

  **ARTICLE 13.08 RIGHT-OF-WAY MANAGEMENT**



  **Division 1. General Provisions**

  **Sec. 13.08.001 Title; policy and purpose**

- (a) This article may be known and cited as the right-of-way management ordinance for the Town of Highland Park, Texas.
- (b) The Town enacts these regulations to manage the public right-of-way, to ensure public health, safety and welfare and to promote the most efficient use of the right-of-way first and foremost for the traveling public, and also for water and sewer uses and for utility uses designed to benefit the citizens of the Town, including such uses as have been recognized in statutory and common law in the State.

  **Sec. 13.08.002 Construction; governing law; venue**

- (a) This article shall be construed under and in accordance with the laws of the State and the Town Charter and Town Code to the extent that such Charter and Codes are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in the county.
- (b) All provisions of this article shall apply to all persons involved with the right-of-way, all work performed therein, any facilities maintained therein or any other matter as applicable.

  **Sec. 13.08.003 Scope**

This article shall be effective within the geographical limits of the Town, including any areas subsequently annexed by the Town.

  **Sec. 13.08.004 Definitions**

The definitions in this section apply to all of this article.

Abandon and its derivatives. The facilities installed in the right-of-way (including by way of example but not limited to: poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that have been left by provider in an unused or nonfunctioning condition for more than 120 consecutive calendar days unless, after notice to provider, provider has established to the reasonable satisfaction of the Town that the applicable facilities, or portion thereof, is still in active use.

Access line.

- (1) Unless the commission adopts a different definition under section 283.003, a unit of measurement representing:
- (A) Each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer's premises within the municipality, that allows the delivery of local exchange telephone services within a

municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale;

(B) Each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or

(C) Each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the municipality, and in that instance, one path shall be counted for every 10 stations served; and

(2) May not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

Ancillary. Secondary, supporting, or subordinate.

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

Applicable codes.

(1) Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(2) Local amendments to those codes to the extent not inconsistent with this article.

Applicant. A person submitting an application or proposal to the Town for a license, franchise, permit or notice to install facilities or equipment or work in the right-of-way.

Application or proposal are synonymous for the purposes of this article. An “application” or “proposal.” The process by which the applicant submits a request and indicates a desire to be granted a license, permit or franchise for all, or a part, of the Town. An “application” or “proposal” includes all written documentation, and official statements and representations, in whatever form, made by an applicant to the Town.

Assignment of an authorization or transfer of an authorization. Any transaction or action which effectively or actually transfers the authorization or franchise or changes operational or managerial control from one (1) person or entity to another.

Authorization or agreement to use the right-of-way. A negotiated privilege pursuant to an agreement between the Town in its discretion and a person, allowing a person to occupy any portion of a street, right-of-way, or easement owned or controlled by the Town, and may be for a limited period of time or for a specific purpose.

Certificated telecommunications provider. A person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Commission to offer local exchange telephone service or a person who provides voice service.

Collocate and collocation. The installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Commission. The Public Utility Commission of Texas.

Communications network. A component or facility that is, wholly or partly, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

Consumer price index. The annual revised consumer price index for all urban consumers for the State, as published by the Federal Bureau of Labor Statistics.

Concealment or camouflaged. Any wireless facility or pole that is covered, painted, disguised, or blended into its environment or otherwise hidden or kept from sight such that the wireless facility blends into the surrounding environment and is visually unobtrusive. A concealed or camouflaged wireless facility or pole also includes any wireless facility or pole conforming to the surrounding area in which the wireless facility or pole is located and may include, but is not limited to hidden beneath a facade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

DAS or distributed antenna system. Shall be included as a type of network node and have the same meaning as “network node.”

Decorative pole or decorative streetlight. A streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

Design district. An area that is zoned, or otherwise designated by municipal code, and for which the Town maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Disaster emergency or disaster or emergency. An imminent, impending, or actual natural or humanly induced situation wherein the health, safety, or welfare of the residents of the Town is threatened, and includes, but is not limited to any declaration of emergency by Town, State or federal governmental authorities.

Easement. Refers to or shall include any public easement or other compatible use, whether created by dedication or by any other means, for uses which include public utility purposes or any other purpose whatsoever. “Easement” may include a private easement used for the provision of utilities, depending upon usage.

FCC or Federal Communications Commission. The Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Fiber able or fiber optic cable. A form of communication transmission that uses light to send data, high quality video and sound.

Franchise or franchise agreement. The initial authorization, or subsequent renewal granted by the Town in order for a person to construct, operate, and maintain a system in all, or part, of the Town right-of-way.

Franchise expiration. The date of expiration, or the end of the term of a franchise.

Franchise fee. The user fee or charge that the Town requires as payment for using the streets, rights-of-way, public ways, and easements of the Town.

Gross receipts. Any and all compensation which is derived from the operation of the system, and which is attributable to the systems operations within the Town as allowed by law.

Highway right-of-way. Right-of-way adjacent to a State or federal highway.

Historic district. An area that is zoned or otherwise designated as a historic district under municipal, State, or Federal law.

Law. Common law or a federal, State, or local law, statute, code, rule, regulation, order, or ordinance.

Local. Within the geographical boundaries of the Town of Highland Park, Texas.

Local exchange telephone service. Has the meaning assigned by section 51.002, Utilities Code.

Mayor. The Mayor for the Town of Highland Park, Texas.

Macro tower. A guyed or self-supported pole or monopole greater than the height parameters prescribed by section 284.103 and that supports or is capable of supporting antennas.

Micro network node. A network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

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

Municipal park. An area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity, and includes the various properties used for such purpose under the direction, control and supervision of the Town.

MUTCD. Manual of Uniform Traffic-Control Devices.

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

- (1) Includes:
 - (A) Equipment associated with wireless communications;
 - (B) A radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
 - (C) Coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (2) Does not include:

- (A) An electric generator;
- (B) A pole; or
- (C) A macro tower.

Network provider.

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

Node support pole. A pole as defined by chapter 284 of the Texas Local Government Code.

Park. Has the same meaning as “municipal park.”

Permit. A document issued by the Town authorizing installation, removal, modification and other work for equipment or facilities in accordance with the approved plans and specifications.

Pole. A service pole, municipally owned pole, node support pole, or other utility pole, and shall include network node support pole.

Person. Any individual, corporation, business, trust, estate, trust, partnership, association of two (2) or more persons having a joint common interest, governmental agency, or other legal entity. From context within sections of this article, it refers to persons using, applying or seeking to use the right-of-way.

Provider. Has the same meaning as “network provider.”

Public right-of-way management ordinance. This article of the Code of Ordinances of the Town of Highland Park and includes all other Highland Park ordinances that comply with chapter 284 of the Local Government Code.

Right-of-way, public way or public right-of-way or public rights-of-way or rights-of-way or right-of-way.

- (1) The surface of, and the space above and below a public street, road, highway, freeway, land, path, public way or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the Town (including any street, as defined, which is acquired by eminent domain) for the purpose of public travel and shall include other easements or rights-of-way now or hereafter held by the Town (including any easements or rights-of-way acquired by eminent domain) which shall, with their proper use and meaning, entitle the Town or utility provider, with proper authorization, to use thereof for the purpose of installing or transmitting utilities over poles, wires, cable, conductors,

ducts, conduits, viaducts, manholes, amplifiers, appliances, attachments, and other property as may ordinarily be necessary.

(2) The term does not include a private easement or the airwaves above a public right-of-way with regard to wireless telecommunications.

Service pole. A pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

- (1) A pole that supports traffic-control functions;
- (2) A structure for signage;
- (3) A pole that supports lighting, other than a decorative pole; and
- (4) A pole or similar structure owned or operated by a municipality and supporting only network nodes.

Small cell. Shall be included as a type of network node and have the same meaning as “network node.”

State. The State of Texas.

Street. Only the portion of the right-of-way with a specially prepared surface used for vehicular travel, which surface may be concrete, asphalt, or other material commonly used to prepare a surface for vehicular travel, and is limited to the area between the inside of the curb (when there is a curb) to the inside of the opposite curb, and does not include the curb area or the area between the two parallel edges of the surface used for vehicular travel where there is no curb. A street is generally part of, but less than, or smaller in width than, the size or width of the right-of-way. Right-of-way includes the sidewalks and utility easements and street does not include a sidewalk or utility easement. A Street does not include the curb, sidewalk, ditch, if any or present either at time of permitting or if added later.

SWPPP. Stormwater pollution prevention plan.

TAS. Texas Accessibility Standards.

Thoroughfare. Shall have the same meaning as “street.”

Town. The Town of Highland Park, Texas or its lawful successor, and includes the Highland Park Town Council.

Town Council or Council/franchising authority. The Town Council for the Town of Highland Park, Texas or its lawful successor, which is the governing body for the Town.

Town Administrator. The Highland Park Town Administrator or designee.

Traffic signal. Any device, whether manually, electrically, or mechanically operated by which traffic is alternately directed to stop and to proceed.

Transport facility. Each transmission path physically within 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.

U.S.C. United States Code.

Underground district or underground requirement area or underground area. An area where poles, overhead wires, and associated overhead or above ground structures have been removed and buried or have been approved for burial underground pursuant to municipal ordinances, zoning regulations, State law, private deed restrictions, or other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User. A person or organization that owns, places or uses facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole. A pole that provides:

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

Voice service. Voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. section 332(d).

Wireless service. Any service, using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider. A person that provides wireless service to the public.

Wireless facilities. “Micro network nodes,” “network nodes,” and “node support poles” as defined in Texas Local Government Code chapter 284.

Sec. 13.08.005 Unauthorized use of public rights-of-way

- (a) The Town may institute all appropriate legal action to prohibit any person from knowingly using the public rights-of-way unless the person has complied with the terms of this article.
- (b) This article shall not be construed as imposing upon the Town or any official or employee any liability or responsibility for damages to any person injured by the performance of any work for which a permit is issued hereunder, nor shall the Town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any work.

Secs. 13.08.006–13.08.030 Reserved

Division 2. Right-of-Way Management

  **Sec. 13.08.031 Right-of-way construction**

No person shall commence or continue with the construction, installation or operation of facilities within the right-of-way in the Town except as provided by the ordinances of the Town and the directives of the Town Administrator. All construction activity in Town right-of-way will be in accordance with this article.

