a traffic signal pole is reinforced or replaced, the traffic signal must remain operational throughout construction, and if necessary, network provider must provide a temporary signal trailer or other temporary pole during construction.

Chapter 29 Article IV "Excavations", Division 2 "Technical Specifications", Section 29-163 entitled "Pre-evacuation facilities location" is hereby amended as follows:

The ROW user shall contact the One Call Center (811), so long as that center is in existence and utilized by the city, or such other center at the time utilized by city, at least forty-eight (48) hours prior to excavation. The ROW user shall protect and support all utility facilities during construction. The ROW user shall also contact the San Antonio Water System ("SAWS") via SAWS's website, www.saws.org.

Chapter 37, "Acquisition, Use, and Disposition of City Property", Section 37-1 entitled "Definitions" is hereby amended as follows:

Application means a written request by a person for rights or privileges under this chapter.

Chief information/technology officer means ~~the~~ an assistant director of the information technology services department (ITSD) designated as the city's chief technology officer.

City means the City of San Antonio.

Encroachment means any physical obstruction or any structure or object of any kind or character placed either in, under, or over any city street, alley or drainage easement in which the city has an interest.

Information technology services department or ITSD means the current city department that oversees the city's technology services, wireless antennas, or wireless towers and any future city department that may oversee the city's technology service, wireless antennas, or wireless towers.

Joint use agreement means a written agreement between government entities, including utility agencies, setting forth the terms and conditions for shared use of public property or facilities.

License means an instrument granted to allow the use or occupation of the city's interest in a property for a specific interval of time. Licenses require city council approval.

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.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term includes: equipment associated with wireless communications; a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation. Network node does not include: an electric generator, a pole, or a macro tower.

Network provider means a wireless service provider; or a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider: network nodes, node support poles, or any other structure that supports or is capable of supporting a network node.

Permit, as defined in this chapter, means an instrument granting approval for encroachments into city right-of-way or drainage easements. A permit grants no property interest in the real property area subject to the permit.

Petitioner means a person requesting a right or privilege governed by this chapter. More than one person may combine as one petitioner, but then each is jointly and severally liable for the obligations of the petitioner.

Point-of-demarcation means the point where the network node terminates and interconnects with transport facilities, whether provided by landline or wireless communications infrastructure.

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

Public right-of-way means any easement or fee over which the public has a right to pass, such as public streets, roads, lanes, paths, alleys, and sidewalks, whether improved or unimproved.

Service pole means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including: a pole that supports traffic control functions; a structure for signage; a pole that supports lighting, other than a decorative pole; and a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Utility agency means either or both of the San Antonio Water System and CPS Energy or their successors, for so long as the utility is a municipally owned utility of the City of San Antonio.

Chapter 37 "Acquisition, Use, and Disposition of City Property", Section 37-21 "Information technology installations on city-owned property", Subsection (a) entitled "Use of city-owned property" is hereby amended as follows:

(a) Use of city-owned traffic poles in the right-of-way.

~~(1) Petitions for the use of city owned traffic poles for the attachment of appropriate wireless communication facilities shall be submitted to the chief information/technology officer. The petitioner shall enter into a pole attachment agreement with the city. The terms and rates of the pole attachment agreement shall be non-discriminatory.~~

~~(2) The installation of network nodes, node support poles, and transport facilities in the public right-of-way shall comply with this section, the design manual in Appendix A of this chapter, Chapter 29 of the City Code, and Chapter 284 of the Texas Local Government Code. The chief information/technology officer shall establish forms, processes and procedures for carrying out this section. At the request of the chief information/technology officer, the petitioner will provide engineering network designs and other relevant information in order to determine the most appropriate use of city owned traffic poles.~~

~~(3) A pole attachment agreement will not grant the petitioner the right to use city rights of way. The petitioner must establish the legal right to use city rights of way outside the scope of this section.~~

~~(4) When traffic poles on which wireless devices are attached must be moved to accommodate a public works project, the petitioner will be required to relocate the wireless devices and any related facilities at its own expense. Upon termination of the pole attachment agreement for any reason, the petitioner shall remove or otherwise dispose of the wireless devices within sixty (60) days. Failure to take this action will result in considering the wireless devices abandoned and they will become the property of the city.~~

(2) City grants applicant the right to use city service poles for the purpose of attaching network node equipment based on the inventory of service poles. Access to individual city service poles will be determined on a case-by-case basis pursuant to the provisions of this chapter, the ROW Ordinance, and applicable law.

