

City of Kingsville, Texas

AGENDA CITY COMMISSION TUESDAY, AUGUST 29, 2017 SPECIAL MEETING

**HELEN KLEBERG GROVES COMMUNITY ROOM
CITY HALL/400 WEST KING AVENUE
4:00 P.M-Special Meeting**

I. Preliminary Proceedings.

OPEN MEETING

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

MINUTES OF PREVIOUS MEETING(S)

None.

II. Public Hearing - (Required by Law).¹

None.

III. Reports from Commission & Staff.²

"At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Proposed Development Report; Accounting & Finance – Financial & Investment Information, Investment Report, Quarterly Budget Report, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works- Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."

IV. Public Comment on Agenda Items.³

1. Comments on all agenda and non-agenda items.

APPROVED BY:



Jesus A. Garza
City Manager

V.

Consent Agenda

Notice to the Public

The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.

CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM PREVIOUS MEETINGS:

(At this point the Commission will vote on all motions, resolutions and ordinances not removed for individual consideration)

1. Motion to approve final passage of an ordinance amending the zoning ordinance by changing the zoning map in reference to KT&I Co., Block 22, Lots 3 & 4, 1.15 acres, also known as area South of Chili's Restaurant on US77 Southbound Frontage Road from AG-Agriculture District to C2-Retail District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Director of Planning & Development Services).
2. Motion to approve final passage of an ordinance amending the Fiscal Year 2016-2017 budget to accept and expend a donation from the Kleberg County Sheriff's Association for the Parks Department. (Parks & Recreation Director).
3. Motion to approve final passage of an ordinance amending the City of Kingsville Code of Ordinances by amending Chapter XV, Article 6, zoning, amending Section 15-6-21 Definitions to add fairgrounds, rodeo grounds, farm, ranch, and orchard; and amending Appendix A-Land Use Categories to add fairgrounds, rodeo grounds, and farm. (Director of Planning & Development Services).
4. Motion to approve final passage of an ordinance amending the City of Kingsville Code of Ordinances by amending Electric Code Sections 15-1-56-Definitions and 15-1-59-Qualifications and Registration. (Director of Planning and Development Services).
5. Motion to approve final passage of an ordinance adopting Article 8-Use of Public R.O.W.-Network Nodes & Support Structures, in Chapter V-Public Works; regulating the physical use, occupancy, and maintenance of City Rights-of-Way by wireless network providers; describing the purpose; providing for definitions; requiring compliance with the City Design Manual and applicable codes for the installation of network nodes and node support poles pursuant to Chapter 284 of the Texas Local Government Code; providing City procedures for applications for permits; establishing time periods for approval of permit applications; providing application fees and annual public Right-of-Way rental rates; providing restrictions on placement of network nodes and node support poles in municipal parks, residential areas, historic districts, and design districts; providing indemnity for the City. (Director of Planning and Development Services).
6. Motion to approve final passage of an ordinance approving a Design Manual for the installation of network nodes and node support poles; and approving a pole attachment agreement regulating the installation of network nodes on City service poles and utility poles. (Director of Planning and Development Services).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

7. Review and discuss proposed fiscal year 2017-2018 budget for departments of the City of Kingsville. (City Manager).

VII. Adjournment.

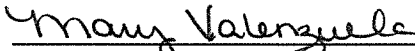
1. No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
2. No person's comments shall exceed 5 minutes without permission of majority of Commission.
3. Comments are limited to 3 minutes per person. May be extended or permitted at other times in the meeting only with 5 affirmative Commission votes. The speaker must identify himself by name and address.
4. Items being considered by the Commission for action except citizen's comments to the Mayor and Commission, no comment at this point without 5 affirmative votes of the Commission.

NOTICE

This City of Kingsville and Commission Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 361/595-8002 or FAX 361/595-8024 or E-Mail mvalenzuela@cityofkingsville.com for further information. Braille Is Not Available. The City Commission reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code, Section 551-071 (Consultation with Attorney), 551-072 (Deliberations about Real Property), 551-073 (Deliberations about Gifts and Donations), 551-074 (Personnel Matters), 551-076 (Deliberations about Security Devices), 551-086 (Certain Public Power Utilities: Competitive Matters), and 551-087 (Economic Development).

