

**Ordinance amending Corpus Christi Code to adopt small cell network fees, regulations, and Design Manual; and providing for penalty**

**WHEREAS**, Texas Local Government Code, Chapter 284, provides the framework for municipal right-of-way access or small cell networks;

**WHEREAS**, Texas Local Government Code, Chapter 284, established a maximum public right of way rate;

**WHEREAS**, City Staff communicated with and received feedback from area Network Providers regarding the content of the City of Corpus Christi Design Manual;

**WHEREAS**, a public hearing was held on Wednesday, June 27<sup>th</sup>, 2018, during a meeting of the Planning Commission. The Planning Commission recommended approval and on Tuesday, July 31<sup>st</sup>, 2018, during a meeting of the City Council, during which all interested persons were allowed to appear and be heard;

**WHEREAS**, Sec. 284.107, *Design Manual*, of the Texas Local Government Code states that “A municipality may adopt a design manual for the installation and construction of network nodes and node support poles in the public right-of-way.

**WHEREAS**, the intent of the City of Corpus Christi Small Cell Design Manual is to implement Plan CC, the City's adopted Comprehensive Plan, by providing City Council with specific, objective, and prescriptive guidance for making decisions about the installation of Network Nodes, Node Support Poles, and related wireless facilities in the public right-of-way; and

**WHEREAS**, the City of Corpus Christi Small Cell Design Manual provides the guidance and recommendations to Network Providers for the timely, efficient, safe and aesthetically pleasing installation of Network Nodes, Node Support Poles, and related wireless facilities in the public right-of-way.

**Now therefore, be it ordained by the City Council of the City of Corpus Christi, Texas:**

**SECTION 1.** The Corpus Christi Code of Ordinance, Chapter 49 is amended to add ARTICLE V. OCCUPATION OF RIGHTS-OF-WAY BY SMALL CELL NETWORKS to read as follows:

**ARTICLE V. OCCUPATION OF RIGHTS-OF-WAY BY SMALL CELL NETWORKS**

**Sec.49-80      Applicability**

In addition to the general right-of-way regulations established in the Corpus Christi Code of Ordinances and the Unified Development Code, the city hereby adopts additional restrictions and requirements for the deployment of the telecommunications

equipment governed by V.T.C.A., Local Government Code Ch. 284. Terms utilized in this Article shall have the meanings assigned in V.T.C.A., Local Government Code Ch. 284. V.T.C.A., Local Government Code Ch. 284 shall be referenced as Ch. 284 in this Article.

A network provider seeking to site, install, collocate, maintain, repair, relocate, replace, and remove wireless facilities in the public right-of-way must comply with the provisions of State and Federal law and with the Corpus Christi Code of Ordinances and the Unified Development Code, as amended, and the City's Small Cell Design Manual, as amended, except where in conflict with Chapter 284.

## **Sec. 49-81 Permit**

(a) Permit Application - A network provider must submit an application for a permit prior to installing a network node, node support pole, or transport facility in the public rights-of-way and prior to any excavating or closing sidewalks or vehicular lanes in a public right-of-way in association with any routine maintenance, replacement, repair, or upgrading work. An application will not be deemed complete unless it includes:

(1) Detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Ch. 284, including, but not limited to Ch. 284, § 284.002, size of a Micro Network Node, § 284.003, size of network nodes, and § 284.103, maximum pole height, and with the requirements of this Article, the rights-of-way maintenance ordinance, and the pole attachment specifications;

(2) An analysis showing that the proposed wireless facility(ies) will not cause any interference with City public safety radio systems, utility supervisory control and data acquisition systems (SCADA), electric automation systems, metering networks, traffic signal light systems, or other City utility or safety communications components in accordance with Ch. 284, § 284.304, or interfere with motorists' sight distance at an intersection as defined by the American Association of State Highway and Transportation Officials (AASHTO) in the "A Policy on Geometric Design of Highways and Streets";

(3) A proposal to camouflage or conceal the network node consistent with the requirements of this Article;

(4) Disclose whether the location is any of the following:

A. Within a municipal park

B. Within an area zoned for residential use

- C. Within a design district utilizing decorative poles or in an area of the City zoned or otherwise designated as a historic overlay district, Development Concept and Special Overlay Districts or other similar districts as set forth in the City's Unified Development Code and Code of Ordinances;
- D. Within an area that has undergrounding requirements as set forth in the City's Unified Development Code (UDC) and Code of Ordinances;
- E. Within 300 feet of a historic site or structure or Historic Landmark recognized by the City, State or Federal Government (see, for example, and not limited to V.T.C.A. Texas Government Code 442.001(3), and 16 U.S.C. 470), as of the date of the submission of the permit.