(i) The applicant's right to use and occupy the public rights-of-way and attach to city service poles shall not be exclusive as the city reserves the right to grant a similar use of same to itself or any person or entity at any time.

(ii) Applicant shall not sub-license to any third parties, or place facilities for the benefit of third parties in city right-of-way or on service poles to which applicant is granted access under this chapter and the ROW ordinance.

(3) Public rights-of-way may be used by applicant in accordance with Section 4.10 of the UECM for the selection of network node sites and installation of network nodes, micro network nodes, and node support poles. The applicant may include new types of network node equipment that may evolve or be adopted using wireless technologies. Applicant shall, at its expense, comply with all applicable

present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the installation, operation, maintenance, and replacement of network nodes, micro network nodes, and node support poles in the public right-of-way.

(4) Network provider that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider agrees:

(i) Each application submitted to the city shall identify each network provider that is a wireless service provider utilizing the site.

(ii) If the network node equipment installed by applicant has the radio frequency range to provide service to two (2) or more network providers that are wireless service providers, the applicant shall submit an application for each wireless service provider being provided network capacity or otherwise provided service from the site.

(iii) Applicant shall not sublicense or in any way provide capacity in the right-of-way to other network providers that are not an electric utility but builds or install infrastructure for wireless service providers. Violation of this subsection shall be considered a material breach of the application and city shall have the right to withdrawal of all previous approvals at the site.

(5) Nothing in this Section 37-21(a) shall be interpreted to authorize the installation of macro wireless towers and related equipment and facilities, nor the installation on poles of wireless equipment and facilities designed for macro wireless towers.

(6) The use of rights-of-way under this chapter does not include a license to install and operate wires and facilities to provide landline broadband backhaul transmission service, whether provided by a third-party provider, applicant, or a corporate affiliate of applicant. Any entity that provides landline broadband backhaul transmission service must have independent legal authorization to use public rights-of-way outside this chapter.

(7) Not later than the 30th day after the date the city receives an application for a permit for a network node or node support pole, or the 10th day after the date the city receives an application for a permit for a transport facility, the city shall determine whether the application is complete and notify the applicant of that determination. If the city determines that the application is not complete, the city shall specifically identify the missing information. The chief information/technology officer and the right-of-way manager may designate one or more staff personnel to review and approve network node site applications, and shall have the authority to develop regulations for the efficient process of such applications.

(8) Upon finding that the network node site application is complete, the city shall approve or deny such network node site application not later than the 60th day after the date the municipality receives the complete application, not later than the 150th day after the date the city receives the complete application for any node support pole, and not later than the 21st day after the date the city receives the complete application for a transport facility. Upon obtaining network node, node support pole, or transport facility approval including right-of-way permit, applicant may proceed to install the

network node in coordination with any affected city departments. Upon completion of the installation, including a micro network node installation, applicant shall notify the chief information/technology officer, or his designee, in writing and provide a picture of said installation, city right-of-way permit number if applicable, the GIS coordinates, date of installation, company site ID#, type of pole used for installation, pole owner, and description/type of installation, which will be included in the network node or node support pole site application records. The city will also require the applicant to label the installation with the city right-of-way permit number for easy reference and verification by city personnel. An application shall be deemed approved if the application is not approved or denied on or before the applicable deadline for approval or denial as prescribed in this section.

- (i) Network provider shall maintain a current inventory of network node, including mirco network node, and node support pole sites. Network provider shall provide to city a copy of the inventory of network node sites on an annual basis. The inventory of network node sites shall include city right-of-way permit number, GIS coordinates, date of installation, company site ID #, type of pole used for installation, pole owner, and description/type of installation for each network node installation. Concerning network node, mirco network node, and node support pole sites that become inactive, the inventory of sites shall include the same information as active installations in addition to the date the site was deactivated and the date the node or node support pole was removed from the public right-of-way. City shall compare the inventory of sites to its records to identify any discrepancies.
- (ii) Any unauthorized network node, including micro network node, or node support pole sites that are identified by the city as a result of comparing the inventory of network node sites to internal records or through any other means may be subject to immediate removal. City shall provide written notice to network provider of any unauthorized site identified by city staff and applicant shall have thirty (30) days thereafter in which to submit a preexisting city right-of-way permit for said site. Failure to produce a city right-of-way permit or notification of installation corresponding with the unauthorized site will result in the imposition of an unauthorized installation charge, which shall be calculated by applying the SB1004 fee formula to the period spanning from the original date of installation of the unauthorized site to the date of the written notice sent by city. The total amount resulting from this calculation shall be assessed an interest rate of twelve (12) percent to constitute the applicable unauthorized installation charge. Thereafter, applicant shall submit a network node site application and applicable annual right-of-way rate for the unauthorized network node site.