  **Sec. 13.08.032 Authorization; registration; compensation and fees**

(a) Registration.

- (1) In order to protect the public health, safety and welfare, all users of the right-of-way will register with the Town.
- (2) Registration and permits will be issued in the name of the person who will own the facilities.
- (3) Registration and permits are not authorizations to install facilities in the rights-of-way, such authorization must be through municipal franchise or license or municipal agreement, except when otherwise required by State law.
- (4) Registration must be renewed every five (5) years. For utilities with a current franchise or license, the franchise or license will be evidence of renewal. If a registration is not renewed and subject to sixty-day notification to the owner, the facilities of the user will be deemed to have been abandoned.
- (5) When any information provided for the registration changes, the user will inform the Town of the change no more than thirty (30) days after the date the change is made.
- (6) Registration shall include:
 - (A) The name of the user of the right-of-way;
 - (B) The name, address and telephone number of people who will be contact person (s) for the user;
 - (C) The name, address and telephone number of any contractor or subcontractor, if known, who will be working in the right-of-way on behalf of the user;
 - (D) The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day and said emergency contact shall be employed by and have binding and decision-making authority for the owner of the facilities;
 - (E) Insurance:
 - (i) Prior to construction in the right-of-way, an applicant must provide, and users must maintain, acceptable proof of liability insurance in the total amount of six million dollars (\$6,000,000.00); one million dollars (\$1,000,000.00) primary plus five million dollars (\$5,000,000.00) umbrella if requested by the owner of the facilities, or other provisions as acceptable to the Town

Administrator. The Town reserves the right to review the insurance requirements and to reasonably adjust insurance coverage and limits when the Town Administrator determines that changes in statutory law, court decisions, or the claims history of the industry or the applicant or user require adjustment of the coverage.

(ii) 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.

(iii) Each policy must include a cancellation provision in which the insurance company is required to notify the Town in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.

(iv) The applicant shall file the required original certificate of insurance prior to any commencement of work. The certificate shall state the policy number; name of the 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. The Town may accept a certificate of insurance or the Town may require another form of legally binding proof of insurance.

(v) An insurer has no right of recovery against the Town. The required insurance policies shall protect the person and the Town. The insurance shall be primary coverage for losses covered by the policies.

(vi) The policy clause “other insurance” shall not apply to the Town if the Town is an insured under the policy.

(F) Bonds:

(i) Applicant or applicant's contractor, at Town's option, shall file an annual surety bond which will be valid each year construction will occur through one (1) full year after the completion of the construction from a surety company authorized to do business in the State in the amount of the estimated amount of the cost to restore the right-of-way for the work anticipated to be done in that year, in the event the applicant leaves a jobsite in the right-of-way unfinished, incomplete or unsafe or other provisions as acceptable to the Town Administrator.

(ii) The above requirements may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the Town.

(G) Indemnity:

(i) To the extent allowed by State law, each person placing facilities in the public rights-of-way shall agree to promptly defend, indemnify and hold the Town harmless from and against all damages, costs, losses or expenses (i) for the repair, replacement, or restoration of Town's property, equipment,

materials, structures and facilities which are damaged, destroyed or found to be defective as a result of the person's acts or omissions, (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any person (including, but not limited to the person, its agents, officers, employees and subcontractors, Town's agents, officers and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to the agents, officers and employees of the person, person's subcontractors and Town, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the person, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

(ii) This indemnity provision shall not apply to any liability resulting from the negligence of the Town, its officers, employees, agents, contractors, or subcontractors.

(iii) The provisions of this indemnity are solely for the benefit of the Town and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

(7) The above requirements may be met by utilities with a current franchise or license if their current franchise or license adequately provides for insurance or bonds or provides an indemnity in favor of the Town.

(8) Failure to maintain registration requirements. In addition to all other legal penalties, including criminal penalties; failure to register or to maintain and update registration information may result in denial of a permit application or removal of facilities.

(b) Authorization.

(1) Municipal authorization or agreement shall be required, except when clearly preempted by State law. Nothing in this article shall be considered to grant authorization to any user. When any State law authorizing right-of-way use is struck down, pre-empted, declared to be invalid or void, in whole or in part, the user relying upon said law for authorization shall seek separate authorization or shall cease using the right-of-way.

(2) When municipal authorization or agreement is required, permit for construction work may not be submitted until said authorization or agreement is obtained.

(3) Municipal authorization does not extend to the use of any property or facilities other than the right-of-way.

(4) Municipal authorization does not address or allow the use of third-party facilities in the right-of-way and is limited as described in the authorization.

(5) This article does not constitute or create authority to place, reconstruct, or alter facilities in, on, or over the public rights-of-way, and said authority must be obtained by separate instrument in accordance with this section or by operation of other laws.

(c) Compensation and fees.

- (1) Municipal right-of-way use shall be compensated as required by the State Constitution, State law, franchise, license or other agreement.
- (2) The Town may structure due dates on payments in such a manner so as to be administratively efficient.
- (3) Application fees, as allowed by State law, for work or installations in the right-of-way shall be the fees set by the Town Council. Such fees may be set by ordinance, resolution, in the budget or by any other lawful means.

Failure to pay application fees, or failure of any payment to properly process shall result in the denial or withdraw of a permit.

  **Sec. 13.08.033 Construction in the right-of-way**

(a) No person shall perform any construction or installation of facilities in the right-of-way without first obtaining a construction permit, except as provided herein. The permit will be in the name of the person who will own the facilities to be constructed. The permit must be completed and signed by a representative of the owner of the facilities to be constructed.

(1) Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however the Town should be notified in writing within two (2) business days of any construction related to an emergency response; including a reasonably detailed description of the work performed in the right-of-way and an updated map of any facilities that were relocated, if applicable.

(2) The phrase “construction or installation of facilities” does not include the installation of facilities necessary to initiate service to a customer's property, or repair or maintenance of existing facilities unless such repair or maintenance requires the breaking of pavement; the closure of a nonresidential traffic lane; excavation or boring.

(b) The permit shall state to whom it is issued, location of work, location of facilities, dates and times work is to take place and any other conditions set out by the Town Administrator or designee.

(c) The person requesting a permit will provide the Town Administrator or designee with documentation in the format specified by the Town Administrator describing:

(1) The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction should be shown on a set of scaled dimensioned construction plans, plan/profile sheet, a street view and an aerial map. Said plans should indicate the current right-of-way lines and any existing Town facilities. Said plans shall show any proposed underground conduit, type of casing pipe required, if applicable, overhead lines, network nodes, ancillary equipment, or any other facilities to be installed. The drawings shall show a cross sectional profile, identify all existing utilities and any existing or potential utility conflicts.

(2) For installation of any proposed pole applicant shall provide sectional detail showing depth of anchor, scaled dimensional drawings of the proposed pole, as well as any other proposed equipment associated with the proposed installation, and shall indicate spacing from existing curb, driveways, sidewalk, light poles, and any other poles or appurtenances.

- (3) All applications shall include a before and after street view image. The after image needs to include any proposed poles and all proposed attachments, and any associated or ancillary equipment, whether attached or stand alone.
- (4) If the project is within the State right-of-way, the applicant must provide evidence of a permit or permission from the State.
- (5) If a Town pole or poles or light structure or structures will be used or will be in the area of the proposed construction, the pole or poles or light structure or structures will be identified. No electric meter shall be mounted on a Town pole or light structure.
- (6) Provider/applicant shall use 240 voltage when connecting to any Town infrastructure and provide key to meter upon installation.
- (7) All plans shall reflect that no facilities to be installed will obstruct an existing or planned sidewalk, walkway, bicycle lane or lane of vehicular traffic.
- (8) Engineering plans which will be on a scale of one (1) inch equals fifty (50) feet unless otherwise approved by Town Administrator.
- (9) Detail of the location of all right-of-way and utility easements which applicant plans to use.
- (10) Detail of all existing Town utilities in relationship to applicant's proposed route.
- (11) Detail of what applicant proposes to install, such as network nodes, poles, pipes, size, number of innerducts, valves, or other facilities.
- (12) Detail of plans to remove and replace asphalt or concrete in streets (include Town standard construction details).
- (13) Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, network nodes, micro-network nodes, or other facilities, including depth located in public right-of-way.
- (14) Handhole and/or manhole typicals of type of manholes and/or handholes applicant plans to use or access.
- (15) Complete legend of drawings submitted by applicant.
- (16) If paper copies are required, five (5) sets of engineering plans must be submitted with permit application.
- (17) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.
- (18) The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the right-of-way, and the

dates and times work will occur, all of which (methods, dates, times, and other applicable information) are subject to approval of the Town Administrator or designee.

(19) A statement that the requirements of [section 13.08.032](#) “authorization; registration; compensation and fees” are met.

(20) A traffic-control plan approved by the Town Administrator, which shall specify the traffic-control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic-control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.

(21) No projecting attachments shall be less than eight (8) feet above the ground, if not projecting toward the street. If an attachment is projecting toward the street, the attachment shall be installed no less than sixteen (16) feet above the ground.

(22) Any proposed work that involves the installation of facilities that will utilize radio frequencies shall not cause any interference with Town public safety radio system, traffic signal light system or other Town communications systems or components, regardless of whether or not a permit is required. The right-of-way user shall provide evidence in a form acceptable to the Town that the proposed installation will be compatible with said Town systems and will not cause any interference with the Town public safety radio system, traffic signal light system or other Town communications systems or components. No installation shall be allowed to be installed or to remain in the right-of-way that causes any such interference.

(23) The plans shall demonstrate that all federal and State laws and Town ordinances will be obeyed, and that all sections of this article, including [division 3](#). “design manual” will be complied with as applicable. Construction in right-of-way adjacent to a school shall be required to follow all State law requirements, including the requirements in the Educational Code regarding work on school grounds, including but not limited to chapters 21 and 22, as applicable.

(d) All construction and installation in the right-of-way shall be in accordance with the permit for the facilities. The Town Administrator or designee shall be provided access to the work and to such further information as he or she may reasonable require to ensure compliance with the permit.

(e) A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Town Administrator or designee at all times when construction or installation work is occurring.