(5) City's acceptance of the submitted design documents does not relieve Network Provider and its engineer of full responsibility and liability for any errors and/or omissions in the engineering analysis.

(6) Network Providers shall provide evidence of such permission to attach or use non-city-owned property and Right-of-Way. If the project lies within a Highway, the applicant must provide evidence of an authorization from the State or Federal government, as applicable

(b) Timeline

(1) The City will evaluate a network node or node support pole application for completeness within 30 days of submission. The City will evaluate a transport facility application for completeness within 10 days of submission.

(2) The city must approve or deny a complete application under this title in the following timeframes:

- A. An application for a node support pole not later than the 150<sup>th</sup> day after the date the municipality receives the complete application.
- B. An application for a network node not later than the 60<sup>th</sup> day after the date the municipality receives the complete application.
- C. An application for a transport facility not later than the 21<sup>st</sup> day after the date the municipality receives a complete application.

D. An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied on or before the applicable date for approval or denial prescribed in this subsection.

(3) A network provider that wants to install or collocate multiple network nodes inside the City is entitled to file a consolidated permit application for not more than 30 network nodes and receive permits for the installation or collocation of those network nodes.

**(c) Application Fee**

- (1) \$500.00 per application, up to five network nodes per application;
- (2) \$500.00 per application for the 1<sup>st</sup> five network nodes, then an additional \$250.00 for each additional network node per application; and
- (3) \$1,000.00 per application for each pole.

**Sec. 49-82 Location**

The following are prohibited or restricted areas for certain wireless facilities, except with separate city agreement:

**(a) Municipal Parks and Residential Areas**

- (1) In accordance with Chapter 284, Sec. 284.104, a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:
  - (2) Not more than (50) feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and
  - (3) Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning.

**(b) Historic Districts and Design Districts with Decorative Poles**

- (1) In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles

(2) As a condition for approval of Network Nodes or Node Support Poles in Design Districts with Decorative Poles or in a Historic District, the City shall require reasonable design or Concealment measures for the Network Nodes or Node Support Poles. Therefore, any request for installations in a Design District with Decorative Poles or in a Historic District, must be accompanied with proposed Concealment measures in the permit applications.

(3) The City requests that a Network Provider explore the feasibility of using Camouflage measures to improve the aesthetics of the Network Nodes, Node Support Poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in Design Districts with decorative poles or in an Historic District.

(4) Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

(5) Each permit application shall disclose if it is within a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District with Decorative Poles or Historic District.

(6) A Network Node shall not be installed in a location that causes any interference with existing City infrastructure. Network Nodes shall not be allowed on City's public safety radio infrastructure.

(d) Compliance with Undergrounding Requirements.

(1) In accordance with Chapter 284, Sec. 284.107, a Network Provider shall comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

(2) Each permit application shall disclose if it is within an area that has undergrounding requirements.

The City by its discretionary consent and agreement may grant exception to the above prohibited locations and sizes, but only in a non-exclusive, and non-discriminatory manner, as allowed or required by Chapter 284, Sec. 284.109 and Sec. 284.110.

**Sec. 49-83 Annual Public Right of Way Rate**

(a) Network node site annual rental rate:

- (1) Annual network node rate. In accordance with Chapter 284., Sec.284.053 (a), Network provider shall pay the city annually \$250.00 per network node installed in City public right-of-way. The annual network node public right-of-way rate is non-refundable.
- (2) Initial annual network node rate prorated. The annual network node public right-of-way rate payment for the first year at any location ("initial annual network node payment") begins accruing when facilities are installed and is due thirty (30) days after network provider installs or collocates a network node at a location. The initial annual network node payment shall be pro-rated for the months remaining in the calendar year after the permit issuance date.
- (3) Subsequent years annual network node rate due date. The annual network node public right-of-way rate for every year after the initial annual network node payment shall be paid in advance on or before December 31 of each calendar year for each network node in the public right-of-way for the next calendar year period.
- (4) Annual network node rate adjustment. The city reserves the right to make periodic rate adjustments in its discretion and pursuant to Ch. 284., § 284.054.

