

ORDINANCE 2020-04-02-0225

**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 TEXAS LOCAL GOVERNMENT CODE CHAPTER 284.**

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**WHEREAS**, Texas Local Government Code Chapter 284 went into effect September 1, 2017; and

**WHEREAS**, Chapter 284 granted wireless providers, “network providers” in Chapter 284, 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 Chapter 284, for the purpose of supporting network nodes; and

**WHEREAS**, Chapter 284 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;

**WHEREAS**, in Ordinance 2017-08-31-0609, City Council amended Chapter 29 and Chapter 37 of the City Code to comply with the permitting processes, fee structures, and application review deadlines set out in Chapter 284; and

**WHEREAS**, in this proposed ordinance, City staff is seeking amendments to the Chapter 29, Chapter 37 provisions adopted in Ordinance 2017-08-31-0609, based on lessons learned from working with network providers and network node applications since the passage of Chapter 284;  
**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 2 “Technical Requirements”, Section 29-139 entitled “Attachment to poles” is hereby amended as follows:

(a) \*\*\*\*\*

(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 90365th day following the date the permit is approved if 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 605th day following the date installation and final testing is complete if the node, node support pole, or transport facility is not placed into active commercial service in providing or supporting the provision of wireless services as of that date.
  - (4) The director right-of-way manager may grant a one-time extension for up to thirty (30) days to an expiration date in this section, provided the director right-of-way manager determines in his-their sole discretion that the network provider has shown good cause for granting the extension. Good cause is determined in the director's right-of-way manager'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, Texas Manual on Uniform Traffic Control DevicesTMUTCD requirements, and applicable federal or state standards. Prior to construction, network provider shall agree that all re-enforced or replaced ~~ment~~ 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 37 "Acquisition, Use, and Disposition of City Property", Section 37-21 "Information technology on city city-owned property", Subsection (a) entitled "Use of poles in the right-of-way" is hereby amended as follows:

- (a) *Use of poles in the right-of-way.*
- (1) 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 V.T.C.A., Local Government Code ch. 284. The director or designee ~~chief information technology officer~~ shall establish forms, processes and procedures for carrying out this section.
  - (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.

- a. 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.
  - b. 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 Utility Excavation Criteria Manual ("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 poles, as defined in V.T.C.A., Local Government Code ch. 284, on behalf of a wireless service provider agrees:
- a. Each application submitted to the city shall identify each network provider that is a wireless service provider utilizing the polesite.
  - b. 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 polesite.
  - c. 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 polesite.

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- (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 tenth 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. Network node and node support pole applications must list the wireline carrier



providing transport facilities to the network node or node support pole being installed even if the network provider is exempt from the monthly transport fee set out in V.T.C.A., Local Government Code ch. 284. The ~~director~~chief information/technology officer and the right-of-way manager may designate one or more staff personnel to review and approve network node and node support pole 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.~~
- a. ~~Network provider shall maintain a current inventory of network node, including micro 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, micro 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.~~
- b. ~~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 ten (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 V.T.C.A., Local Government Code ch. 284.

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- (11) Prior to conducting planned or routine maintenance on traffic signal system poles, the TCI Department shall provide applicant twenty-four (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 ~~directore~~chief information/technology officer or designee 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.
- a. The applicant shall provide the ~~directore~~chief information/technology officer or ~~his~~ designee an interference remediation report that includes the following items:
1. *Remediation plan.* Devise a remediation plan to stop the event of interference;
  2. *Time frame for execution.* Provide the expected time frame for execution of the remediation plan; and
  3. *Additional information.* Include any additional information relevant to the execution of the remediation plan.
- b. 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.

- c. 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.