(f) All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the Town Administrator or designee. The Town Administrator or designee will use best efforts to approve or disapprove a request for permit as soon as possible.

(g) A copy of any permit or approval issued by federal or State authorities for work in federal or State right-of-way located in the Town, if requested by the Town Administrator and a copy of written

permission for work in railroad right-of-way from the applicable railroad if requested by the Town Administrator.

(h) A request for a permit must be submitted at least ten (10) working days before the proposed commencement of work in the request, unless waived by the Town Administrator or designee.

(i) Requests for permits will be approved or disapproved by the Town Administrator or designee within a reasonable time or receiving all the necessary information. The Town Administrator or designee will use best efforts to approve or disapprove a request for permit as soon as possible.

(j) The Town Administrator or the applicant can request a pre-construction meeting with the permittee and their construction contractor.

(k) Permit applications are required for construction on new, replacement or upgrading of the company's facilities in the right-of-way either aerial or underground.

(l) The failure of a person to request and obtain a permit from the Town prior to performing any of the above listed activities in, or over any right-of-way, except in an emergency, will subject the person to a stop-work order from the Town and enforcement action pursuant to the Town's Code of Ordinances.

(m) If the person receiving the permit fails to act upon the permit within one hundred eighty (180) calendar days of issuance, the permit shall become invalid, and the person will be required to obtain another permit.

(n) If State or Federal law provides that a permit is not required for certain work to be done, then a person proposing to do such work shall be required to provide notice two (2) working days prior to performing such work. The following requirements must be met, even if no permit is required pursuant to State or Federal law:

(1) Certification of a State-registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules, regulations, and publicly disclosed design specifications establishes in the Town's right-of-way management requirements, including the design manual are required.

(2) Work shall follow all other requirements and directives from the Town Administrator, including but not limited to the excavation ordinance, alley excavation drawing requirements, specifications for utility excavation, requirements for approach-curb-walk, public walk detail, requirements for curb-gutter, circular driveway specifications, requirements in regard to basement driveway designs, requirements regarding sewer taps, and the use of Town forms, including concrete and excavation bond forms, excavation permit application (water/sewer tap) and the forms required under this article.



Sec. 13.08.034 Construction and maintenance standards

(a) The following shall be required when facilities are constructed in the right-of-way, regardless of whether a permit is required, and, to the extent applicable, for as long as the facilities remain in the right-of-way.

- (1) The Town must be notified twenty-four (24) hours in advance that construction is ready to proceed by the right-of-way user, their contractor or representative. The right-of-way user or contractor must previously called for any needed locations for right-of-way facilities. At the time of notification, the right-of-way user will inform the Town Administrator of the number (or other information) assigned from the one-call system. The provider must have previously contracted the Town and obtained all needed locational information for Town utilities.
- (2) All construction shall be in conformance with all Town codes and applicable local, State and federal laws and must be done in a good and workmanlike manner and in accordance with all applicable sections of this article.
- (3) Three by three (3 x 3) feet information signs stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur forty-eight (48) hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An informational sign will be posted on public right-of-way one hundred (100) feet before the construction location commences and each one hundred (100) feet thereafter, unless other posting arrangements are approved or required by the Town Administrator.
- (4) Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.
- (5) Lane closures on major thoroughfares will be limited after 8:30 a.m. and before 4:00 p.m. unless the Town Administrator grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and thirty-six (36) inch reflector cones placed according to the specifications of the Town Administrator and must be in accordance with the filed lane closure plan approved by the Town Administrator.
- (6) Permittees are responsible for the workmanship and any damages by a contractors or subcontractors. A responsible representative of the permittee will be available to Town staff at all times during construction.
- (7) Permittee shall be responsible for stormwater management erosion control that complies with Town, State and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request permittee may be required to furnish documentation submitted or received from federal or State government.
- (8) Permittee or contractor or subcontractor will notify the Town Administrator immediately of any damage to other utilities, either Town or privately owned.
- (9) It is the Town's policy not to cut streets or sidewalks; however, when a street or sidewalk cut is required, prior approval must be obtained by the Town Administrator and all requirements of the Town Administrator shall be followed. Repair of all street and sidewalk removals must be made promptly to avoid safety hazards to vehicle and pedestrian traffic.

- (10) Installation of facilities must not interfere with Town utilities, in particular gravity dependent facilities.
- (11) New facilities must be installed to a depth approved by the Town Administrator.
- (12) All directional boring shall have locator place bore marks and depths while bore is in progress. The boring method and bore pit locations shall be identified. Locator shall place mark at each stem with paint dot and depth at least every other stem.
- (13) The working hours in the rights-of-way are 9:00 a.m. to 4:00 p.m., Monday through Friday. Work that needs to be performed after 4:00 p.m. Monday through Friday must be approved in advance. Any work performed on Saturday must be approved twenty-four (24) hours in advance by the Town Administrator. Directional boring is permitted only Monday through Friday 9:00 a.m. to 4:00 p.m., unless other hours are approved in advance. No work will be done on Sundays or Town holidays, except for emergencies.
- (14) People working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of the geographic information system or the plans of records does not satisfy this requirement.
- (15) Permittee will be responsible for verifying the location, both horizontal and vertical, of all facilities. When required by the Town Administrator, permittee shall verify locations by pot holing, hand digging or other method approved by the Town Administrator prior to any excavation or boring with the exception of work involving lane closures, as discussed above.
- (16) Placement of all manholes and/or handholes must be approved in advance by Town Administrator. Handholes or manholes will not be located in sidewalks, unless approved by the Town Administrator.
- (17) Locate flags shall not be removed from a location while facilities are being constructed.
- (18) Construction which requires pumping of water or mud shall be contained in accordance with Town of Highland Park ordinances and federal and State law and the directives of the Town Administrator.
- (19) All facilities installed in the right-of-way shall be in earth tone colors or in colors that blend with the surroundings, or if on a service pole or municipally owned pole shall match the color and finish of the pole, or must be approved by the Town.
- (20) All facilities installed in the right-of-way shall be capable of being identified through a GIS shape file or other means as acceptable to the Town Administrator or designee. Said identification shall be provided at the time of application and shall be visible on the facilities when installed.
- (21) Above ground wires shall be located on only one side of the right-of-way.
- (22) The right-of-way user or contractor must obtain any needed permits for electrical work and provide sealed engineered drawings for conduit size, circuit size, calculations for

Amperage, or any other required information. Provider shall be responsible for obtaining any required electrical power service to any installation. Any such electrical supply must be separately metered and must match Town infrastructure voltage.

(23) Right-of-way users shall complete construction as expeditiously as possible and lane closures or work that inconveniences the traveling public shall be minimized. Lane closures shall not last longer than four (4) hours, unless a different period of time is shown on the permit.

(24) Right-of-way work shall be completed in the amount of time shown on the permit; but if no completion time is shown on the permit the work shall be complete in not more than one (1) year.

(25) All right-of-way work and facilities installed shall be done in a good workman like manner; shall meet all applicable codes; shall be maintained and kept in good repair and shall be aesthetically pleasing.

(26) All efforts shall be made to avoid or minimize negative visual impact to the surrounding area and to enhance the safety requirement for vehicles and pedestrians, particularly in areas where small children or other vulnerable members of the population may be located.

(27) Installations which require ancillary ground equipment with a footprint of twenty-five (25) square feet or more shall be spaced at least 300 feet apart.

(28) The name, address and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during construction. Such information shall be required prior to the commencement of any work.

(29) A statement that the requirements of [section 13.08.032](#) “authorization; registration; compensation and fees” are met.



(30) A traffic-control plan, which shall specify the traffic-control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic-control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.

(31) A traffic-control plan approved by the Town Administrator, which shall specify the traffic-control measures to be provided, SWPPP, and trench safety plan may also be required based on the proposed scope of work. An approved traffic-control plan shall be required any time work will require traffic lane closures or sidewalk closures, regardless of whether a permit is required.

(32) Any proposed work that involves the installation of facilities that will utilize radio frequencies shall not cause any interference with Town public safety radio system, traffic signal light system or other Town communications systems or components, regardless of whether or not a permit is required. The right-of-way user shall provide evidence in a form acceptable to the Town that the proposed installation will be compatible with said Town

systems and will not cause any interference with the Town public safety radio system, traffic signal light system or other Town communications systems or components. No installation shall be allowed to be installed or to remain in the right-of-way that causes any such interference.

(b) To the extent applicable, the above requirements shall continue during the entire time that the installed facilities remain in the right-of-way.

  **Sec. 13.08.035 Plans of record**

(a) Right-of-way users will provide the Town Administrator or designee with plans of record showing installed and final location of facilities within ninety (90) days of completion of facilities in the right-of-way. Users which have facilities in the right-of-way existing as of the date of this article who have not provided “plans of record” plans shall provide one (1) quarter of the information concerning facilities in Town right-of-way within one (1) year after the passage of this article and one (1) quarter each six (6) months thereafter. The plans shall be provided to the Town with as much detail and accuracy as required by the Town Administrator. All the requirements specified for the plans submitted for the initial permit, as set forth in [section 13.08.033](#), shall be submitted and updated in the plans of record. The detail and accuracy will concern issues such as location, size of facilities, materials used, and any other health, safety and welfare concerns. The detail will not include matters such as capacity of lines, customers, or competitively sensitive details. Submittal of “plans of record” shall be in digital format.

(b) This requirement, or portions of this requirement, may be waived by the Town Administrator for good cause.

(c) If the release of the location of any utilities, including water and sewer, or of plans of record submitted under this section would jeopardize public safety, the information shall be considered confidential. In addition, if plans of record submitted under this section include information expressly designated by the right-of-way user as a trade secret or other confidential information protected from disclosure by State law, the Town may not disclose that information to the public without the consent of the right-of-way user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a right-of-way user to designate all matters in its plans of record as confidential or as trade secrets.

(d) User shall maintain accurate maps and other appropriate records of its facilities and equipment as they are actually constructed in the rights-of-way, including, upon request, the use of Auto CAD/GIS digital format. User will provide additional maps to the Town upon request.