(b) Collocation attachment on service pole fee:

- (1) Subject to an agreement, annual collocation on service pole attachment fee. Network provider shall pay the city annually \$20.00 for each service pole with network node(s) collocated on in accordance with Ch. 284.

(c) Transport facility fee:

- (1) Transport facility fee amount. When the network provider is installing its own transport facilities, the network provider shall pay to the city an amount equal to twenty-eight dollars (\$28.00) per month multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul. As an alternative to paying the transport facility fee, the network provider may utilize the alternative verification report option as described below.
- (2) The transport facility fee is non-refundable. The monthly transport facility fee begins accruing when the transport facility is installed and is due in full December 31 of that year.

(3) When the network provider is obtaining transport service from a person that is paying the city municipal fees to occupy the public right-of-way that are the equivalent of not less than twenty-eight dollars (\$28.00) per network node site per month, the network provider may utilize the alternative verification report option as described below.

(4) Alternative verification report. If network provider utilizes the Ch. 284., § 284.055(a)(2) option to obtain transport service from a person that is paying municipal fees to occupy the public right-of-way or utilizes the Ch. 284., § 284.055(a)(1), option and install its own transport facilities and asserts that it has paid the city in an amount that is equivalent to or greater than the transport facility fee due for that year for the same and corresponding year that would have been due from the network provider to the city for the calendar year then:

(A) On or before December 31, the provider will notify the city that it intends to utilize this alternative verification report option.

(B) Thirty (30) days after the end of each calendar year the network provider shall provide to the city an alternative verification report documenting those equivalent or greater payments to the city. The verification report shall be provided thirty (30) days after the end of each calendar year that an actual and full payment is not made from the network provider to the city for the transport facility fee payment.

(C) This alternative verification report is to allow the city to verify that the annual payments due the city for transfer facilities for each network node transfer facility that the city has received from the network provider or from the network provider's provider of transport facilities a payment to the city for that corresponding prior calendar year is equal to or exceeds the monthly aggregate per-node transfer facility compensation due to the city and Ch. 284., § 284.055(b)(2) for that same period.

(D) In the event the payment to the city that is asserted to be equal to or exceeding the monthly aggregate per-node transfer facility compensation due to the city was by a different named entity than the network provider, the network provider bears the burden to establish that the entity paying the city and the network provider is an affiliate and that they are one and the same for purposes of a Ch. 284 transfer facility fee credit against the monthly transport facility fee.

(5) 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.

(d). If any state law setting the maximum right-of-way fee is amended, preempted, or declared to be invalid or void by a court of competent jurisdiction, the Annual Public Right of Way fee is the lesser of the maximum legally allowable amount or \$1,500 per network node.

### **Sec 49- 84 Collocation agreement**

The city manager or designee is authorized to enter into an agreement for the use of municipally owned service poles without any further action by city council. The terms of this pole attachment agreement shall have nondiscriminatory terms and conditions and shall require an industry standard pole load analysis.

### **Sec 49-85 Small Cell Design Manual**

(a) *Adoption of Small Cell Design Manual.*

The City Council adopts the *Small Cell Design Manual* for the installation of micro network nodes, network nodes, node support poles and related ground equipment pursuant to V.T.C.A. Local Government Code, ch. 284. A copy of the *Small Cell Design Manual* is available in the city secretary's office. Revisions to the design manual shall be by ordinance of City Council.

(b) *Compliance with Small Cell Design Manual.*

The installation and construction of micro network nodes, network nodes, transport facilities, and new node support poles in the rights-of-way is subject to the Corpus Code of Ordinance, Unified Development Code and the Small Cell Design Manual.

### **Sec 49-86 Administrative hearing – request for exemption**

Should the Network Provider desire to deviate from any of the standards set forth in the Design Manual, the Network Provider may request an Administrative Hearing before a Board of Appeals. The Zoning Board of Adjustment shall act as the Board of Appeals for a Request for Exemption. The process for an application, hearing and vote shall follow the process set out for a variance

### **Sec 49-87 General construction and maintenance**

(a) *General.*

In accordance with Ch. 284., § 284.102, a Network Provider shall construct and maintain wireless facilities in a manner that does not:

- (1) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
- (2) Obstruct the illumination of street lights;
- (3) Obstruct the legal use of a public right-of-way by other utility providers;
- (4) Violate nondiscriminatory applicable codes;
- (5) Violate or conflict with the City's Small Cell Wireless Facilities right-of-way use ordinance or Small Cell Design Manual;
- (6) Violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).