(9) Network provider shall not be required to submit an application, obtain a permit, or pay an application fee for routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way or for 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 public right-of-way. For purposes of this section a network node or pole is considered to be "substantially similar" if the new or upgraded network node, including the antenna or other equipment element, will not be more than 10 percent larger than the existing node, provided that the increase may not result in the node

exceeding the size limitations set out in the design manual and Local Government Code Chapter 284.

(10) The city shall have the authority at any time to order and require applicant to remove and abate any network node, micro network node, or other structure that is in violation of the City Code of Ordinances. In case applicant, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the city shall have the authority to remove the same at the expense of applicant, all without compensation or liability for damages to applicant.

(11) Prior to conducting planned or routine maintenance on traffic signal system poles, the TCI Department shall provide applicant 24 hours advance notice of such maintenance activities. In advance of such maintenance activities, network provider shall temporarily cut-off electricity to its network nodes and micro network nodes for the safety of maintenance personnel. In the event of failure of components of the traffic signal system for whatever reason, including damage resulting from vehicular collisions, weather related events, or malicious attacks, city will respond to restore traffic signal operations through the city's Transportation and Infrastructure Management Call Center (TIMCC) operated by the TCI Department. Should the events that result in damage or failure of the traffic light signal system also affect network nodes, applicant shall have the sole responsibility to repair or replace its network nodes and shall coordinate its own emergency efforts with the TIMCC.

(12) Network providers shall maintain emergency contact information current at all times with the chief information/technology officer and the ROW manager.

(13) In the event that applicant's network nodes interfere with the city's traffic signal system, public safety radio system, or other city communications infrastructure, applicant will respond to the city's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice network provider must address the interference or shut down the network node.

(i) The applicant shall provide the chief information/technology officer or his designee an interference remediation report that includes the following items

(A) Remediation plan. Devise a remediation plan to stop the event of interference;

(B) Time Frame for execution. Provide the expected time frame for execution of the remediation plan; and

(C) Additional information. Include any additional information relevant to the execution of the remediation plan.

(ii) In the event that interference with city facilities cannot be eliminated, applicant shall shut down the network node, including micro network node, and remove or relocate the node that is the source of the interference.

(iii) Network provider's duty to remove and relocate its network nodes, including micro network nodes, and node support poles at its expense is not contingent on the availability of an alternative location acceptable for relocation.

(14) City, or its designees, shall have the right to audit, examine or inspect, at the city's election and at city's expense, all of the applicant records at any and all applicant's locations relating to network node, micro network node, and node support pole deployments under this chapter and Chapter 29 of the City Code. The audit, examination, or inspection may be performed by city's designee, which may include internal city auditors or outside representatives engaged by city. Applicant agrees to retain the applicant's records for a minimum of four (4) years, following removal of network nodes, micro network nodes, and node support poles, unless there is an ongoing dispute then, such retention period shall extend until final resolution of the dispute beyond the four (4) year retention period.

(15) Applicant's records shall be made available at the city's designated offices within thirty (30) calendar days of the city's request and shall include any and all information, materials, and digital data of every kind and character generated as a result of installing and operating network nodes, micro network nodes, and node support poles in the right-of-way. Examples of applicant's records include but are not limited to copies of inventory of network node and node support pole sites, network node and node support poles site applications, right-of-way permit numbers, CPS Energy Attachment Permits, payment records for annual right-of-way rate and application fees, equipment invoices, subcontractor invoices, engineering documents, vendor contracts, network diagrams, internal network reports, and other documents related to installation of network nodes, micro network nodes, and node support poles in city right-of-way. The applicant bears the cost of producing, but not reproducing any and all requested business records

(16) The indemnification provisions of Texas Local Government Code Sections 283.057(a) and (b) shall apply to a network provider accessing the public right-of-way under this chapter and chapter 29 of the San Antonio Municipal Code.