  **Sec. 13.08.036 Conformance with public improvements**

Whenever by reasons of widening or straightening of streets, water or sewer line projects, or any other public works or Town projects, (e.g. install or improve storm drains, water lines, sewer lines, or any other public works or Town project) it shall be deemed necessary by the governing body of the Town to remove, alter, change, adapt, or conform the underground or overhead facilities of a right-of-way user to another part of the right-of-way, such alterations shall be made by the owner of the facilities at their expense (unless provided otherwise by State law or a franchise in effect on August 26, 1999, until that franchise expires or is otherwise terminated or is amended or the tariff is changed) within the time limits set by the Town Administrator working in conjunction with the owner of the facilities,

or if no time frame can be agreed upon, within ninety (90) days from the day the notice was sent to make the alterations, unless a different schedule has been approved by the Town Administrator or designee. Facilities not moved after ninety (90) days or the time set forth in the notice shall be deemed abandoned and may be removed in accordance with [section 13.08.042](#) “abandoned facilities.”

  **Sec. 13.08.037 Improperly installed facilities**

- (a) Any person doing work in the Town right-of-way shall properly install, repair, upgrade and maintain facilities.
- (b) Facilities shall be considered to be improperly installed, repaired, upgraded or maintained if:
- (1) The installation, repairs, upgrade or maintenance endangers people;
 - (2) The facilities do not meet the applicable Town codes;
 - (3) The facilities are not capable of being located using standard practices;
 - (4) Underground facilities that are installed less than twenty-four (24) inches in depth;
 - (5) Facilities or construction in regard to placement of said facilities that remains incomplete or hazardous after construction work is finished or time for completion has passed, including but not limited to holes in paved areas or ground, handholes or manholes that are improperly sealed, and broken equipment or any other incomplete or hazardous condition;
 - (6) The facilities are not located in the proper place at the time of construction in accordance with the directions provided by the Town Administrator.
- (c) Facilities will be considered improperly installed if said facilities utilize radio frequencies and cause any interference with Town public safety radio system, traffic signal light system or other communications components.

  **Sec. 13.08.038 Restoration of property**

- (a) Users of the right-of-way shall restore property affected by construction of facilities to a condition that is equal to or better than the condition of the property prior to the performance of the work. Restoration must be approved by the Town Administrator.
- (b) Restoration must be to the reasonable satisfaction of the Town Administrator and the property owner. The restoration shall include, but not be limited to:
- (1) Replacing all ground cover with the type of ground cover damaged during work or better either by sodding or seeding, as directed by the Town Administrator;
 - (2) Installation of all manholes and handholes, as required;
 - (3) Backfilling all bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety requirements are approved by the Town Administrator;
 - (4) Leveling of all trenches and backhoe lines;

- (5) Restoration of excavation site to Town specifications; and
- (6) Restoration of all landscaping, ground cover, and sprinkler systems.

(c) All locate flags shall be removed during the clean-up progress by the permittee or contractor at the completion of the work.

(d) Restoration must be made in a timely manner as specified by approved Town schedules and to the satisfaction of Town Administrator or designee. If restoration is not satisfactory and performed in a timely manner all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be placed on any permits not approved until all restoration is complete.

(e) If a person fails to restore property as set out in this section, the Town shall give five (5) days written notice to the person at the address shown on the permit. If the person does not initiate repairs during the five-day period, or fails to complete the repairs within thirty (30) days thereafter the Town may elect to repair such portion of the right-of-way as may have been disturbed by the person, its contractors, or agents at the cost of the person performing the right-of-way work. These time periods may be shorten or waived in cases of a threat to public health, safety or welfare. Upon receipt of an invoice from the Town, the person will reimburse the Town for the costs so incurred no later than thirty (30) calendar days from the date of the Town invoice.

(f) Should the Town reasonably determine, within two (2) years from the date of the completion of the repair work, that any of the said restoration work failed to meet the existing standards of the Town, the person shall perform such additional restoration work to the satisfaction of the Town, subject to all Town remedies.

(g) Notwithstanding any of the above sections, if the Town determines that the failure of the person to properly repair or restore the right-of-way constitutes a threat to the public health, safety or welfare, the Town may undertake emergency repairs and restoration efforts. The Town may attempt to provide emergency notice to the person responsible, but is not obligated to do so. The right-of-way user shall promptly reimburse the Town for all costs incurred by the Town within thirty (30) calendar days from the date of the Town invoice.

Sec. 13.08.039 Revocation or denial of permit



(a) If any of the provisions of this article are not followed, a permit may be revoked by the Town Administrator or designee. If a person has not followed the terms and conditions of this article in work done pursuant to a prior permit, new permits may be denied or additional terms required.

(b) If a permit is denied upon initial submission for incompleteness or for an issue which is capable of correction, the applicant may complete or correct the application and resubmit the application. Applications not resubmitted within thirty-one (31) calendar days shall be considered withdrawn.


Sec. 13.08.040 Appeal from denial or revocation of permit

(a) An applicant may appeal from denial or revocation of permit to the Town Administrator. Appeal shall be filed with the Town Secretary within five (5) calendar days from the date of the decision being appealed.

(b) A denial or revocation will be upheld unless a person can show that there is an error and that the person was following all of the requirements of this article and all right-of-way engineering requirements.

  **Sec. 13.08.041 Inspections**

The Town may perform inspections of any right-of-way work, including installations, maintenance, modifications or any other right-of-way work, whether such work is subject to permit requirements or allowed to be done without a permit. The Town may perform visual inspections of any right-of-way work located in the right-of-way as the Town deems appropriate without notice. If the inspection requires physical contact with right-of-way work, the Town may provide the right-of-way user with notice prior to said inspection. Right-of-way user may have a representative present during such inspection. In the event of an emergency situation, the Town may, but is not required to, notify the right-of-way user prior to the inspection. The Town may take any needed action to remediate an emergency. The Town shall notify the right-of-way user as soon as practical after said remediation.

  **Sec. 13.08.042 Abandoned facilities**

(a) Duty to remove. A person that has placed facilities in the right-of-way shall remove said facilities and related equipment when such facilities are abandoned regardless of whether or not it receives notice from the Town.

(b) Time for removal.

(1) The Town may notify the person that said facilities must be removed immediately when necessary to ensure public health, safety, and welfare.

(2) If immediate removal is not required, the removal must be completed within the time set forth in the written notice to remove from the Town and if no time is set out, then within ninety (90) days for the facilities and related equipment being abandoned.

(3) If the facilities are not removed after the 90-day notice to remove, the Town may remove the facilities thirty (30) days after notice of a final finding of abandonment.

(4) When a person removes, or abandons permanent structures in the right-of-way, the person shall notify the Town Administrator in writing of such removal or abandonment and shall file with the Town Administrator the location and description of each facility and ground equipment removed or abandoned.

(5) The Town Administrator may require the person to complete additional remedial measures necessary for public safety and the integrity of the right-of-way.

(c) Deemed abandoned. Facilities may be deemed abandoned as set out in this article. Additionally, facilities may be deemed abandoned if:

(1) A person does not relocate facilities as set out in [section 13.08.036](#) “conformance with public improvements.”

(2) A person does not correct or abate improperly installed facilities as set out in [section 13.08.037](#) “improperly installed facilities.”

- (3) A person fails to maintain the registration requirements set forth in [section 13.08.032](#) “authorization; registration; compensation and fees”
- (4) A person utilizing the right-of-way cannot be found or contacted.
- (5) A person utilizing the right-of-way fails to pay the required compensation.
- (6) A person utilizing the right-of-way fails to comply with the requirements of this article after being given due notice of any deficiencies. The notice requirement shall only apply to persons who have maintained the required registration as set out in [section 13.08.032](#) “authorization; registration; compensation and fees” and are capable of being contacted.

  **Sec. 13.08.043 Underground installation preferred**



- (a) The underground placement of facilities is encouraged.
- (b) Facilities shall be installed underground where existing utilities are already underground.
- (c) Underground conduits and ducts shall be installed in the public rights-of-way between the adjacent property line and curb line unless otherwise directed by the Town.
- (d) Conduits and ducts shall be installed parallel with the curblines and cross the public rights-of-way perpendicular to the public rights-of-way centerline unless otherwise directed by the Town.
- (e) Ducts and conduits shall be installed by trenchless excavation or directional boring whenever commercially economical and practical. Trenchless excavation shall be used to place facilities under paved public rights-of-way centerline unless otherwise directed by the Town.

  **Sec. 13.08.044 As-built maps and records**

User shall maintain accurate maps and other appropriate records of its facilities and equipment as they are actually constructed in the rights-of-way, including, upon request, the use of Auto CAD/GIS digital format. User will provide additional maps to the Town upon request.

  **Sec. 13.08.045 Courtesy and proper performance**



User shall make citizen satisfaction a priority in using the right-of-way. User shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its facilities and related ground equipment in the right-of-way. User's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the Town Administrator or designee, user is not interacting in a positive and polite manner with citizens, the Town Administrator may request user to take all remedial steps to conform to these standards.

  **Sec. 13.08.046 Drug policy**

It is the policy of the Town to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by user's employees, contractors, subcontractors, sub-network provider's, or vendors while on Town premises is prohibited.


  **Sec. 13.08.047 Tree maintenance**

User, its contractors, and agents shall provide written notice to the Town Administrator before trimming trees hanging in the right-of-way. The Town shall not be liable for any damages, injuries, or claims arising from user's actions under this section.

  **Sec. 13.08.048 Signage**

(a) User shall post and maintain legible identification showing its name, location identifying information, and emergency telephone number in an area on a cabinet of a facility that is visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law (e.g. RF ground notification signs) or the Town Administrator.

(b) Except as required by law or by the utility pole owner, user shall not post any other signage or advertising on the facilities or equipment.

  **Sec. 13.08.049 Graffiti abatement**

As soon as practical, but not later than fourteen (14) calendar days from the date user receives notice thereof, user shall remove all graffiti on any of its facilities and related ground equipment located in the right-of-way and shall restore to the previous condition or better. The foregoing shall not relieve the user from complying with any Town graffiti or visual blight ordinance or regulation.