I, the undersigned authority do hereby certify that the Notice of Meeting was posted on the bulletin board in the City Hall, 200 East Kleberg, of the City of Kingsville, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time:

August 24, 2017 at 4:15 P.M. and remained so posted continuously for at least 72 hours proceeding the schedule time of said meeting.



Mary Valenzuela, TRMC, City Secretary
City of Kingsville, Texas

This public notice was removed from the official posting board at the Kingsville City Hall on the following date and time: _____

By: _____
City Secretary's Office
City of Kingsville, Texas

CONSENT AGENDA

AGENDA ITEM #1

City of Kingsville
Planning and Development Services

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Tom Ginter, Director of Planning and Development Services

DATE: August 18, 2017

SUBJECT: Rezoning request from Brazos de Santos Partners, Ltd. Of 1.5 acres out of KT & I CO , Block22, Lots 3 & 4 from AG (Agricultural District) to C2 (Retail District)

Summary:

Brazos de Santo Partners has submitted a request to re zone 1.15 acres out of Block 22, Lots 3 and 4 from Agricultural to C2. The reason for the request is that the proposed project is a fast food restaurant with drive a through.

Background:

This ground is owned by Paul West and is directly south of the Chili's. In the packet are site plans that give detailed information as to the site and its relationship to the other properties that surround. Essentially to the north the properties are zoned C2 and to the south they are zoned Agricultural. Mr. West owns the ground to the south.

Financial Impact:

The financial impact to the city would be a positive one. The proposed project would add to the tax base and provide jobs for the community. I believe it would be a plus for the dining scene for the citizens of Kingsville.

Recommendation:

The Planning and Zoning Commission voted 5 – 0 to recommend approval of the rezoning request .



**CITY OF KINGSVILLE
PLANNING AND ZONING DIVISION
MASTER APPLICATION**

PROPERTY INFORMATION: (Please PRINT or TYPE)Project Address N/A Nearest Intersection US 77 at E. General Cavazos(Proposed) Subdivision Name BDSP-Kingsville Lot Out of 3 & 4 Block 22Legal Description: 1.15 acres out of KT & I Co, Block 22, Lots 3 & 4Existing Zoning Designation AG (Agricultural District) Future Land Use Plan Designation C2 (Retail District)**OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE)**Applicant/Authorized Agent Carol Lagutchik
for Brazos de Santos Partners, Ltd. Phone (210) 225-4461 FAX _____Email Address (for project correspondence only): clagutchik@billmillerbbq.comMailing Address P.O. Box 839925 City San Antonio State TX Zip 78283Property Owner Paul M. West Phone _____ FAX _____

Email Address (for project correspondence only): _____

Mailing Address 489 N. County Rd. 1050 City Kingsville State TX Zip 78363

Select appropriate process for which approval is sought. Attach completed checklists with this application.

<input type="checkbox"/> Annexation Request	No Fee	<input type="checkbox"/> Preliminary Plat	Fee Varies
<input type="checkbox"/> Administrative Appeal (ZBA)	\$250.00	<input type="checkbox"/> Final Plat	Fee Varies
<input type="checkbox"/> Comp. Plan Amendment Request	\$250.00	<input type="checkbox"/> Minor Plat	\$100.00
<input checked="" type="checkbox"/> Re-zoning Request	\$250.00	<input type="checkbox"/> Re-plat	\$250.00
<input type="checkbox"/> SUP Request/Renewal	\$250.00	<input type="checkbox"/> Vacating Plat	\$50.00
<input type="checkbox"/> Zoning Variance Request (ZBA)	\$250.00	<input type="checkbox"/> Development Plat	\$100.00
<input type="checkbox"/> PUD Request	\$250.00	<input type="checkbox"/> Subdivision Variance Request	\$25.00 ea

Please provide a basic description of the proposed project:

Fast food restaurant with drive through

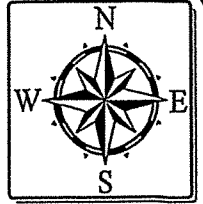
I hereby certify that I am the owner and /or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the permit or approval may be revoked.