(b) *Windstorm.* All affected materials and installation shall comply with Texas Department of Insurance Requirements for windstorm resistant construction for design wind speed or as required by adopted City Technical Construction Codes, whichever is more restrictive. Permittee shall be responsible for contracting with a licensed structural engineer in the State of Texas to perform all inspections and provide documentation that the installation was inspected and constructed in accordance with City-approved plans and codes.

(c) *Breakaway Poles.* New network support poles •Adjacent to arterials or higher capacity roadways, breakaway poles must be used for the Installation of Network Nodes and related wireless facilities.

#### **Sec 49-88 Emergency removal, removal, replacement, maintenance, and repair**

- (a) Relocation. Except as provided in State and Federal law, a network provider, within 90 days of receipt of written notice from the City, shall relocate or adjust network nodes in a public right-of-way without cost to the City in the management and maintenance of the public right-of-way and shall comply with the relocation requirements in the Code of Ordinances. The City will make a good-faith effort to assist with identifying a location in a nearby Right-of-Way for the network node. The Network Provider shall obtain all permits required prior to relocation. The City shall waive the application fees and transfer all remaining rights to the new location so long as such relocation was not directly caused by the Network Provider.
- (b) Emergency removal, removal, replacement, maintenance, and repair.

(1) Other than routine maintenance where no roadway obstruction is necessary, a network provider must provide the City with seven days' advanced notice of any significant maintenance work conducted within the public right-of-way and of any work to replace or upgrade a network node or pole, to install, place, maintain, operate, or replace micro network nodes that are strung on cables between existing poles or node support poles.

(2) A network provider must comply strictly with the requirements of the right-of-way maintenance ordinance and other applicable ordinances, when installing, replacing, maintaining, repairing, upgrading, removing, relocating or operating micro network nodes, network node facilities, node support poles and related ground equipment, except to the extent not consistent with Ch. 284, § 284.107, and except as provided in existing State and Federal law.

(3) The City retains the right and privilege to disconnect or move any network node, node support pole, or associated ground equipment located within the public right-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any imminent public health or safety emergency. The City shall immediately notify the Network Provider after disconnecting or removing a network node, node support pole or associated ground equipment. If circumstances permit, the City shall notify the network provider and allow the network provider an opportunity to move its own facilities prior to the City disconnecting or removing a facility.

(c) Removal or relocation by network provider.

(1) If the Network Provider relocates a Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, it shall notify the City Manager in writing not less than 10 business days prior to relocation. Network Provider shall obtain all Permits required for relocation of its Micro Network Node, Network Node facilities, Node Support Poles and related ground equipment prior to relocation.

(2) All portions of the Micro Network Node, Network Node, Node Support Pole and related ground equipment may be removed by Network Provider at any time, provided the Network Provider shall notify the City Manager of such removal within thirty (30) days after removal. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

(d) Removal or Relocation Required for a City Project

(1) Except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node,

Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.

(2) Network Provider understands and acknowledges that the City may require Network Provider to remove or relocate its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or any portion thereof from the Right-of-Way for City construction projects as allowed by state and federal law, including the common-law.

(3) Network Provider shall, at the City Manager's direction, remove or relocate the same at Network Provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Manager reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the traveling public's use for travel and transportation.

(4) If Network Provider fails to remove or relocate the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof as requested by the City Manager within 90 days of Network Provider's receipt of the request, then the City shall be entitled to remove the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof at Network Provider's sole cost and expense, without further notice to Network Provider.

(5) Network Provider shall, within 90 days following receipt of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

(e) Removal Required by City for Safety and Imminent Danger Reasons

(1) Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment:

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

(B) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property; or

(C) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

(2) The City Manager shall provide 90 days written notice to the Network Provider before removing a Micro Network Node, Network Node, Node Support Pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.

(3) Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 90 days of receiving the invoice from the City.