Chapter 37 "Acquisition, Use, and Disposition of City Property", Section 37-22 "Fee and Consideration Schedule" is hereby amended as follows:

SECTION 2. Permit, Document or Action:	Process Fee:	Consideration Amount:
Communications Facilities - not installed pursuant to 37-21(a), (b), and (c)	None	By agreement with chief information/technology officer; fair market value of area covered

SECTION 2. Permit, Document or Action:	Process Fee:	Consideration Amount:
Pole Attachment Agreement — use of city property <u>Network Node, Node Support Pole, and Transport Facility Fees pursuant to Chapter 284 of the Local Government Code</u> <i>Section 37-21(a)</i>	<u>\$1,000 per new node support pole</u> <u>\$500 for up to 5 network nodes in an application; \$250 per additional network node included in an application</u>	Consistent with Section 54.204 of the Public Utility Regulatory Act. <u>\$20 per service pole per year</u> <u>\$250 per network node per year; allows ½ CPI escalation per year after 60 day written notice</u> <u>\$28 per month for wireline transport facilities, on a per network node basis</u>

Chapter 37 “Acquisition, Use, and Disposition of City Property” is hereby amended as follows:

Appendix A. Design Manual.

Right-of-Way Network Node Design Manual

DIVISION I – General.

a. Applicability.

The requirements of this Manual shall apply to all installations in the right-of-way within the City of San Antonio consisting of equipment associated with network nodes, node support poles, and other poles on which network nodes and associated equipment are installed. The City of San Antonio shall not be responsible to applicants for such installations for the costs of compliance with this Manual. The Manual, however, is not intended to supersede or conflict with engineering, technical, or operational requirements found in CPS Energy’s pole attachment license agreements and Pole Attachment Standards.

b. Sources of Authority.

This Design Manual is adopted pursuant to Texas Local Government Code Chapter 284.

c. Definitions.

For purposes of this Manual, all terms herein shall be as defined in the City Code of San Antonio, including Chapters 29, 35 and 37, in Texas Local Government Code Chapter 284, or in this Manual.

1. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
2. "COSA" means the City of San Antonio, including all city departments, officers, officials, or employees authorized to act on city's behalf.
3. "CPS" means CPS Energy, the electric and gas municipally owned utility owned by COSA.
4. "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.
5. "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.
6. "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.
7. "HPO" means the City of San Antonio Historic Preservation Officer or their designee.
8. "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Texas Utilities Code, and located in a public right-of-way.
9. "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.
10. "OHP" means the City of San Antonio Office of Historic Preservation.
11. "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.
12. "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.
13. "ROW" means public street right-of-way within the jurisdiction of the City of San Antonio.
14. "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:
 - A. a pole that supports traffic control functions;
 - B. a structure for signage;
 - C. a pole that supports lighting, other than a decorative pole; and
 - D. a pole or similar structure owned or operated by a municipality and supporting only network nodes.
15. "Stealth" or "stealth design" means a method of camouflaging any network node, node support pole, or transport facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure.
16. "TCI" means the City of San Antonio Transportation and Capital Improvements Department.
17. "UDC" means the City of San Antonio Unified Development Code.
18. "Utility pole" means a pole that provides:
 - A. electric distribution with a voltage rating of not more than 34.5 kilovolts; or
 - B. services of a telecommunications provider, as defined by Section 51.002, Texas Utilities Code.

19. "Wireless service provider" means a person that provides wireless service to the public.

Unless noted otherwise, where the above definitions conflict with those found in Texas Local Government Code Chapter 284, the latter shall control.

DIVISION II – Procedures.