Applicant's Signature _____ Date: 6/23/2017
 Property Owner's Signature Paul M. West Date: 6/20/2017
 Accepted by: _____ Date: _____

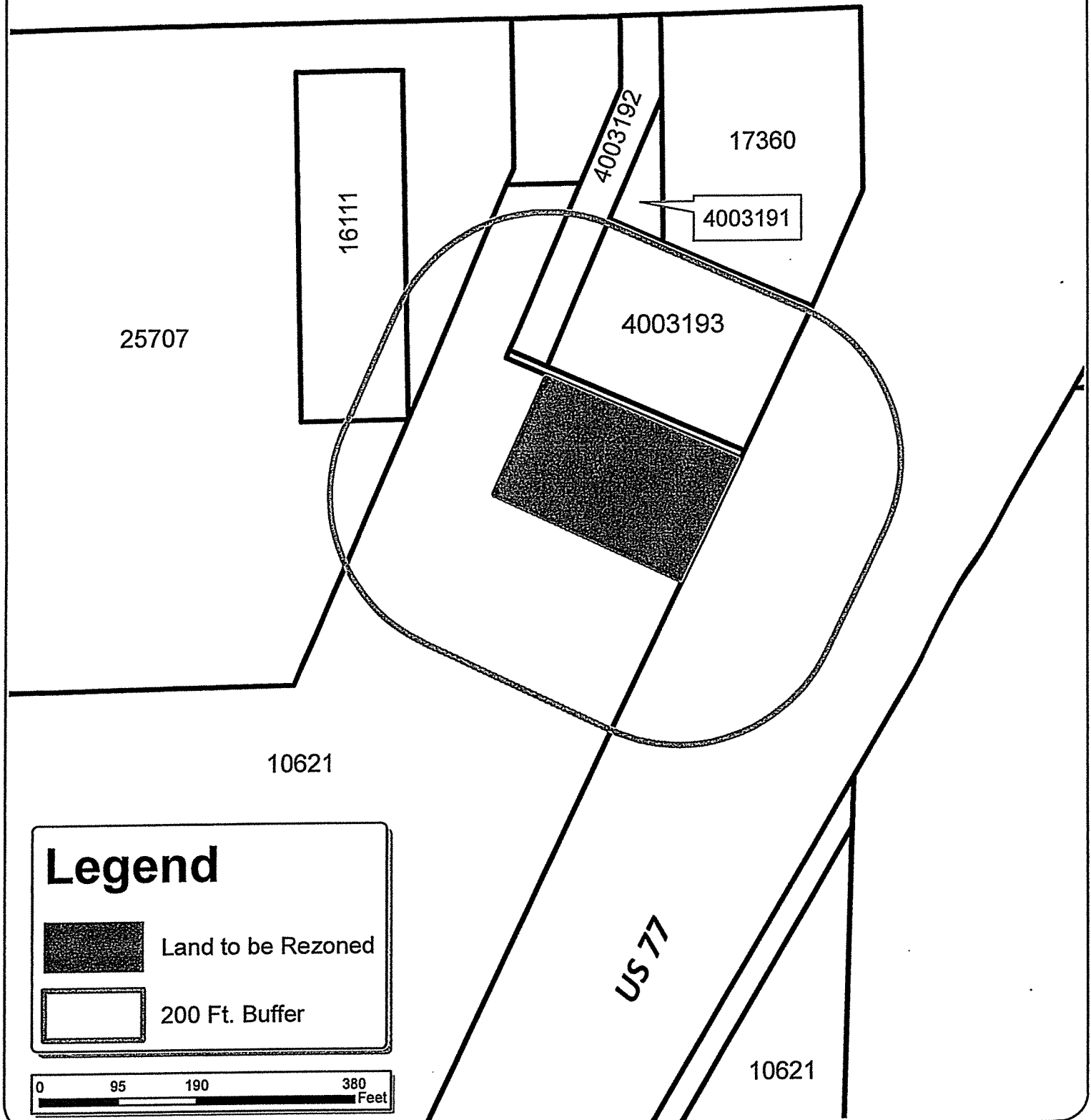
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City of Kingsville - 200 Ft. Radius Map