  **Sec. 13.08.050 Alternate means or method; waiver**

(a) A person may file a request with the Town Administrator to use alternate means or methods in right-of-way construction or maintenance. In determining whether any requirement under this section may be waived or if an alternate method or means may be used, the Town Administrator may consider all reasonable factors, including but not limited to:

- (1) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in risk;
- (2) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase of service interruption;
- (3) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable increase in potential for liability for accidents;
- (4) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in construction;
- (5) Whether the requirement or the alternate means or method or waiving the requirement would subject the person or persons or public to an unreasonable delay in availability of services; or

(6) To any other unreasonable technical or economic burden.



(b) There shall be no right to receive permission to use an alternative means or method and denial by the Town Administrator shall be final.



  **Sec. 13.08.051 Orderly use of the right-of-way by multiple users**

(a) In the exercise of governmental functions, the Town has first priority over all other uses of the rights-of-way. Traffic uses shall be considered as the primary use and the Town reserves the right to lay sewer, water, gas and other pipelines or cables and/or cables and conduits, and to do underground and overhead work, including attachments, restructuring or changes in aerial or underground facilities in, across, along, over, or under a public street, alley or right-of-way and to change the curb, sidewalks of the grade of streets. Uses should be designed so as to cause the least interference with traffic, including signalization.

(b) The Town shall assign the location in or over the rights-of-way among competing users of the rights-of-way with due consideration to the public health, safety and welfare considerations of each user type, and to the extent the Town can demonstrate that there is limited space available for additional users, may limit new users or require removal of abandoned or obsolete facilities, as allowed under State or federal law.

(c) If the Town authorizes abutting landowners to occupy space under the surface of any street, alley or rights-of-way, the grant to an abutting landowner shall be subject to the rights of the previously authorized users of the public rights-of-way. If the Town closes or abandons a public right-of-way that contains a portion of a person's facilities, the Town may close or abandon such right-of-way subject to the right of the person, provided said facilities have not been abandoned and provided the person is a registered user of the right-of-way.

  **Secs. 13.08.052–13.08.080 Reserved**

  **Division 3. Design Manual**

  **Sec. 13.08.081 Purpose**

(a) This design manual is for the: (1) maintenance; (2) siting; and (3) criteria for the installation of wireless facilities, including micro network nodes, network nodes, node support poles and related ground equipment and applies to any and all maintenance, siting, installations, collocations, or other placement of, in, over or under the public rights-of-way of network nodes, node support poles, micro network nodes, distributed antenna system(s), microwave communications or other wireless facilities, by whatever nomenclature, whether they are installed pursuant to chapter 284 of the Local Government Code or installed pursuant to an agreement to use the right-of-way or authorization or installed as may otherwise be allowed by State law.

(b) The Town enacts these design requirements and guidelines in order to meet its fiduciary duty to its citizens, and to give assistance and guidance to network providers in the safe, aesthetically pleasing, efficient, and timely installation of facilities.

  **Sec. 13.08.082 Prohibited or restricted areas for wireless facilities in the right-of-way**

(a) Prohibited: Municipal parks and residential areas. A network provider may not install a new node support pole in the following locations:

- (1) In a municipal park; or
- (2) In right-of-way that is adjacent to a street that is:
 - (A) Not more than fifty (50) feet wide at average width, measuring vehicular traveled portion only as set out in the definition of “street” and the measurement does not include intersection and refers only to the main traveled portion measured at mid-block or mid-point between intersections; and
 - (B) Adjacent to developed or undeveloped single-family residential lots, other multifamily residential area or land that is designated for residential use by zoning or deed restrictions.
- (3) Construction in right-of-way adjacent to a school is prohibited, unless all contractors, sub-contractors, or other workers follow all statutory requirements in the Educational Code regarding work on school grounds, including but not limited to chapters 21 and 22.

(b) Prohibited: Undergrounding district.

- (1) Above ground structures shall not be installed in an underground district or underground requirement area, except as provided herein.
- (2) 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 the appropriate zoning, land use approval or other required approval.
- (3) In addition to areas designated in this article, future areas may be designated from time to time by the Town as underground required areas by any means, including but not limited to means such as ordinances, resolutions, or filed plats. If an area is converted from an area that allows overhead lines to one that prohibits overhead lines, all subsequent installations shall meet the requirements for an underground district.
- (4) If a location is designated by the Town to be underground required area, then a network provider's permit for the location of the micro network node, network node, node support pole, and related ground equipment at such location will be automatically revoked, with removal of said the micro network node, network node, node support pole, and related ground equipment at such location within 90 days of such designation, or as otherwise allowed for the transition of other overhead facilities.

(c) Restricted: Historic district and design districts.

- (1) A network provider must obtain advance written approval from the Town before collocating network nodes or installing node support poles in a design district with decorative poles or in an area of the Town zoned or otherwise designated as a design district or historic district.

(2) Concealment required:

(A) As a condition for approval of network nodes or node support poles in design districts with decorative poles or in a historic district, concealment measures are required for network nodes or node support poles or related ground equipment or any portion of the nodes, poles, or equipment.

(B) Said concealment measures shall minimize the impact to the aesthetics in a historic district or design district.

(3) Network provider shall comply with and observe all applicable Town, State, and federal laws and requirements, including historic preservation laws and requirements.

(d) Collocation will not be allowed on decorative poles in any area of the Town.

(e) Historic landmarks. Network provider is discouraged from installing a network node or node support pole within 300 feet of a historic site or structure or historic landmark recognized by the Town, State or Federal government (see, for example, and not limited to §442.001(3) of the Texas Government Code, and 16 U.S.C. §470), as of the date of the submission of the permit.

(f) Designated areas.

(1) The Council may designate an area as a historic district, design district or underground district at any time.

(2) Underground district. Any area that meets the definition of underground district or underground requirement area may be designated as such an area. An area does not need to be designated by this article to be considered to be within an underground district. Such designation does not require a zoning case. Any area declared to be an underground district by Town Council or any area that meets the definition of underground district or underground requirement area shall be subject to all requirements and protections for an underground district.

(3) Design district. The Town Council may designate an area as a design district at any time. An area does not need to be designated in this article to be considered to be within a design district. Such a designation does not require a zoning case. Any area designated by Town Council as a design district or any area that meets the definition of a design district shall be subject to all requirements and protections for a design district.

(4) Historic district. The Town Council may designate an area as a historic district at any time. An area does not need to be designated by this article to be considered to be within a historic district. Such designation does not require a zoning case. Any area declared to be a historic district by Town Council or any area that meets the definition of historic district shall be subject to all requirements and protections for a historic district.

(g) Defense.

(1) It shall be a defense to the above requirements prohibiting or restricting location of facilities in a park, residential area, historic district, design district, underground district or collocating on a decorative pole that the network provider obtained advance written approval or waiver of restrictions from the Town before collocating new network nodes or

installing new node support poles or ground equipment in a prohibited or restricted location. In any prosecution herein for such prohibition or violation of any restrictions, it shall be an affirmative defense to have an Agreement with the Town that approved such location or waived the applicable restriction.

(2) If an agreement is granted to locate in a prohibited location, the network provider shall be required, as a condition for approval of new network nodes or new node support poles in a prohibited location, to install reasonable design or concealment measures for the new network nodes or new node support poles. Therefore, any request for installations in a prohibited location, must be accompanied with concealment measures in the permit applications.

(3) The Town requests that a network provider explore the feasibility of using certain 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 all locations of the Town.

(h) Private deed restrictions and property owners association rules. A network provider installing a network node or node support pole in a public right-of-way described above shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

(i) Ground equipment.

(1) Ground equipment shall be minimal and the least intrusive at all sites.

(2) In order to maximize line of sight at street corners and intersections and minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or street intersection.

(3) Ground equipment may not be installed at street corners or intersections within a visibility triangle.

(4) Ground equipment shall not be installed near a driveway.

(j) Each permit application shall designate if the requested area for installation is within one a residential area, a municipal park, an underground district or underground requirement area or a historic district or a design district.



Sec. 13.08.083 Preferred location


(a) The following locations, in the order listed, are the preferred locations for installation of poles or wireless facilities:

(1) Industrial areas.

(2) Areas designated by the Town as a highway rights-of-way area, provided that such areas are not adjacent to a municipal park, residential area, historic district, design district or any prohibited area set out above.

(3) Retail and commercial areas, provided such areas are not in a prohibited location, such as an underground district, design district or historic district.

(b) In the absence of State law or an agreement or municipal authorization providing otherwise, network nodes shall be restricted to preferred locations set out in this section.

  **Sec. 13.08.084 Order of preference regarding attachment to existing facilities**

(a) The following shall be the order of preference for the attachment of network nodes to existing facilities, beginning with most preferred location and ending with least preferred location. In addition to the preference set out by the Town, existing facilities may be owned by third parties and may not be available for attachment of facilities or may require authorization from other parties.

(b) Order of preference from most preferable to least preferable.

(1) Most preferable. Existing telephone or electrical lines between existing utility poles. micro network nodes shall only be lashed on existing telephone or electrical lines between existing utility poles (electric poles or telephones poles), with notice to the pole owner as required by the Federal Pole Attachment Act, and not placed on utility poles, node support poles or service poles.

(2) Preferable. Existing utility poles (electric poles or telephones poles), shall be the preferred support facility for network nodes and related ground equipment.

(3) Least preferable. Municipal service poles, which shall require an agreement with the Town. Municipal service poles includes (in order of preference):

(A) Nondecorative streetlights.

(B) Traffic signal structures - Network nodes may only be attached to traffic signal structures when such installation will not interfere with the integrity of the facility and will not interfere with the safety of the public. Any installation of network node facilities on any traffic signal structures shall:

(i) Be encased in a separate conduit than the traffic light electronics;

(ii) Have a separate electric power connection than the traffic signal structure;

(iii) Shall not puncture or drill into the structure; and

(iv) Have a separate access point than the traffic signal structure.

(C) Other municipal service pole use is discouraged.

(4) New node support poles shall also be least preferred. Collocation shall generally be preferred over new poles. New poles shall not be installed in prohibited areas and shall only be allowed in restricted areas to the extent all requirements are followed or a waiver is granted. Any new poles shall be camouflaged to the extent allowed by law as set out in this article.

(c) Ground equipment should be minimal and the least intrusive.

(d) In the absence of State law or an agreement or municipal authorization providing otherwise, network nodes, if allowed, shall be restricted to most preferable locations set out in this section and shall be prohibited in the least preferable.