- a. All installations of network nodes and related equipment in the City of San Antonio public ROW shall require a permit issued by TCI for the specific equipment and work actually installed and performed. Any said work performed without a permit shall be considered a violation of the San Antonio City Code and all persons or entities committing such violations may be subject to civil and criminal penalties as permitted by law.
- b. Where the proposed installation of a network node or related equipment is to be on a Service Pole, applicants shall confirm site eligibility with TCI prior to submitting a permit application. Eligibility determinations shall be based on installation space availability, as well as public safety, technical, and other criteria consistent with applicable law and city policies.
- c. To ensure the integrity of the traffic signal system and continued COSA compliance with federal and state laws, and the latest edition of the Texas Manual on Uniform Traffic Control Devices, (available at <https://www.txdot.gov/government/enforcement/signage/tmutcd.html>), TCI may deny access to Service Poles due to site operational conditions, limited space availability, public safety concerns, future traffic signal system planning, or other operational considerations. Eligibility approval for a particular location shall not be construed as eligibility approval for any other location.
- d. Pursuant to Texas Local Government Code Section 284.104, written approval by the Director of TCI shall be required prior to the installation by a network provider of any new node support pole in a public ROW that is in a municipal park or is adjacent to a street or thoroughfare that is not more than fifty (50) feet wide and adjacent to single-family residential lots or other multifamily residences or undeveloped land designated for residential use by zoning or deed restrictions.
- e. Pursuant to Texas Local Government Code Section 284.105, written approval by the Director of TCI shall be required prior to the installation by a network provider of any new node support pole in a public ROW that is in a Design District which requires the use of decorative poles, as listed in this Manual. Such approval shall require compliance with all applicable design and aesthetic standards described in this Manual.
- f. Where a proposed installation is to be on a property or in a zoning district designated a Design District under this Manual, the applicant shall meet the city department with jurisdiction over the particular district for review of required and proposed installation aesthetics prior to submitting application materials for completeness review. Where a proposed installation is in more than one Design District, the applicant shall meet with OHP.
- g. Where a proposed installation is to be on a property that is designated as a Historic Landmark, or is within a Historic, River Improvement Overlay, Viewshed Protection, or Mission Protection Overlay District, such installation shall be subject to review by OHP for compliance with this Manual, the Historic Design Guidelines and/or applicable Overlay District Guidelines, and the UDC, and the following additional procedures shall apply:

1. Prior to submitting a permit application, applicants shall meet with OHP to discuss potential equipment design modifications necessary to achieve compliance.
 2. Applicants shall furnish OHP with accurate scaled drawings of all proposed new equipment, showing location relative to existing equipment, existing poles, and adjacent structures within five hundred (500) feet. Additional submittal materials for OHP review shall be per the instructions of the COSA Historic Preservation Officer.
- h. Where required to support a proposed installation, and subject to TCI approval, applicants proposing pole re-enforcement or replacement shall provide engineering design drawings and specifications demonstrating the proposed alteration to the pole.
 - i. The Chief Technology Officer, Right-of-Way Manager, HPO, or their designees may, at their discretion, require applicants make design modifications pursuant to Chapter 284, this or other COSA design manuals, and applicable regulatory or legal requirements. Such requested design modifications shall be a prerequisite to a determination that a permit application is complete.
 - j. No application review, or application review timeline under Texas Local Government Code Chapter 284, shall commence until an application is deemed complete by the Directors of TCI, ITSD, OHP or their designees.
 - k. ROW permit applicants shall submit complete structural calculations and drawings to TCI, sealed by a professional engineer licensed in the State of Texas, detailing anchorage, attachment, and support, including an industry standard pole load analysis certifying that the pole will safely support all applicable loads of all the existing and proposed equipment, facilities, and appurtenances.
 - l. Permit applications shall identify which Design Districts as defined in this Manual, if any, the proposed installation is within.
 - m. Permit applications shall clearly demonstrate compliance with the following, as applicable:
 1. One (1) hour shutoff notice obligation;
 2. Non-interference obligation;
 3. Quick disconnect at node location;
 4. Own power source, conduit, meter, and shutoff accessible by TCI; and,
 5. Any applicable backhaul rights/rules.
 - n. Applications shall be evaluated on a case-by-case basis to ensure consideration of specific structural conditions, load capacities, visual and signal interference, aesthetics, and reservation of space for future COSA infrastructure.
 - o. Upon completion of installation work, applicants shall:
 1. Provide TCI with an affidavit of compliance, sealed by a professional engineer licensed in the State of Texas, certifying all work was carried out consistent with the previously submitted and approved calculations and drawings.

2. Notify the Chief Technology Officer, or his designee, in writing and provide a picture of said installation, city ROW permit number, the GIS coordinates, date of installation, company site ID#, type of pole used for installation, pole owner, and description/type of installation, which will be included in the Network Node Site Application records. Applicants shall be required to label all installations with the City right-of-way permit number for easy reference and verification by City personnel.

DIVISION III - Technical Requirements.

a. General Requirements.