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Chapter 37, Article IV "Acquisition, Use, and Disposition of City Property", Section 37-21 "Information technology on city city-owned property", Subsection (b) entitled "Fiber optic licenses" is hereby amended as follows:

(b) *Fiber optic licenses.*

- (1) Petitions to install fiber optic cable, conduit, and related communications facilities on city right-of-way or other city property must be submitted to the directore~~chief information/technology officer~~. The directore~~chief information/technology officer~~ may process requests and may establish forms and procedures to carry out this section. This section does not apply to a certificated telecommunications provider licensed by the Texas Public Utility Commission that is providing local exchange telephone service within the city and does not include public right-of-way that is a drainage easement unless the city also owns the underlying fee interest.
- (2) Fiber optic licenses have ten-year terms.
- (3) The annual consideration amount for use of public right-of-way for the purpose of installing aerial and/or subterranean fiber optic and related communications facilities is based on the fair market value of the right-of-way used by the petitioner. The licensed area must be as wide as the petitioner will reasonably need to maintain the licensed facilities but not more than twenty (20) feet. Notwithstanding subsection 37-2(i), the directore~~chief information/technology officer~~ in his discretion may utilize internal staff or engage an independent professional consultant to conduct an appraisal of the right-of-way subject to the license, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. The petitioner will be responsible for paying the right-of-way appraisal separate from the processing fee. The directore~~chief information/technology officer~~ will determine the fair market value on a per-linear-foot basis of the right-of-way area associated with the petitioner's network footprint. An annual escalation factor of four (4) percent will be applied to the consideration amount for year one in order to derive the consideration amount for years two (2) to ten (10) of the license term. At the discretion of the directore~~chief information/technology officer~~, the city may negotiate a discount off the total licensing fee in exchange for in-kind contributions of equivalent value.



- (4) The licensing fee will authorize the petitioner to install fiber facilities on city right-of-way, but does not grant authority to use poles or other infrastructure of the city or utility agencies. The ~~director~~chief information/technology officer may require a petitioner to sign and deliver an agreement setting out the applicable license fee and conditions imposed by city departments and utility agencies. When reasonably conducive to the efficient use of the property on which fiber facilities are located, the ~~director~~chief information/technology officer may require licensee to relocate the fiber optic facilities, including all related communications facilities, at licensee's expense.
- (5) Following termination of the license for any reason, licensee must remove or otherwise dispose of all communications facilities at its own expense within sixty (60) days. Failure to take this action will result in the fiber facilities being considered abandoned and the property of the city.

Chapter 37, Article IV "Acquisition, Use, and Disposition of City Property", Section 37-21 "Information technology on city city-owned property", Subsection (c) entitled "Wireless communications towers on city property" is hereby amended as follows:

(c) *Wireless communications towers on city property.*

- (1) Petitions for the right to erect a wireless communications tower on city property or collocate antennae facilities on a wireless communications tower must be submitted to the ~~director~~chief information/technology officer. The ~~director~~chief information/technology officer may process requests and may establish forms and procedures to carry out this section. Wireless communications leases and collocation licenses are for twenty-year terms.
- (2) The city may lease space for the erection of wireless communications towers. When erected, wireless communication towers remain personal property and belong to the provider during the existence of the lease. The lease may specify the required height of the wireless communications tower and the required number of antennae array locations. If following termination of a tower lease for any reason, the provider fails to remove the wireless communications tower within sixty (60) days or otherwise dispose of the tower, the tower shall be considered abandoned and shall become the property of the city.

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- (4) Despite the wireless communications tower being the provider's personal property during the term of a lease, the city reserves the right to charge processing fees and the consideration amount to collocators desiring to install antennae facilities on the city tower. If a wireless communications tower was built before adoption of this section, the provider must obtain a tower lease from the city, and any collocator must obtain a collocation license for its antennae facilities.
- (5) The petitioner must annually provide the city a list of all wireless communications towers deployed by petitioner on city property, including addresses, location, and GIS coordinates in a form approved by the ~~director~~chief information/technology officer.
- (6) The city attorney must approve the form of each tower lease and collocation license that does not conform to this section, both of which must be approved by the city council. The

~~directore~~chief information/technology officer can bind the city to tower leases or collocation licenses without specific city council action, if they conform to this section.

- (7) Validation of proper operation. Within forty-five (45) days of commencement of operations, the petitioner shall provide verification by qualified experts that the radio frequency levels comply with FCC regulations.
- (8) The annual consideration amount for use of city property for the purpose of installing a wireless communications tower is based on the fair market value of the city property leased by the petitioner, including, but not limited to, uninhabitable enclosed structures, all communications facilities and related city property fenced in and enclosed therein. The ~~directore~~chief information/technology officer will determine the fair market value on a cubic foot basis (width x length x height) of the city property area associated with the petitioner's lease. The ~~directore~~chief information/technology officer in his discretion may engage an independent professional consultant to determine the lease rate. An annual escalation factor of four (4) percent will be applied to the consideration amount for year one in order to derive the consideration amount for years two (2) to twenty (20) of the lease term. At the discretion of the ~~directore~~chief information/technology officer. The city reserves the right to revise its rate structure based on market conditions.