  **Sec. 13.08.085 Placement requirements**

(a) A network provider shall construct and maintain network nodes and node support poles in a manner that does not:

- (1) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
- (2) Obstruct the legal use of a public right-of-way by other utility providers;
- (3) Violate nondiscriminatory applicable codes;
- (4) Violate or conflict with the municipality's publicly disclosed public right-of-way management ordinance or this design manual.
- (5) Violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. section 12101 et seq.).

(b) Network node facilities shall be installed in accordance with [section 13.08.089](#) and all other applicable requirements of this article.

(c) Right-of-way.

- (1) Network nodes installation shall follow all applicable requirements of this article, including [section 13.08.034](#).
- (2) Network node facilities, node support poles and related ground equipment shall be placed, as much as possible, within two (2) feet of the outer edge of the right-of-way line.
- (3) Node support poles and related ground equipment shall not impede pedestrian or vehicular traffic in the right-of-way.
- (4) No protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

(d) Parks. For the safety of park patrons, particularly small children, and to allow full line of sights near park property, the network provider shall not install ground equipment in a right-of-way that is within a park or within 250 feet of the boundary line of a park. The network provider may request a waiver of the requirement that such equipment not be within 250 feet of a park from the board of adjustment.

(e) There shall be no more than one (1) network node on any one pole.

  **Sec. 13.08.086 Camouflage required when possible**

(a) Camouflage is required by the Town when wireless facilities are allowed, as set forth above, in design districts with decorative poles or in historic districts.

- (b) It is the Town's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial or in a designated highway district area.
- (c) Companies shall submit their proposal for camouflage with the permit application.

  **Sec. 13.08.087 General requirements**

(a) Confirmation of noninterference with Town safety communication networks.

- (1) The network provider shall provide analysis that the proposed network node shall not cause any interference with Town public safety radio system, traffic signal light system, or other Town safety communications components.
- (2) It shall be the ongoing responsibility of the network provider to evaluate, prior to making application for permit and while network nodes remain in the right-of-way, the compatibility between the existing Town infrastructure and provider's proposed network node. A network node shall not be installed in a location that causes any interference and any network node that causes destructive interference post-installation shall correct such interference or be removed and shall follow all federal regulations regarding interference.
- (3) Network nodes shall not be allowed on Town's public safety radio infrastructure.

(b) Size limits.

- (1) Network providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this article.
- (2) To the extent authorization is provided by franchise or license, the franchise or license controls.
- (3) To the extent authorization is provided by State law which sets out size limits, the size limits in the State law control.
- (4) If authorization is provided through a State law with no size limits, or other authorization with no size limits, the size limits of this section shall control.
- (5) Unless otherwise provided by State law or municipal authorization, license, franchise or agreement, the following maximum size limits are applicable (required):
 - (A) Micro network node dimensions - Maximum length: 24 inches; maximum width 15 inches; maximum height 12 inches.
 - (B) Network node shall not exceed the size limits set out in chapter 284 of the Local Government Code, without specific Town authorization, regardless of whether or not the provider claims authority under chapter 284 or a different State statute.
 - (C) Pole height not higher than ten feet in height above the tallest existing utility pole within 500 linear feet of a new pole or fifty-five (55) feet, whichever is least.
 - (D) Ground equipment, separate from the pole, may not be higher than three feet six inches (3'6") from grade, wider than three feet six inches (3'6").

(E) When not otherwise set out in this article or in a municipal authorization, the size limits shall be less than or equal to the size limits set forth for structures or equipment in chapter 284 of the Local Government Code, where applicable.

(F) Size limits may be reduced when necessary for public health, safety or welfare.

(c) Size limits provided by State law are only applicable for so long as required by State law. If said State law is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the Town, either in the municipal authorization or an amendment to the municipal authorization or the directives of the Town or this article, shall be required and such standards shall be subject to individualized review.

(d) Concealment. The network node facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

(e) New node support pole spacing.

(1) New node support poles shall be at a minimum 300 feet from a utility pole or another node support pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area, unless a lesser distance is approved by the Town Administrator.

(2) New poles shall be placed a minimum of 5 feet from a street curb or travel lane and 18 inches from a sidewalk to minimize the potential of being struck by a motor vehicle or bicycle.

(3) New poles shall be placed on breakaway anchor bolt supports or bases to minimize the impact severity to motor vehicles that strike the pole.

(f) Minimize ground equipment concentration. In order to minimize negative visual impact to the surrounding area, the Town's designee may deny a request for a proposed location if the network provider installs network node ground equipment where existing ground equipment already occupies a footprint of 25 sq. ft. or more.

(g) Allowed colors. Colors shall meet the requirements set out in [section 13.08.034\(a\)\(19\)](#).

(h) 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 Town Administrator and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the right-of-way noncompliant with applicable laws, including the American Disabilities Act, then network provider shall remove the network node facilities, node support poles or ground equipment.

(i) Ground equipment.

(1) Ground equipment should be minimal and the least intrusive. To minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way the maximum line of sight required to add to safe travel of vehicular and pedestrian traffic and in order to maximize that line of sight at street corners and intersections and to

minimize hazards at those locations, ground equipment may not be installed within 250 feet of a street corner or a street intersection.

(2) Ground equipment near municipal parks. For the safety of municipal park patrons, particularly children, and to allow full line of sights near municipal park property, the network provider shall not install ground equipment in a right-of-way that is within a park or within 250 feet of the boundary line of a park, unless approved by the Town Administrator in writing.

(3) To enhance the safety requirements of line of sight of pedestrians, particularly small children, the Town's designee may deny a request for a proposed location if the network provider installs network node ground equipment where existing ground equipment within 300 feet already occupies a footprint of twenty-five (25) square feet or more.

(4) Ground equipment shall not be installed in such a manner as to interfere with a sight visibility triangle.

(j) Municipal service poles.

(1) An agreement shall be required for all installations on municipal service poles and all such installations shall be in accordance with the agreement.

(2) Installations on all service poles shall have an industry standard pole load analysis completed and submitted to the municipality with each permit application indicating that the service pole to which the network node is to be attached will safely support the load.

(3) Height of attachments:

(A) All attachments on all service poles shall be at least 8 feet above grade;

(B) If a network node attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground; and

(C) Meet all applicable requirements of State law and this article.

(4) Installations on all traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the agreement with the Town. Installation of network node facilities on any traffic signal structures shall:

(A) Be encased in a separate conduit than the traffic light electronics;

(B) Have a separate electric power connection than the traffic signal structure;

(C) Have a separate access point than the traffic signal structure;

(D) Shall not puncture or drill into the structure;

(E) Shall not be installed on the mast arm; and

(F) Meet all other requirements of State law and this article.

(5) Installations on street signage: Installations on all street signage structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with the agreement with the Town. Installation of network node facilities on any street signage structures that has electrics shall:

- (A) Be encased in a separate conduit than any Town signage electronics;
- (B) Have a separate electric power connection than the signage structure;
- (C) Have a separate access point than the signage structure;
- (D) Meet all other requirements of State law and this article.

  **Sec. 13.08.088 Electrical supply**

(a) Network provider shall be responsible for obtaining any required electrical power service to the micro network node, network node facilities, node support poles and ground equipment. The Town shall not be liable to the network provider for any stoppages or shortages of electrical power furnished to the micro network node, network node facilities, node support poles or ground equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant or network provider of the structure, or for any other cause beyond the control of the Town.

(b) Network provider shall not allow or install generators or back-up generators in the right-of-way.

  **Sec. 13.08.089 Installation and inspections**

(a) Installation.

(1) Network provider shall, at its own cost and expense, install the micro network node, network node facilities, node support poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the Town Administrator, as such may be amended from time to time. Network provider's work shall be subject to the regulation, control and direction of the Town Administrator.

(2) All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the micro network node, network node facilities, node support poles and related ground equipment shall be in compliance with any agreement with the Town as applicable and all applicable laws, ordinances, codes, rules and regulations of the Town, County, State, and the United States ("laws").

(b) Standard pole load analysis on attachments to a service pole. All applications for permits to collocate and/or attach to any service pole must have included in its permit application a completed industry standard individual pole load analysis performed and sealed by an engineer licensed by the State that indicates that the service pole to which the network node is to be attached will safely support the load. Such analysis shall also address safety of pole and attachments in regard to wind loads, collision with motor vehicle.

(c) Inspections. The Town Administrator may perform visual inspections of any micro network node, network node, node support pole or related ground equipment located in the right-of-way as the Town Administrator deems appropriate without notice. If the inspection requires physical contact with the micro network node, network node, node support poles or related ground equipment, the Town Administrator shall provide written notice to the network provider within five (5) business days of the planned inspection. Network provider may have a representative present during such inspection.

(d) No installations shall be placed on the mast arm of a traffic-control signal.



Sec. 13.08.090 Requirements in regard to removal, replacement, maintenance and repair

(a) Removal or relocation by network provider.

(1) If the network provider removes or relocates a micro network node, network node facilities, node support pole or related ground equipment at its own discretion, it shall notify the Town Administrator in writing not less than ten (10) business days prior to removal or relocation. Network provider shall obtain all permits required for relocation or removal of its micro network node, network node facilities, node support poles and related ground equipment prior to relocation or removal.

(2) The Town 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.

(3) Any abandoned or obsolete micro network node, network node, node support pole or other related equipment shall be removed in strict accordance with this article and all other applicable ordinances and State law.

(4) Network provider shall remove micro network node, network node facilities, node support pole or related ground equipment when such facilities are abandoned regardless of whether or not notice is received from the Town. Such removal must occur within ninety (90) days from the date of abandonment, unless additional time is allowed by the Town. The network provider shall provide advance written notice of such removal which must be received by the Town at least two (2) working days prior to the removal, except in case of emergency. Such notice shall specify the location and description of each micro network node, network node facilities, node support pole or related ground equipment to be removed.

(5) The Town Administrator may require the network provider to complete additional remedial measures necessary for public safety and the integrity of any Town facilities and the right-of-way.

(b) Removal or relocation required for Town project.

(1) 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 in accordance with [section 13.08.036](#) and without cost to the municipality managing the public right-of-way.