1. In accordance with Texas Local Government Code Section 284.102, a network provider shall construct and maintain network nodes and node support poles described by Texas Local Government Code Section 284.101 in a manner that does not:
 - A. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
 - B. obstruct the legal use of a public right-of-way by other utility providers;
 - C. violate nondiscriminatory applicable codes;
 - D. violate or conflict with the municipality's publicly disclosed public right-of-way design specifications; or
 - E. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).
2. In addition to the foregoing, and in accordance with Texas Local Government Code Section 284.304, network nodes and node support poles described by Texas Local Government Code Section 284.101 shall be constructed and maintained in a manner that does not obstruct, interfere, or conflict with any public safety communication or traffic safety signal frequency.
3. In accordance with Texas Local Government Code Section 284.107, network providers shall comply with the City's nondiscriminatory undergrounding requirements in relation to an installation for which the City has approved a permit application, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval. This provision may not be interpreted to prohibit a network provider from replacing an existing structure.

b. Specific Requirements.

In accordance with Texas Local Government Code Section 284.108, the following shall apply to all network node installations in the right of way ('ROW'):

1. All network nodes and related equipment shall be installed in accordance with the Right-of-Way Management Ordinance, as applicable.
2. Network providers shall be responsible for ensuring compliance with all applicable federal, state, and other local installation and construction standards and industry best practices, as well as the Americans with Disabilities Act.

3. New node support poles shall be located at least two hundred and fifty (250) feet from any existing pole of any type, unless the director of TCI determines in his sole discretion that the network provider has shown good cause for granting an exception to the distance requirement. Good cause is determined in the director's sole discretion and, in any event must be based on the unavailability or unsuitability of all other feasible locations. Wireless antennas shall maintain a minimum ten (10) foot vertical and horizontal clearance from any electrical conductors including neutral conductors. Additional clearances may be required to ensure that field personnel are not exposed to unsafe radiation levels. Applicants are responsible for confirming applicable clearance requirements with CPS and COSA.
4. Electrical power to network nodes and related equipment shall be wholly separate from electrical power serving COSA equipment including traffic signal devices, street lighting, etc. In addition, applicants shall be responsible for compliance with applicable CPS meter requirements.
5. All electrical and communication cabling to network nodes and related equipment shall be run in its own conduit path outside of the conduit path used by COSA infrastructure.
6. In order to permit emergency power shut-downs, an electrical cutoff, accessible by TCI personnel, shall be provided at each network node or related equipment installation with separate electrical power service.
7. Installation of network nodes and related equipment shall not hinder the intended operation and visibility of all traffic control devices, including but not limited to signal faces, signals, detectors, push buttons, etc.
8. The following locations are reserved for COSA infrastructure, and no network nodes or related equipment shall be installed therein:
 - A. any location not on a vertical support pole (i.e., steel mast arm mounted over the roadway, span wire cable between poles, down guy cable systems, etc.)
 - B. within ten (10) ft. from the base of the pole (any type of traffic signal pole)
 - C. within three (3) ft. below the mast arm on the pole
 - D. within five (5) ft. above the mast arm on the pole
 - E. within five (5) ft. from the top of the pole
9. When approved pursuant to applicable procedures and reviews, including load analysis, extensions may be mounted to poles to permit installation of a network node or related equipment.
10. Applicants shall be responsible for ensuring that installation of equipment and approved extensions shall not encroach into areas restricted by CPS surrounding primary, secondary, and neutral wires.
11. All pole excavations, construction activities, and aerial installations on poles in the ROW shall be carried on as to minimize interference with the use of City's public ROWs and with the use of private property, in accordance with all regulations of the City necessary to provide for public health, safety and convenience.

12. All construction in the ROW shall conform to the latest version of the 'City of San Antonio Standard Specifications for Construction' document and associated Special Provisions, available at on the City of San Antonio's website at <http://www.sanantonio.gov/TCI/Current-Vendor-Resources/Standard-Specifications-and-Details>, as well as the 'City of San Antonio Utility Excavation Criteria Manual (UECM) – Second Edition', available at <http://www.sanantonio.gov/TCI/Services/Right-of-Way-and-Permits>.
13. Installations with no equipment located on the ground are strongly encouraged. Where ground-mounted equipment is approved as part of a permitted installation, it shall comply with the requirements of this Manual.

Division IV – General Aesthetic Requirements.

a. Height Limits.

1. Maximum Pole Height.

In accordance with Texas Local Government Code Section 284.103, no new, modified, or replacement utility pole or node support pole installed in a public right-of-way shall exceed the lesser of:

- A. Ten (10) feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- B. Fifty-five (55) feet above ground level.