FM 1356



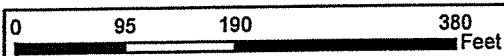
Legend



Land to be Rezoned



200 Ft. Buffer



Document Path: N:\GIS Techs\MAPSWAP_DOCUMENTS\Arc_City_Address_Assign_Map_8.5x11.mxd

Page 1 / 1	Drawn By: Engineering Department
	Last Update: 8/17/2017
	Note:

DISCLAIMER
THIS MAP IS FOR VISUAL PURPOSES ONLY.
THE INFORMATION ON THIS SHEET MAY
CONTAIN INACCURACIES OR ERRORS.
THE CITY OF KINGSVILLE IS NOT
RESPONSIBLE IF THE INFORMATION CONTAINED
HEREIN IS USED FOR ANY DESIGN,
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OR ANY OTHER PURPOSE.



**CITY OF KINGSVILLE
ENGINEERING DEPARTMENT**

400 W King Ave
Kingsville, Texas 78363
Office: 361-595-8007
Fax: 361-595-8064

CHRISTUS SPOHN HOSPITAL KLEBERG
% PROP TAX APPEAL & SERVICE CO
792 W FM 1961
YORKTOWN, TX 78164
#16111

CHRISTUS SPOHN HOSPITAL KLEBERG
% PROP TAX APPEAL & SERVICE CO
792 W FM 1961
YORKTOWN, TX 78164
#25707

PAUL M WEST
489 N COUNTY ROAD 1050
KINGSVILLE, TX 78363-8923
#10621

PAUL M WEST
489 N COUNTY ROAD 1050
KINGSVILLE, TX 78363-8923
#4003191

BRINKER TEXAS LP
ATTN GENERAL COUNSEL
6820 LYNDON B JOHNSON FWY
DALLAS, TX 75240-6511
#4003192

BRINKER TEXAS LP
ATTN GENERAL COUNSEL
6820 LYNDON B JOHNSON FWY
DALLAS, TX 75240-6511
#4003193

WHATABURGER INC
ATTN: REAL ESTATE DEPT.
PO BOX 13752
PHILADELPHIA, PA 19101-3752
#17360

To: Planning and Zoning Commission Members

From: Tom Ginter, Director

Date: August 11, 2017

Subject: Agenda Item Information

Agenda Item #1 and # 2:

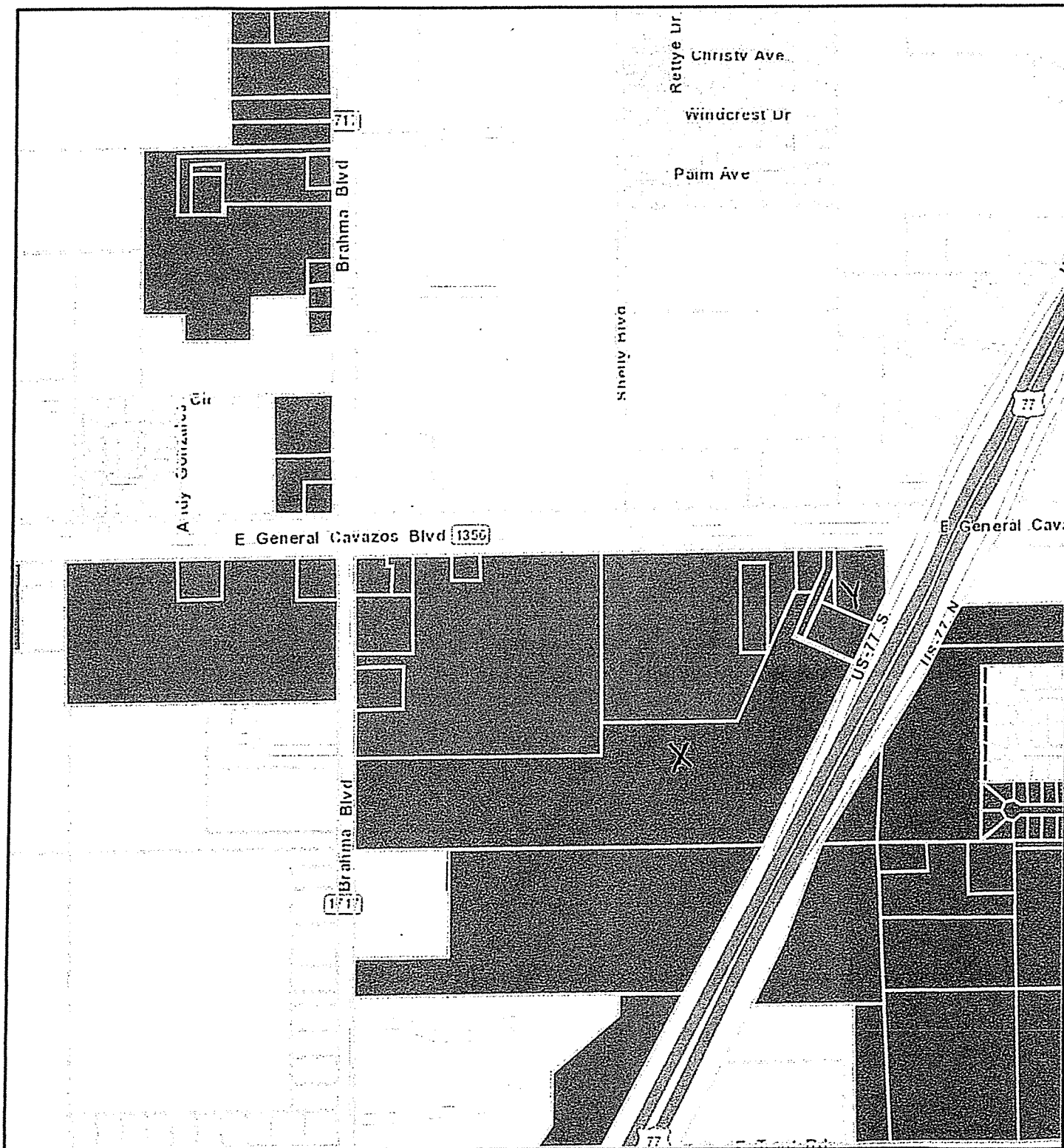
Both of these items pertain to the rezoning request as noted on the application. This particular ground is 1.148 acres just South of Chili's. The rezone request is from Agriculture to C2, just like the other two businesses that are there, Chili's and Whataburger. Issues such as drainage and traffic will be reviewed and discussed with City staff. Staff recommends to submit an approved recommendation to the City Commission.

Agenda Item #3:

As suggested by the Commission, the following changes were made to the ordinance.

1. In Appendix A – Land Use Categories, Fairground and Rodeo Grounds were put together. A Special Use Permit is required for Agriculture with it being permitted in I1 and I2.
2. The word sheep will be deleted from the Ranch definition. It will now read: An area of 10 or more acres including various structures, given primarily to the practice of ranching, raising and grazing livestock.
3. Change the definition of Fairground to the following: Open space of land where fairs, exhibitions or other public events are held in a permanent structure.

Since the last meeting if there are other changes, please let me know so I can include it in the Ordinance. If I do not receive any corrections by Monday at Noon, then I will get the ordinance to you.

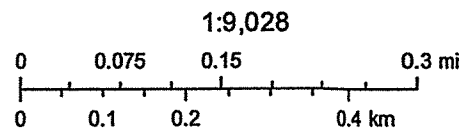


June 12, 2017

X - agriculture

Y - C2

Would have to
rezone from Ag to
C2 ~~from Ag to~~



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

Area competitors head to Waco for state rodeo

By Jaime Gonzalez
Sports Editor

Local competitors will be heading to Waco this week for the state finals of the Texas Youth Rodeo Association.

Eleven competitors from the area, ranging from ages six through 16, are competing at the state finals that began on Tuesday and run through Saturday.

"When I was younger, I rode horses and started to rodeo," 8-year-old Elizabeth Ivey said. "I ended up really liking it."