**Sec 49-90 Improperly Located Network Node facilities, Node Support Poles and related ground equipment:**

(a) Improperly Located Network Node facilities, Node Support Poles and related ground equipment shall not impede pedestrian or vehicular traffic in the Right-of-Way. If any Network Node facilities, Node Support Poles or ground equipment is installed in a location that is not in accordance with the plans approved by the Director of Development Services and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Network Provider shall promptly remove the Network Node facilities, Node Support Poles or ground equipment.

(b) Notice to Remove unauthorized facilities and relocate and penalty: After 90 days' notice to remove unauthorized Network Node facilities, Node Support Poles or ground equipment in the incorrect permitted location, if not relocated, the Network Provider shall be subject to a penalty of \$100 per day that begins to accrue at the expiration of the 90 days' notice period until the Network Node facilities, Node Support Poles or ground equipment is removed regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ordinance and other applicable ordinances concerning improperly located facilities in the rights-of-way. Removal and relocation is not required and penalties will not be imposed if the Network Provider, after receipt of the 90 days' notice required by this subsection, applies for a permit and the City approves such application for the present location. In such case, for purposes of back rent, the City may invoice, and Network Provider shall pay to City within ninety (90) days from receipt of the invoice, a sum equal to five (5) times the then current, applicable rental rate(s)

multiplied by the number of unauthorized Network Nodes, unless the Network Provider can produce documentation showing installation of the Network Node occurred on a later date, in which case Network Provider shall pay back rent from that point forward.

## **Sec 49-91 Abandonment**

Permittee shall remove micro network nodes, network nodes, node support poles, and related ground equipment when such facilities are abandoned or are obsolete, regardless of whether it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of it being abandoned or within 90 days of receipt of written notice from the City. A micro network node, network node, node support pole and related ground equipment is presumed abandoned if such facilities are not operated for 180 consecutive calendar days. When Permittee removes abandoned permanent structures in the public right-of-way, the Permittee shall notify the City Engineer in writing of such removal and shall file with the City Engineer the location and description of the abandoned micro network nodes, network nodes, node support poles, and related ground equipment removed. The City Engineer may require the Permittee to complete additional remedial measures necessary for public safety, health, and welfare, and the integrity of the public right-of-way.

## **Sec 49-92 Bonding, Insurance, and Indemnity**

### **(a) Bond**

(1) Within thirty days of the approval of provider's initial permit under this Article, provider shall maintain and furnish to the city a security in favor of the city. "Security" means an executed performance bond acceptable to the city, for the purpose of protecting the city from the costs and expenses associated with provider's failure to comply with its material obligations under and throughout the time of provider's occupancy of public right-of-way, including but not limited to:

- (A). The city's restoration of the public right-of-way;
- (B) The city's removal of any of provider's attachments that are abandoned or not properly maintained or that need to be removed to protect public health, safety, welfare, or city property;
- (C) The city's recoupment of rental fees that have not been paid by provider in over twelve months, after provider receives reasonable notice from the city of any of the non-compliance listed above and opportunity to cure.

(2) The amount of security shall be one-hundred-thousand dollars for between one and thirty sites, and one-hundred-fifty-thousand dollars for between thirty-one and fifty sites. The security amount shall be prorated based on the number of attachments.

(3) The bond, if any, must be in a form approved by the city attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability up to one hundred thousand dollars by a reinsurer listed on the U.S. Treasury list.

(4) In the event the surety or party issuing the security cancels or decides not to renew or extend the security, provider shall obtain, and provide to the city attorney for approval, a replacement security with another surety, authorized to do business in Texas, within thirty days of the date the security has been cancelled or non-renewed.

(5) In the event the city draws upon the security, provider must replenish the amount of the security within thirty days. The city will notify provider in writing as a precondition to drawing on, seeking payment under, or executing against the security.

(6) In the event that provider shall relinquish its permits and remove its attachments from city facilities or public right-of-way, the city shall return the security to provider, or a portion thereof, within sixty (60) days of the removal of the attachments.

(b) Insurance

(1) Network Provider must submit a certificate of liability insurance in the amount of \$1,000,000.00 primary plus 2,000,000.00 umbrella or other securities as acceptable to the City Risk Manager or designee for the city. The city shall be named as additional insured on such certificate.

(2) The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion and collapse hazards.