2. Supplemental Height Regulations.

Notwithstanding the height limits in subsection (a), above, all poles and associated equipment shall comply with the height restrictions of the Airport Hazard Overlay District, as found in Section 35-331, Military Airport Overlay Zones, as found in Section 35-344, and Viewshed Protection and Mission Protection Overlay Districts, as found in Sections 35-337 and 35-339.06, of the City Code.

3. Other Height Regulations.

Network providers shall be responsible for complying with all applicable federal regulations, including applicable Federal Aviation Regulations (FAR) such as those codified at 14 CFR, part 77.

b. Other Dimensional Limits.

1. Per Texas Local Government Code Section 284.003, except as provided by Section 284.109 of that Code, a network node to which this chapter applies must conform to the following conditions:

- A. each antenna that does not have exposed elements and is attached to an existing structure or pole:

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

B. if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:

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

C. the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:

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

D. ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and

E. pole-mounted enclosures may not be taller than five feet.

2. The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (A):

- A. electric meters;
- B. concealment elements;
- C. telecommunications demarcation boxes;
- D. grounding equipment;
- E. power transfer switches;
- F. cut-off switches; and
- G. vertical cable runs for the connection of power and other services.

3. Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

4. All network node equipment placed on new and existing poles shall be located not less than eight feet above ground level.

5. Equipment attached to a utility pole must be installed in accordance with the National Electric Safety Code and the utility pole owner's construction standards, subject to all other applicable codes, regulations, or laws.

c. Lighting.

Network nodes and node support poles shall not be artificially lighted unless required by the FAA, FCC, or other applicable regulatory authority. If required, lighting shall be designed to cause the least disturbance feasible to the surrounding property owners.

d. Advertising.

No sign of any type shall be allowed on a network node, node support pole, or any other component of a wireless antenna installation, transport facility, or any associated equipment, other than notices required by law.

e. Solar Panels.

Solar Panels are prohibited as part of any network node, node support pole, or any other component of a wireless antenna installation, transport facility, or any associated equipment, in the ROW.

f. Visual Appearance of Equipment.

The installation of all network nodes, node support poles, or other components of a wireless antenna installation, transport facility, or any associated equipment, whether pole-mounted or ground-mounted, shall be of the least visually intrusive type feasible to meet the design performance goals. This shall be achieved by utilization of the dimensionally smallest equipment and equipment enclosures meeting the design specifications for the particular location and function. Additionally, all equipment, conduit, attachment hardware, and other elements installed or modified by a network provider shall be the same color as the pole to which they are attached, or the background against which they are viewed from the ground. Network providers shall minimize the visual obtrusiveness of installations to the greatest extent possible using methods including, but not limited to, integrating the installation with the existing infrastructure components to which they are attached, or utilization of coverings or concealment devices of similar material, color and texture – or the appearance thereof – as the surface against which the installation will be seen or on which it will be installed.

g. New or Replacement Pole Aesthetic Requirements.

- 1. Unless noted otherwise, all poles shall be of a size, type, and finish per TCI and subject to Section 29-139 of the City Code and applicable federal or state standards.**
- 2. In no event shall new node support poles be placed in front of the front façade of primary structures on any single-family residential lot.**
- 3. For purposes of this Manual, structures fronting more than one street shall be considered to have a front façade fronting on each such street.**

Division V – Additional Aesthetic Requirements in Design Districts.

a. Applicability.

1. The requirements of Division IV of this Manual shall apply to network node installations in the ROW within all city parks, as well as in the ROW within, or directly abutting property within, Design Districts as defined herein.
2. For purposes of Texas Local Government Code Chapter 284 and this manual, the following types of districts shall be considered Design Districts with Decorative Poles:
 - A. Downtown 'D'
 - B. Historic 'H', 'HS', 'HE' or 'HL', including properties within historic districts and individual properties designated as Historic Landmarks
 - C. River Improvement Overlay 'RIO'
 - D. Neighborhood Conservation 'NCD'
 - E. Corridor Improvement Overlay
 - F. Viewshed Protection 'VP' and Mission Protection 'MPOD'
 - G. Airport/Military Airport Overlay 'AHOD/MAHOD'
 - H. Form-Based Zoning District 'FBZD'

The above list is intended for information purposes only, is not intended to be exhaustive, and is subject to amendment.