For Elizabeth and several other competitors, their love of rodeo developed thanks to family tradition.

"I grew up ranching," Becky Ivey, Elizabeth's mother said. "We've always been on horses."

Becky Ivey said Elizabeth got her first pony when she was two.

"Since then it was just every day, 'Can I ride?', so we ride," Becky said.

Several of the competitors had their final practice last weekend in Ricardo before hitting the road to Waco.

Tres Mendieta has competed at the state finals before, and said the event continues to get bigger and better.

"My dad roped, and when I was younger he got me into riding," he said.

Tres has been competing

since he was four.

"It's an annual thing for us," he said. "The whole family packs up and heads up there. It gets better and better every year."

Tres will be joined in the competition this time around with his sister, Trista, also competing in Waco.

"I'm pretty excited," she said about competing at the state finals for the first time.

Twelve-year-old J.T. Garcia said he got into rodeo as an alternative to more traditional youth sports four years ago.

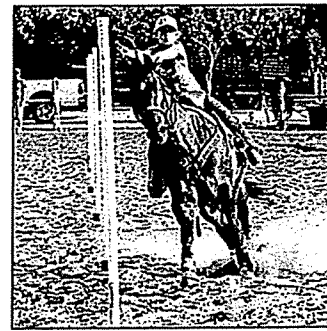
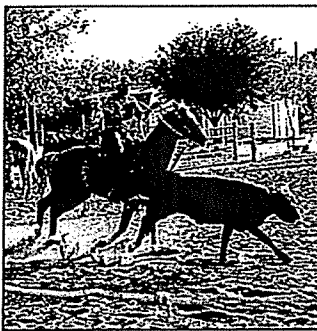
"I played sports and didn't like it," J.T. said. "My dad rodeoed a lot and got me into it. I made new friends and I'm having fun."

"For us, it's been a family tradition," Jennifer Garcia, J.T.'s mother, said. "He has a great-grandfather that was a Kineho on the King Ranch. He grew up riding horses, and he took to it and loved it."

Juan Garcia, J.T.'s father, hosts the practice for the competitors, and serves as a coach for the group.

Other riders competing at the state rodeo include McKenzie Bryce, Grant Garza, Kayle Utterback, Joey Gonzalez, Emma Gonzalez, Grace Bull and Adelei Gutierrez.

Jaime Gonzalez can be contacted at jgonzalez@king-ranch.com or (361) 221-0246.



Pictured at top, J.T. Garcia ropes a calf in preparation for this week's TYRA state finals. Above at left, Tres Mendieta also ropes a calf during their practice session on Saturday. Above at right, Elizabeth Ivey runs poles with her horse. (Photos by Jaime Gonzalez)

Boxers win at Victoria



Three Kingsville Boxing Club fighters traveled to compete in Victoria last weekend. Pictured, from left, are John Cason, Roci Garcia and Dylan Salinas. Cason and Salinas won their bouts, while Garcia went unopposed on the card. Also pictured are coaches Michael Pendleton and Lee Ortega. (Submitted photo)

Statement from managing editor

A July 23 story in the Kingsville Record and Bishop News incorrectly reported that local umpire Joe Cusack was retiring after 60 years of officiating high school,

junior high and youth sports in the area.

Cusack is not retiring and intends to continue officiating games at the levels previously listed, though he has been

retired from being an umpire for high school baseball for the past three years.

The Kingsville Record and Bishop News apologizes for the error.

H.M. King sets football, volleyball practices

Staff Reports

The H.M. King athletic department has set the practice schedules for the upcoming fall sports.

The New Bull camp for freshman players runs on Monday through Wednesday, 9 a.m. to noon.

Upper classmen in football will need to report Aug. 3 at from 8 a.m. to noon to helmets and lockers.

First practice players will need to report to the locker room at 6:15 a.m.

Volleyball practice will begin Aug. 1 from 6 to

8:30 a.m. in dome B.

For cross country athletes, their first day to report is Aug. 7 from 8 to 9 a.m. at the school's softball field.

All physical for athletes need to be turned into the athletic department before the first day of practice.