(3) Each policy must include a cancellation provision in which the insurance company is required to notify the city in writing not fewer than thirty days before canceling, failing to renew, or reducing policy limits.

(4) The Network Provider shall file with the City Risk Manager the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of insurance company; name and address of the agent or authorized representative of

the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.

(5) At all times during Network Provider's use and occupancy of city facilities or public right-of-way, Network Provider shall keep in force and effect the same insurance coverage.

(c) **Indemnification**

(1) Per Ch. 284., §284.302, Network providers shall indemnify and hold the municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the Network provider, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Network provider, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality, its officers, employees, contractors, or subcontractors. If a Network provider and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the municipality and Network provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(2) Network provider or municipality shall promptly advise the other in writing of any known claim or demand against the Network provider or the municipality related to or arising out of the Network provider's activities in a public right-of-way.

## **Section 49-93 Assignment**

(a) Assignment – A permit shall be personal to the permittee. However, a permittee may assign a permit to other entities provided that, prior to the assignment, it first obtains the city manager's written consent to the assignment. The city manager may not unreasonably withhold consent to a permittee's request to assign its permit. In the event of any transfer of the permit to a third party, all of the benefits and obligations created by a permit will inure to the benefit of and become binding upon the assignee, and the permittee will be released from its obligations under

the permit. Notwithstanding any of the foregoing, a permittee may assign its interest in the permit to any licensed affiliate without the prior written consent of city, but such an assignment may not relieve the permittee of any of its obligations or liabilities under the permit, whether accrued or unaccrued.

(b) Permittee shall not sub-license or lease its rights under this Ordinance or associated Permits to an unaffiliated third party, including but not limited to allowing third parties to place Attachments on Poles, or by placing Attachments on Poles for the benefit of such third parties, without City's prior written consent. The city manager may not unreasonably withhold consent to a permittee's request to sub-license or lease its permit. The parties agree and acknowledge that, notwithstanding anything in this Ordinance to the contrary, certain Facilities deployed by Permittee in the Rights-of-Way pursuant to this Ordinance and associated Permits may be owned and/or operated by Permittee's third-party wireless carrier customers ("Carriers") and installed and maintained by Permittee pursuant to license agreements between Permittee and such Carriers. Such Facilities shall remain under Permittee's custody, care and control and shall be treated as Permittee's Facilities for all purposes under this Ordinance and associated Permits provided that (i) Permittee remains responsible and liable for all performance obligations under the Permits with respect to such Facilities; (ii) City's sole point of contact regarding such Facilities shall be Permittee; and (iii) Permittee shall have the right to remove and relocate the Facilities necessary for ordinary operation and maintenance so long as the location has already been approved by the City.

## **Sec 49-94 Enforcement**

It is unlawful for any person, firm or corporation to violate the provisions or terms of this Article or the Small Cell Design manual that is adopted by reference, and violators shall be subject to a penalty for each offense in accordance with section 1-6 of the Corpus Christi Code of Ordinances or any civil or injunctive relief in a court of competent jurisdiction.

**SECTION 2.** The City of Corpus Christi Design Manual, attached as Exhibit A, is adopted in its entirety.

**SECTION 3.** If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this ordinance, for it is the definite

intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision of this ordinance be given full force and effect for this purpose.

**SECTION 4.** Penalties are as provided in Section 1-6 of the Corpus Christi Code of Ordinances.

**SECTION 5.** Publication shall be made in the official publication of the City of Corpus Christi as required by the City Charter of the City of Corpus Christi.

**SECTION 6.** This ordinance takes effect upon publication.

That the foregoing ordinance was read for the first time and passed to its second reading on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

Joe McComb	_____	Ben Molina	_____
Rudy Garza	_____	Everett Roy	_____
Paulette Guajardo	_____	Lucy Rubio	_____
Michael Hunter	_____	Greg Smith	_____
Debbie Lindsey-Opel	_____		

That the foregoing ordinance was read for the second time and passed finally on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

Joe McComb	_____	Ben Molina	_____
Rudy Garza	_____	Everett Roy	_____
Paulette Guajardo	_____	Lucy Rubio	_____
Michael Hunter	_____	Greg Smith	_____
Debbie Lindsey-Opel	_____		

PASSED AND APPROVED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

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Rebecca Huerta  
City Secretary

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Joe McComb  
Mayor