3. The Design Districts listed above may be further subdivided by neighborhood, area, or other division. Where specific requirements apply within sub-districts, such requirements may be elaborated in this Manual.
4. Where conflicts exist between this Manual and other district-specific or sub-district-specific Design Manuals, the more stringent requirements shall control.

b. Design District Aesthetic Requirements.

In addition to the design requirements in Division III of this Manual, the following aesthetic requirements shall apply in Design Districts:

1. New node support poles in districts designated as Design Districts in this Manual shall be placed within ten feet of interior lot lines.
2. In no event shall new node support poles be placed in front of the front façade of primary structures on any property designated as Historic or within fifteen hundred (1500) feet of the brass monument viewshed marker in front of a structure designated by the United Nations as a UNESCO World Heritage site.
3. Network nodes, node support poles, and related equipment shall require camouflage or concealment measures to mitigate the impact or improve the aesthetics of the installation, as determined by the Historic Preservation Officer based on the unique circumstances of the design district or impacted property.
 - A. New network nodes mounted to existing poles shall be low profile and flush mounted to the greatest extent feasible. Network nodes must be painted to match the support pole or structure on which they are mounted.

B. The installation of new node support poles is discouraged in Historic Districts, Downtown "D", River Improvement Overlay Districts, Viewshed Protection and Mission Protection Overlay Districts. The Historic Preservation Officer may require concealment of the support pole in the form of aesthetically appropriate street lamps, site elements, district signage, or other stealth methods. The color of any new support pole or concealment solution shall be determined by the Historic Preservation Officer based on site specific conditions.

- i.** New node support poles must generally be located at commercial corners and intersections.
- ii.** New node support poles must be separated from other node support poles or existing poles by a distance of 250 feet.
- iii.** Where a separation requirement cannot be met, network nodes are preferred to be mounted to existing poles or installed with a stealth method.
- iv.** The height of new node support poles should not exceed the established predominant height of other poles and historic site elements located within 500 feet of the proposed installation.
- v.** New node support poles must be painted and not exceed 8" in diameter at the widest portion of the pole.

C. Ground-mounted equipment must be integrated into the overall design of an installation, camouflaged or concealed based on site specific conditions, and positioned to mitigate visual or physical obstructions to nearby historic features as recommended by the Historic Preservation Officer.

c. Decorative Poles.

In accordance with Chapter 284, installation or attachment of wireless communications equipment, including antennas, network nodes, transport facilities, and related equipment is prohibited on all decorative streetlight poles in Design Districts.

SECTION 3. All other provisions of Chapter 29 and Chapter 37 of the City Code of San Antonio, Texas, shall remain unchanged and in full force and effect unless expressly amended by this Ordinance.

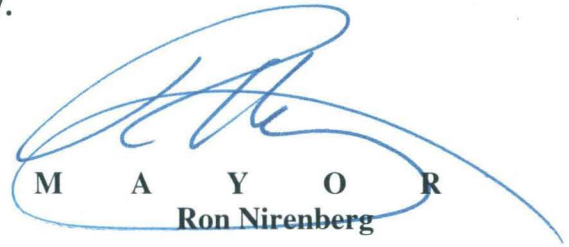
SECTION 4. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 5. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 6. The City Clerk for the City of San Antonio is directed to publish notice of this Ordinance in a newspaper published in the City of San Antonio, Texas, as required by Article 2, Section 17 of the City Charter of San Antonio, Texas.

SECTION 7. This Ordinance is effective upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

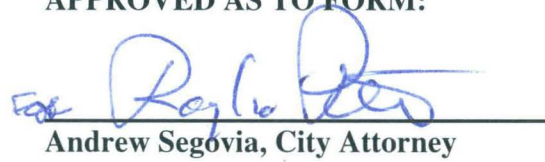
PASSED AND APPROVED this 31 day of August, 2017.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney

Agenda Item:	17 (in consent vote: 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28A, 28B)						
Date:	08/31/2017						
Time:	09:24:59 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing amendments to Chapters 29 and 37 of the City's Municipal Code to provide an initial framework for the deployment of small cell network nodes and node support poles in the public right-of-way, authorized by SB 1004, which added Chapter 284 to the Texas Local Government Code; approving a design manual for network nodes and node support poles in accordance with SB 1004; and amending Chapter 29 to include San Antonio Water System's (SAWS) utility locate contact information. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				