Chapter 37, Article IV "Acquisition, Use, and Disposition of City Property", Section 37-21 "Information technology on city city-owned property", Subsection (d) entitled "Communications facilities installed on city property not addressed in subsections (a), (b), and (c)", and Subsection (e) entitled "Interference with public safety communications" are hereby amended as follows:

- (d) *Communications facilities installed on city property not addressed in subsections (a), (b), and (c).*
  - (1) Communications facilities installed on city property pursuant to this subsection shall be by agreement negotiated by petitioner and the ~~directore~~chief information/technology officer.
  - (2) The annual consideration amount for use of city property is based on the fair market value of the city property used by the petitioner. The agreement may include an annual escalation factor of four (4) percent may be applied to the consideration amount for year one in order to derive the consideration amount for future years covered by the agreement.
- (e) *Interference with public safety communications.* Whenever the city has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by the wireless communications infrastructure installed by one or more wireless communication providers, the following steps shall be taken:
  - (1) The city shall provide notification to all wireless communications service providers operating in the city of possible interference with the public safety communications equipment. Upon such notification, the owners shall use their best efforts to cooperate and coordinate with the city and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Best Practices Guide," released by the FCC in February 2001, including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time.



- (2) If any wireless communications service provider fails to cooperate with the city in complying with the wireless communications service provider's obligations under this section or if the FCC makes a determination of radio frequency interference with the city public safety communications equipment, the wireless communications service provider who fails to cooperate and/or the owner of the wireless communications facilities which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the city for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the city to determine the source of the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in the "Best Practices Guide" within twenty-four (24) hours of the city's notification.
- (3) The requirements set out in subsections (1) and (2) of this section (e) also apply to wireless communications infrastructure installed by network providers, as defined in V.T.C.A., Local Government Code § 284.002.

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

Permit, Document or Action:	Process Fee:	Consideration Amount:									
<b>Communications Facilities</b> - not installed pursuant to 37-21 (b), and (c)	None	By agreement with <del>information/technology officer</del> <u>director/chief</u> ; fair market value of area covered									
<b>Encroachment Permit</b> - public street, alley or drainage right-of-way  <i>Section 37-3</i>	\$100.00	\$500.00									
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<b>Electrical power charge associated with network nodes installed on certain city infrastructure</b>  <i>Section 37-Design Manual Division III, Section c.</i>		<table> <tr> <th>Tier</th><th>Max Wattage/Amperage</th><th>Annual Fee</th></tr> <tr> <td><u>Low</u></td><td>0-480 watts / 0-4 amps</td><td>\$356</td></tr> <tr> <td><u>Standard</u></td><td>481- 1,165 watts / 4.1-10 amps-</td><td>\$864</td></tr> </table>	Tier	Max Wattage/Amperage	Annual Fee	<u>Low</u>	0-480 watts / 0-4 amps	\$356	<u>Standard</u>	481- 1,165 watts / 4.1-10 amps-	\$864
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		<b>High</b> <u>above 1,165 watts/ \$1,778</u> <u>10+ amps</u>
<b>Recording</b> <i>Section</i>	<b>Costs</b> 37-2	Application specific calculation - Petitioner must pay the cost at least 30 days prior to an item being scheduled for city council consideration None
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Chapter 37 Appendix A "Right-of-way network node design manual", Division I "General", Subsection (a) entitled "Applicability", Subsection (b) entitled "Sources of Authority", and Subsection (c) entitled "Definitions" are hereby amended as follows:

## **DIVISION I. GENERAL**

### **a. Applicability.**

The requirements of this Design Manual "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.

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17. "UDC" means the City of San Antonio Unified Development Code.

18. "UECM" means the Utility Excavation Criteria Manual Fourth Edition, as may be amended by city staff from time to time; available at <http://www.sanantonio.gov/TCI/Services/Right-of-Way-and-Permits>.

19. "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.

2049. "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.