(2) Pursuant to State law and as a condition for occupancy of the right-of-way, the network provider may be required by the Town to remove or relocate any of its facilities, including but not limited to, its micro network node, network node, node support pole and related ground equipment, or any portion thereof from the right-of-way, and network provider shall, at the Town Administrator's direction, remove or relocate the same at network provider's sole cost and expense, whenever the Town Administrator reasonably determines that the relocation or removal is needed as set out in [section 13.08.036](#).

(3) 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 Town Administrator within 90 days of network provider's receipt of the request, then the Town 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, and network provider shall, within 30 days following issuance of invoice for the same, reimburse the Town 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.

(c) Removal required by Town for safety or due to imminent danger; or for improper permitting or licensing.

(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 Town Administrator if the Town Administrator 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 Town 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 Town 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. If the Town Administrator reasonably determines that there is imminent danger to the public, then the Town may immediately disconnect, remove, or relocate the applicable micro network node, network node, node support pole and related ground equipment at the network provider's sole cost and expense.

(2) The Town Administrator 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 Town for the Town's actual cost of removal of micro network node, network node, node support pole and related ground equipment within 30 days of receiving the invoice from the Town.

(d) Restoration. Network provider shall repair any damage to the right-of-way, or any facilities located within the right-of-way, and the property of any third party resulting from network provider's removal or relocation activities (or any other of network provider's activities hereunder) within 10

calendar days following the date of such removal or relocation, at network provider's sole cost and expense, including restoration of the right-of-way and such property to substantially the same condition as it was immediately before the date network provider was granted a permit for the applicable location or did the work at such location (even if network provider did not first obtain a permit), including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Town Administrator.

(e) Network provider responsible. Network provider shall be responsible and liable for the acts and omissions of network provider's employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, sub-network provider's and subcontractors in connection with the installations of any micro network node, network node, node support pole and related ground equipment, as if such acts or omissions were network provider's acts or omissions.



Sec. 13.08.091 Requirements upon abandonment

(a) Upon abandonment or upon being deemed abandoned, network provider has a duty to promptly remove its facilities from the right-of-way. Notice from the Town is not a prerequisite to the requirement for removal.

(b) If the network provider does not promptly remove its facilities removal procedures as set out in [section 13.08.042](#) may be followed.



Sec. 13.08.092 General provisions

(a) All requirements of this division, including [division 2](#), shall be met as applicable.

(b) No Town allocation of funds for removal and storage. All costs of any removal or storage of micro network node, network node, node support pole and related ground equipment, as authorized under this article, shall be the responsibility of the network provider and the Town is not required to expend no funds to meet the requirements of the network providers. Any funds expended by the Town due to an emergency or failure of a person to abide by these requirements shall be reimbursed to the Town.

(c) Ownership. No part of a micro network node, network node, node support pole and related ground equipment erected or placed on the right-of-way by network provider will become, or be considered by the Town as being affixed to or a part of, the right-of-way. All portions of the micro network node, network node, node support pole and related ground equipment constructed, modified, erected, or placed by network provider on the right-of-way will be and remain the property of network provider and may be removed by network provider at any time, provided the network provider shall notify the Town administrator prior to any work in the right-of-way.

(d) Size limits.

(1) Network providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in this article or State law with each application, notice of work to be performed or request for a permit for each location; provided, however, where possible providers are encouraged to reduce the size of installed facilities.



(2) The size limits in this article are only applicable for so long as required by State law. If chapter 284 of the Local Government Code is found to be repealed, struck down, pre-empted or invalid, in whole or in part, the standards required by the Town, either in the municipal authorization or an amendment to the municipal authorization or the directives of the Town or this article then such standards shall be subject to individualized review.

  **Sec. 13.08.093 Insurance, indemnity, bonding and security deposits**

Insurance, indemnity, bonding and security deposits shall be in strict accordance with the Town's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with State law.

  **Sec. 13.08.094 Design manual - updates**

Placement or modification of micro network node, network node, node support pole and related ground equipment shall comply with the Town's design manual at the time the permit for installation or modification, and as said design manual may be approved or amended from time to time.

  **Secs. 13.08.095–13.08.120 Reserved**

  **Division 4. Right-of-Way Construction for Utility Connections**

  **Sec. 13.08.121 Purpose**

This article is enacted in order to provide clear guidance to abutting landowners, residents, or businesses and their contractors in regard to individual utility connections, driveway constructions and related right-of-way construction that presents a lesser burden on the right-of-way than utility construction.

  **Sec. 13.08.122 Permit required; compliance**

(a) Permit required. It shall be unlawful for any person or any of their agents, contractor, servants or employees to cut, remove, alter, construct, reconstruct or repair any street, alley, sidewalk, curb, gutter or driveway approach in the Town without having first obtained a permit from the Town as herein required or without complying with the provisions of this article.

(b) Compliance with additional sections of right-of-way management article. If it is determined by the Town that the proposed scope of work does not fit within the provisions of this article or that it is necessary for the contractor or person performing the work to follow the requirements of other sections of this article, the person performing the work will comply with all such requirements.

(c) Application; permittee's assumption of responsibility for work.

(1) By accepting an excavation permit, the permittee assumes complete responsibility for all phases of the excavation and thereby accepts responsibility for removal and replacement of unsatisfactory work.

(2) Any application for a permit shall be made at the Town on forms furnished by the Town. The application for the permit must be made at least twenty-four (24) hours prior to beginning any work pursuant thereto, except in the case of an emergency as described in [section 13.08.132](#) of this article, and the applicant shall furnish prior to issuance the following:

- (A) Surety bond as described in this section;
- (B) Certificate of insurance as described in this section;
- (C) Certificate of worker's compensation as required by State law;
- (D) Evidence that a paving bond has been issued by the Town to the contractor responsible for replacing the pavement removed during the course of excavation;
- (E) A plan of the proposed work. When requested, the application shall be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to said excavation and of the proposed excavated surfaces, the location of the excavation work, and such other information as may be prescribed by the Town.

(d) Surety bond.

(1) Before an excavation permit is issued by the Town, the applicant shall deposit with the Town a surety bond in the amount of ten thousand dollars (\$10,000.00) payable to the Town and executed on the forms provided by the Town.

(2) The required surety bond must be:

- (A) With a good and sufficient surety;
- (B) By a surety company authorized to transact business in the State;
- (C) Conditioned upon the permittee's compliance with this article and to secure and hold the Town and officials harmless against any and all claims, judgments or other costs arising from the excavation or any work covered by the excavation permit or for which the Town, the Town Council or any other Town officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee, either in not properly guarding the excavation or for any other injury resulting from negligence of the permittee; further, that the permittee assures the Town that the excavation shall be filled, restored and placed in a good and safe condition, as near as possible to its original condition and to the satisfaction of the Town, and to maintain the property where excavation is made in as good condition for a period of two (2) years after said excavation work shall have been completed and accepted by the Town, usual wear and tear excepted.

(2) Recovery on such bond for any injury or accident shall not exhaust the bond, but it shall in its entirety cover any and all future accidents or injuries during the term for which it is given. In the event of any suit or claim against the Town by reason of negligence or default of the permittee, upon the Town's giving written notice to the permittee and surety of such suit or claim, any final judgment against the Town requiring it to pay for such

damage, including its legal fees and court costs, shall be conclusive upon the permittee and his surety.

(e) Insurance. The permittee, prior to the issuance of the excavation permit, shall furnish to the Town satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than one hundred thousand dollars (\$100,000.00) for any one (1) person and three hundred thousand dollars (\$300,000.00) for any one (1) accident and property damage insurance of not less than fifty thousand dollars (\$50,000.00), duly issued by an insurance company authorized to do business in the State. However, if the Building Inspector determines that the cost of the excavation to be performed by the permittee exceeds fifty thousand dollars (\$50,000.00), then the Town, at its discretion, may require the permittee to maintain in force during the performance of the excavation work and the period of the excavation permit public insurance not less than one hundred thousand dollars (\$100,000.00) for any one (1) person and three hundred thousand dollars (\$300,000.00) for any one (1) accident and property damage insurance not less than five hundred thousand dollars (\$500,000.00), duly executed by an insurance company authorized to do business in the State.

(f) Fee. The fee for the permit described in this section shall be the amount shown on the Town's current master fee resolution for each pavement cut, excavation, bore or embankment. Public utility companies which have a franchise with the Town to utilize streets, alleys and easements of the Town shall be exempt from the requirement to pay a fee.

(g) Revocation.

(1) In addition to the penalty provisions of [section 1.01.009](#) of the Town Code, the Town, in its discretion, may revoke the permit issued hereunder upon the following grounds:

- (A) Failure of the permittee to diligently do work permitted after beginning the excavation;
- (B) Violation of any terms or provisions of this article;
- (C) Giving false information upon the application;
- (D) Changing of persons responsible for the paving repair without first notifying the Town Administrator and obtaining the necessary approval.

(3) Whenever the permittee has failed to comply with provisions of this article, the permittee shall be notified in writing of such violations. In the event such violations are not corrected upon written notice to the permittee and surety, the Town Administrator may revoke the excavation permit without further notice.

(h) Expiration. A permit shall expire for work not started within thirty (30) days or completed within sixty (60) days after issuance, and a new permit shall be required before beginning or completing the work. The request for an extension of a permit shall be made in writing to the Town Administrator.



Sec. 13.08.123 Traffic-control plan; excavations; restoration of property

All work requiring pavement excavations, closure of a traffic lane, or routing of traffic shall follow all requirements of [division 3](#) in regard to such work.

  **Sec. 13.08.124 Protection of utilities**

(a) Prior to beginning excavation, the permittee shall notify all affected utility companies and have all underground utilities located. The permittee shall not interfere with any existing utility without the written consent of the utility company or the person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by its owner. No utility owned by the Town shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless other arrangements are made with the utility company.

(b) The permittee shall support and protect all water mains and lines, sewer mains and connections, gas mains and services, electric conduit or other utilities which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them during said work. Should any of said water mains and lines, sewer mains and connections, gas mains and services, electric conduit or other utilities be damaged, they shall be repaired by the agency or person owning them, and the expense of such repairs shall be charged to the permittee, and his or its bond shall be liable therefor. The permittee shall inform itself as to the existence and location of all underground utilities and protect the same against damage.