Chapter 37 Appendix A "Right-of-way network node design manual", Division II "Procedures", Subsections (h) and (o) are hereby amended as follows:

## **DIVISION II. PROCEDURES**

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- 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 s~~Subject to directorTCI approval, applicants proposing service pole re-enforcement or replacement shall provide engineering design drawings and specifications demonstrating the proposed alteration to the pole.

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- 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 the right-of-way managerTCI 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. Upon completion of the installation, including a micro network node installation, applicant shall notify the director or 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.



~~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.~~

- a. 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 or never activated, 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. The inventory shall include network nodes installed on service poles, municipally owned utility poles and third-party proprietary poles. The annual inventory shall be due not later than September 30<sup>th</sup> of each year.
- b. 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.

Chapter 37 Appendix A “Right-of-way network node design manual”, Division III “Technical Requirements”, Subsection (b) entitled “Specific Requirements” and Subsection (c) entitled “Electrical power charge associated with network nodes installed on certain city infrastructure” are hereby amended as follows:

- 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 Chapter 29, Article IV (COSA Right-of-Way Management Ordinance), and the UECM 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., unless otherwise authorized by the director or designee. 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, unless otherwise authorized by the director or designee.
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, unless otherwise authorized by the director or designee:
  - 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.

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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. Network providers shall not install overhead lines connecting to a network node collocated on a service pole or a node support pole, unless approved by the director for temporary maintenance or repair not to exceed ten days. All lines, including power and transport facilities, connecting to a pole mounted network node, shall be placed in duct or conduit that is buried below ground, provided that a network node attached to a utility pole, a municipally owned utility pole, or a pole not subject to Chapter 284 requirements may connect to aerial transport facilities for which an attachment right has been granted by the utility pole owner.
132. 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>.



143. 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.

c. Electrical power charge associated with network nodes installed on certain city infrastructure.

1. The City may allow network providers that locate network node equipment on any traffic signal pole to utilize the City's meter and/or electric service account associated with the host traffic signal pole. Network providers shall pay to the City an annual power fee designed to recover the cost of the additional electric energy used by the network node equipment and related infrastructure installed by the provider on any City traffic signal pole. The initial annual power fee shall be paid on the date a network node application is approved by the City and invoiced annually, on October 1 of each year thereafter. The annual power fee shall be adjusted as necessary to ensure the City receives full cost recovery for network node installations on City traffic signal poles. Similarly, the annual power fee may be adjusted prospectively as necessary to reflect any increase in CPS Energy rates. The annual power fee shall be based on the projected kilo-watt-hour consumption, as determined by the maximum wattage/ampere capacity of the installed network node equipment as stated on the Right-of-Way network node permit application, which is subject to verification by CPS Energy.
2. Via the annual power fee specified in subsection c.1., above, a network provider shall reimburse the City for its proportionate share of cost for electricity use, based on wattage/ampere tiers as illustrated in section c.3. below. The City retains the right, at any time, to amend the wattage/ampere range for any tier and related annual power fee, including the creation of additional tiers. For any network node location, if the City determines that the network node equipment is using more kilo-watt-hours than the initial tier designation, the City shall designate an alternative tier to the network node as appropriate. The City retains the right to disconnect power to any network node if the annual power fee is not paid. The City retains the right to require a dedicated meter, at the network provider's expense, for any network node installation at any time if the provider fails to timely pay or repeatedly and significantly underestimates usage.
3. The annual power fee applicable to network node equipment installed on any City traffic signal pole is set out in Section 37-22 of the City's Municipal Code.

Chapter 37 Appendix A "Right-of-way network node design manual", Division IV "General Aesthetic Requirements", Subsection (e) entitled "Solar Panels" and Subsection (f) entitled "Visual Appearance of Equipment" are hereby amended as follows:

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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 Prohibited Power Sources.

Solar Panels and generators are prohibited as part of any network node, node support pole, or any other component of a network node ~~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. Placing conduit and associated wiring inside new network node steel support poles, or of similar material and design support poles, are encouraged and preferred.

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.

Chapter 37 Appendix A “Right-of-way network node design manual”, Division V “Additional Aesthetic Requirements in Design Districts”, Subsection (b) entitled “Design District Aesthetic Requirements” is hereby amended as follows:

**DIVISION V. ADDITIONAL AESTHETIC REQUIREMENTS IN DESIGN DISTRICTS**

a. Applicability.

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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.~~New Pole Allowance: The installation of new poles is discouraged in Historic Districts, Downtown "D", River Improvement Overlay Districts, Viewshed Protection and Mission Protection Overlay Districts. No new poles are to be reviewed or approved prior to the submission of a documented effort to install network node equipment onto existing poles within the immediate block or a 250 foot radius. If installation is found to be infeasible or unproductive to the area's telecommunication network needs, only then may a new pole installation be considered. The Historic Preservation Officer determines if the network provider has shown good cause for granting an exception to the distance requirement. Good cause is determined in the Historic Preservation Officer's sole discretion and, in any event must be based on the unavailability or unsuitability of all other feasible locations.
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. New pole locations should follow the placement pattern of existing pole structures of the immediate block or within a 250 foot radius, regarding both the distance between existing poles and the relationship between poles and abutting structures. Typically, appropriate new pole locations include commercial corners or intersections and the corners between properties.~~
  - A. New poles in districts designated as Design Districts in this Manual shall be placed within ten feet of interior lot lines.
  - B. 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.~~New network node poles should match the material, color, and general form of existing poles within the immediate block or 250 foot radius. Typically appropriate poles to mimic include wood utility poles, metal streetlight poles, and metal traffic poles. The Historic Preservation Officer maintains the discretion to stipulate a higher quality and more appropriate pole material and design when matching the existing poles is counterproductive to the Design District. Public art poles or specially designed poles may also be considered in unique circumstances such as an arts and culture district or corridor.



- 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. New node support poles should blend into the streetscape by using existing familiar forms and functions, rather than calling attention with a new distinct design exclusive to network nodes. For instance, a new node support pole may require the installation of a light arm to prevent the installation of a single-use pole, used solely for mounting network node equipment.~~
- ~~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. Each new, modified, or replacement utility pole or node support pole shall not 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. The dimensions of a new pole should be minimized to the greatest extent feasible, while meeting the minimal requirements for concealing equipment inside the pole or withstanding wind or other structural loads by Code.~~
- 4. Pole-mounted network node equipment (including but not limited to radios, antennas, meters, shrouds, cabinets, and conduit) shall require camouflage or concealment measures, feature a low profile, and be flush mounted to the greatest extent feasible to mitigate the impact or improve the aesthetics of the installation. Typically, appropriate equipment feature simple geometries and concealed conduit, manufactured or painted to match the pole color, and will not feature any branding, messaging, or outstanding utilitarian details.
  - 5. Ground-based enclosures adjacent to a pole, often used for housing meter and disconnect equipment, are strongly discouraged. When concealing within the base of a pole or underground is infeasible, 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 and design features as recommended by the Historic Preservation Officer. In some site specific conditions, ground equipment may be concealed by the use of existing or new streetscape elements, such as recycling bins, park and bus stop benches, bike racks, or planters.


**SECTION 2.** 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 3.** 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 4.** 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 5.** 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.

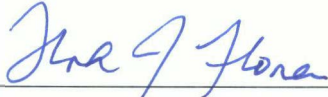
**PASSED AND APPROVED** this 2<sup>nd</sup> day of April, 2020.



M A Y O R

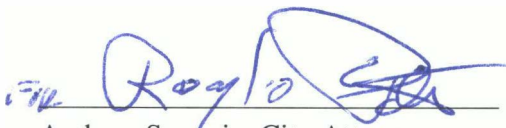
**Ron Nirenberg**

**ATTEST:**



Tina Flores, Acting City Clerk

**APPROVED AS TO FORM:**



Andrew Segovia, City Attorney



# City of San Antonio

City Council

April 02, 2020

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**Item: 12**

**Enactment Number:**

**File Number: 19-7574**

**2020-04-02-0225**

Ordinance amending Chapters 29 and 37 of the City Code to provide updates related to the deployment of small cell network nodes and node support poles in the public right-of-way authorized by Chapter 284 of the Texas Local Government Code. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works Department]

Councilmember John Courage made a motion to adopt. Councilmember Rebecca Viagran seconded the motion. The motion passed by the following vote:

**Aye:** 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,  
Cabello Havrda, Sandoval, Pelaez, Courage and Perry

**Absent:** 1 Gonzales