  **Sec. 13.08.125 Protection of adjoining property**

(a) The permittee shall at all times and at permittee's own expense, preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. The permittee shall, at permittee's own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property resulting from its failure to properly protect and carry out said work.

(b) The permittee shall not remove, even temporarily, any trees or shrubs which exist on public property without having first notified and obtained the consent of the Town Administrator. Whenever it may be necessary for the permittee to trench through any park area, the sod shall be carefully cut and rolled and replaced with live sod after ditches have been backfilled as required in this article.

  **Sec. 13.08.126 Prompt completion of work**

(a) The permittee shall prosecute with diligence and expedition all excavation and paving replacement as is consistent with high-quality workmanship and materials. Use of water pumps, high-strength concrete and similar techniques is permitted, insofar as possible without sacrifice to the quality of the work. Completion of the job, including replacement of the pavement and cleanup, shall be accomplished within five (5) working days after the right-of-way becomes impassable.

(b) Permittee may only work on Saturday if specifically permitted to do so. For every Saturday on which the contractor chooses to work, one (1) day will be charged to the time permitted by this article. Nothing in this article shall be construed as prohibiting the contractor from working on Saturdays if he so desires. Extensions of time to complete shall only be with the approval of the Town.

  **Sec. 13.08.127 Construction requirements**

The permittee shall protect the street, alley surface or easement, drainage facilities, adjacent property and all existing improvements from excavated materials, equipment operations and other construction operations. Adequate provisions must be made to minimize inconvenience for traffic and to adjacent property owners. The following construction requirements shall be met by the permittee:

- (1) Limits of work. Property and easement lines shall be indicated on the plan of excavation submitted to the Town with the application for the excavation permit, and it shall be the permittee's responsibility to confine excavation work within these limits and, if necessary, secure written authorization from adjacent property owners to utilize their property.
- (2) Protection of watercourses. The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace the same in as good condition as it found them or shall make such provisions for them as the Town may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to remove all surplus water, muck, silt, slickings or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.
- (3) Inspection of work. All work shall be subject to inspection by the Town. The Town shall be notified by the permittee before starting work, before starting backfill, prior to pouring concrete and upon completion of work. The permittee shall not proceed with any further work in each instance without authorization by the Town Administrator.
- (4) Noise, dust and debris. The permittee shall conduct and carry out the excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the Town and occupants of neighboring property. The permittee shall take appropriate measures to reduce, to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris. During the hours between 10:00 p.m. and 7:00 a.m., and all day on Sundays and holidays, the permittee shall not use, except with the express written permission of the Town or in case of an emergency as defined in [section 13.08.132](#) any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.
- (5) Preservation of monuments. The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until approved to do so by the Town.
- (6) Maintenance of drawings of underground structures. Users of all subsurface street, alley and easement space in the Town shall maintain accurate drawings and plans showing the location and character of all underground structures. Copies of such plans shall be furnished to the Town as each revision is made.
- (7) Breaking through pavement. Steel reinforcement bars shall be preserved. Existing concrete base shall be removed and replaced a minimum of one (1) foot beyond the trench width. The removal and replacement of portions of existing concrete pavement shall require breakout grooves to be sawed by the use of an appropriate power-driven concrete saw, subject to the approval of the Town. Where designated locations of breakout fall

within (3) feet of tool joints, construction joints or expansion joints, breakout shall be to the existing joint. The grooves shall be cut perpendicular to the surface and shall be sawed to a minimum depth of one and one-half (1-1/2) inches. The concrete shall be sawn down to and around the existing reinforcing bars; the bars shall be bent clear of the excavation but not removed from the concrete.

(8) Jacking, boring or tunneling. Where encasement or carrier pipe is required to be installed under public property by jacking, boring or tunneling methods, the applicant must submit detailed plans for prior approval by the Town. Except for public utilities, the plans must be designed by and display the seal of a professional engineer registered in the State.

(9) Minimum size of cut. On concrete pavement, no horizontal dimension of any cut made for the purpose of installing water or sewer services shall be less than three (3) feet.

(10) Cleanup. As the work progresses, all streets and alleys shall be thoroughly cleaned of all rubbish, excess dirt, mud and other debris. If necessary, the Town may require cleanup to be done by the permittee on a daily basis. All cleanup operations shall be at the expense of the permittee.

(11) Care of excavated material. All material excavated or other materials stored next to trenches and piled adjacent to the trench or in any street shall be piled and maintained in such a manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets, alleys, easements and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, or other circumstances should deem it necessary, the Town Administrator shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites within the Town.

(12) Utility connections. When the excavation is made by the permittee for the purpose of connecting private sewer or water lines to the Town mains, it shall be the responsibility of the permittee to prepare the trench and expose the main to the satisfaction of the Town. The request for an inspection shall be made for a time that the permittee or his authorized agent will be on the jobsite. Upon approval by the Town, the Town will normally make the connection within twenty-four (24) hours, excluding weekends, holidays and emergency repairs. Backfilling and concrete replacement shall be the responsibility of the permittee.

(13) Repairs. Repairs are to be made as rapidly as is consistent with high-quality workmanship and materials. Use of high-strength concrete and similar techniques is encouraged, insofar as possible without sacrifice of the quality of repair. All concrete replacement procedures, including, but not limited to, backfilling, compaction, reinforcement, inspections and concrete placement, are the responsibility of the bonded concrete contractor.

(14) Trench safety. Any excavation which will exceed a depth of five (5) feet shall meet all current OSHA safety standards and any applicable Town ordinances.

(15) Backfilling. Backfill will be in accordance with the permit requirements and Town standards.

(16) Replacement of pavement. The existing pavement shall be sawed in accordance with subsection (7) herein and removed to a line at least twelve (12) inches back from the firm banks of the trench. The backfill shall be brought up to the elevation of the existing subgrade and satisfactorily densified in accordance with subsection (15) herein. Reinforcement shall be no. 3 steel bars on twelve-inch centers, both directions. New reinforcement shall be tied to existing steel exposed during removal or shall be dowelled eight (8) inches into the existing concrete base. Reinforcing bars shall be lapped eighteen (18) inches on splices. The concrete pavement shall be replaced with 3500 psi concrete of not less than five (5) sacks of cement per cubic yard and match the finish and thickness of the existing pavement but not less than six (6) inches thick. Concrete shall be brush finished. The Town shall have the right to require testing to determine concrete strength, and such testing shall be at the expense of the bonded concrete contractor.

(17) Concrete base. The existing pavement shall be removed and compacted in accordance with the above specifications, and the concrete base shall be replaced in accordance with above specifications to a line one and one-half (1-1/2) inches below the asphaltic concrete surface of the street. Concrete shall cure for a minimum of four (4) days before placing asphalt.



(18) Asphalt. Surface pavement shall consist of type D hot-mix asphaltic concrete unless otherwise specified by the Town. Asphalt shall be placed at a minimum temperature of two hundred fifty (250) degrees and shall be immediately compacted and rolled to obtain maximum density. The roller shall be a self-propelled, flat-wheel roller and shall produce a uniform surface with no deviation in excess of one quarter (1/4) inch per foot, as measured with a straight edge.

Sec. 13.08.128 Final cleanup

Immediately upon completion of the work authorized, the permittee shall remove from the work area all unused material, dirt, rock, debris and loose concrete. The entire work area shall be thoroughly washed down, broom cleaned and usable. Upon failure to do so within twenty-four (24) hours after having been notified by the Town, said work may be done by the Town and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder. Excavations in easements will be graded to provide for drainage.

Sec. 13.08.129 Town's right to restore surface



If the permittee fails to restore all surfaces to their original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit, the Town reserves the right to do all work necessary to restore surfaces and to complete the excavation work. The permittee shall be liable for the actual cost thereof plus fifteen (15) percent of such cost for general overhead and administrative expenses. The Town shall have a cause of action against the permittee for all fees, expenses and amounts paid out and due it for such work. The Town shall also enforce its rights under the permittee's surety bond provided pursuant to this article.

  **Sec. 13.08.130 Applicability to work by Town, Town contractors and utility companies**



The provisions of this article shall not be applicable to excavation work performed by the Town and its employees. Any contractor of the Town, performing work for or in behalf of the Town necessitating openings or excavations on public property, shall comply with this article unless the Town, in writing, waives compliance with the requirements of this article upon terms and conditions it deem necessary.



  **Sec. 13.08.131 Unlawfully damaging utility lines**

It shall be unlawful for any person to injure, deface, or destroy unlawfully, willfully or maliciously any pipes, cables or lines belonging to the Town or public utilities, including, but not limited to, water, sewer, gas, electric, telephone and cable television.

  **Sec. 13.08.132 Emergency work**

Nothing in this article shall be construed to prevent emergency excavation on public property when the same is necessary for the preservation of life or property. However, no emergency repair shall be done without immediately notifying the Town Administrator. If such emergency occurs at night, or on weekends or holidays, such notification shall be directed to the Town Department of Public Safety before work is done. Thereafter, it shall be necessary to obtain a permit from the Town Administrator on the earliest working day immediately following such emergency.

  **Secs. 13.08.133–13.08.160 Reserved**

  **Division 5. Exemption Process**

  **Sec. 13.08.161 Administrative hearing - request for exemption**

(a) Should any person utilizing or proposing to utilize the right-of-way desire to request an exemption from a specific standard set forth in this article, and [section 13.08.050](#) is not applicable, the person 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 under this article.

(b) Any person requesting an exemption from any of the requirements shall file such a request with the Town Administrator within fifteen (15) calendar days from the time that need for an exemption arose. If an exemption is requested prior to construction, the request should be submitted prior to filing for a permit.

(c) An exemption shall only be granted if:

- (1) Such exemption is not contrary to the public interest;
- (2) Such exemption will not increase the burden on the right-of-way or other right-of-way users;

(3) Such exemption shall not increase the right-of-way management or administrative duties for Town staff;

(4) The exemption shall fit within the spirit of this article; and

(5) The application of this article in the particular circumstances would create an unnecessary hardship.

(d) It shall take an affirmative vote of four (4) members of the Board to grant the exemption.

(Ordinance 2025 adopted 8/28/17)