PUBLIC HEARING NOTICE

The Planning & Zoning Commission of the City of Kingsville will hold a Public Hearing Wednesday, August 16th, 2017 at 6:00 p.m. wherein the Commission will discuss and/or take action on the following items and at which time all interested persons will be heard:

Carol Lagutich for Brazos de Santos Partners, Ltd, applicant, Paul M. West, owner, requesting the rezoning of 1.15 acres out of KT & I CO, Block 22, LOTS 3 & 4 from AG (Agricultural District) to C2 (Retail District).


The meeting will be held at City Hall, 400 West King, in the Helen Kleberg Groves Community Room. If you have any questions about the items on the agenda, please contact the Planning Department at (361) 595-8055.

PUBLIC HEARING NOTICE

The City Commission of the City of Kingsville will hold a Public Hearing Monday August 28th, 2017 at 6:00 p.m. wherein the City Commission will discuss the introduction on the following item and at which time all interested persons will be heard:

Carol Lagutich for Brazos de Santos Partners, Ltd, applicant, Paul M. West, owner, requesting the rezoning of 1.15 acres out of KT & I CO, Block 22, LOTS 3 & 4 from AG (Agricultural District) to C2 (Retail District).

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ORDINANCE #2017-_____

AMENDING THE ZONING ORDINANCE BY CHANGING THE ZONING MAP IN REFERENCE TO KT&I CO., BLOCK 22, LOTS 3 & 4, 1.15 ACRES, ALSO KNOWN AS AREA SOUTH OF CHILI'S RESTAURANT ON US 77 SOUTHBOUND FRONTAGE ROAD FROM AG-AGRICULTURE DISTRICT TO C2-RETAIL DISTRICT; AMENDING THE COMPREHENSIVE PLAN TO ACCOUNT FOR ANY DEVIATIONS FROM THE EXISTING COMPREHENSIVE PLAN; AND PROVIDING FOR PUBLICATION.

WHEREAS, the Planning Commission has forwarded to the City Commission its reports and recommendations concerning the application of Carol Lagutchik for Brazos de Santos Partners, Ltd, applicant, on behalf of Paul M. West, owner, for amendment to the zoning ordinance and zoning map of the City of Kingsville;

WHEREAS, with proper notice to the public, public hearings were held on Wednesday, August 16, 2017 during a meeting of the Planning and Zoning Commission, and on Monday, August 28, 2017 during a meeting of the City Commission, at City Hall, in the City of Kingsville, during which all interested persons were allowed to appear and be heard; and

WHEREAS, the item PASSED with a 5-0 vote of the Planning Commission on the requested rezone with no abstentions; and

WHEREAS, the City Commission has determined that this amendment would best serve public health, necessity, and convenience and the general welfare of the City of Kingsville and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

SECTION 1. That the Zoning Ordinance of the City of Kingsville, Texas, is amended by changing the zoning of KT&I Co., Block 22, Lot 3 & 4, 1.15 acres also known as area south of Chili's Restaurant on the US77 Southbound Frontage Road from AG-Agriculture District to C2-Retail District, as more specifically described on the Zone Change Map, attached as Exhibit A.

SECTION 2. That the official Zoning Map of the City of Kingsville, Texas, is amended to reflect the amendments to the Zoning Ordinance made by Section 1 of this ordinance.

SECTION 3. That the Zoning Ordinance and Zoning Map of the City of Kingsville, Texas, as amended from time to time, except as changed by this ordinance and any other ordinances adopted on this date, remain in full force and effect.

SECTION 4. That to the extent that these amendments to the Zoning Ordinance represent a deviation from the Comprehensive Plan, the Comprehensive Plan is amended to conform to the Zoning Ordinance, as amended by this ordinance.

SECTION 5. That all ordinances or parts of ordinances in conflict with this ordinance are hereby expressly repealed.

SECTION 6. That publication shall be made in the official publication of the City of Kingsville as required by the City Charter of the City of Kingsville.

INTRODUCED on this the 28th day of August, 2017.

PASSED AND APPROVED on this the 29th day of August, 2017.

THE CITY OF KINGSVILLE

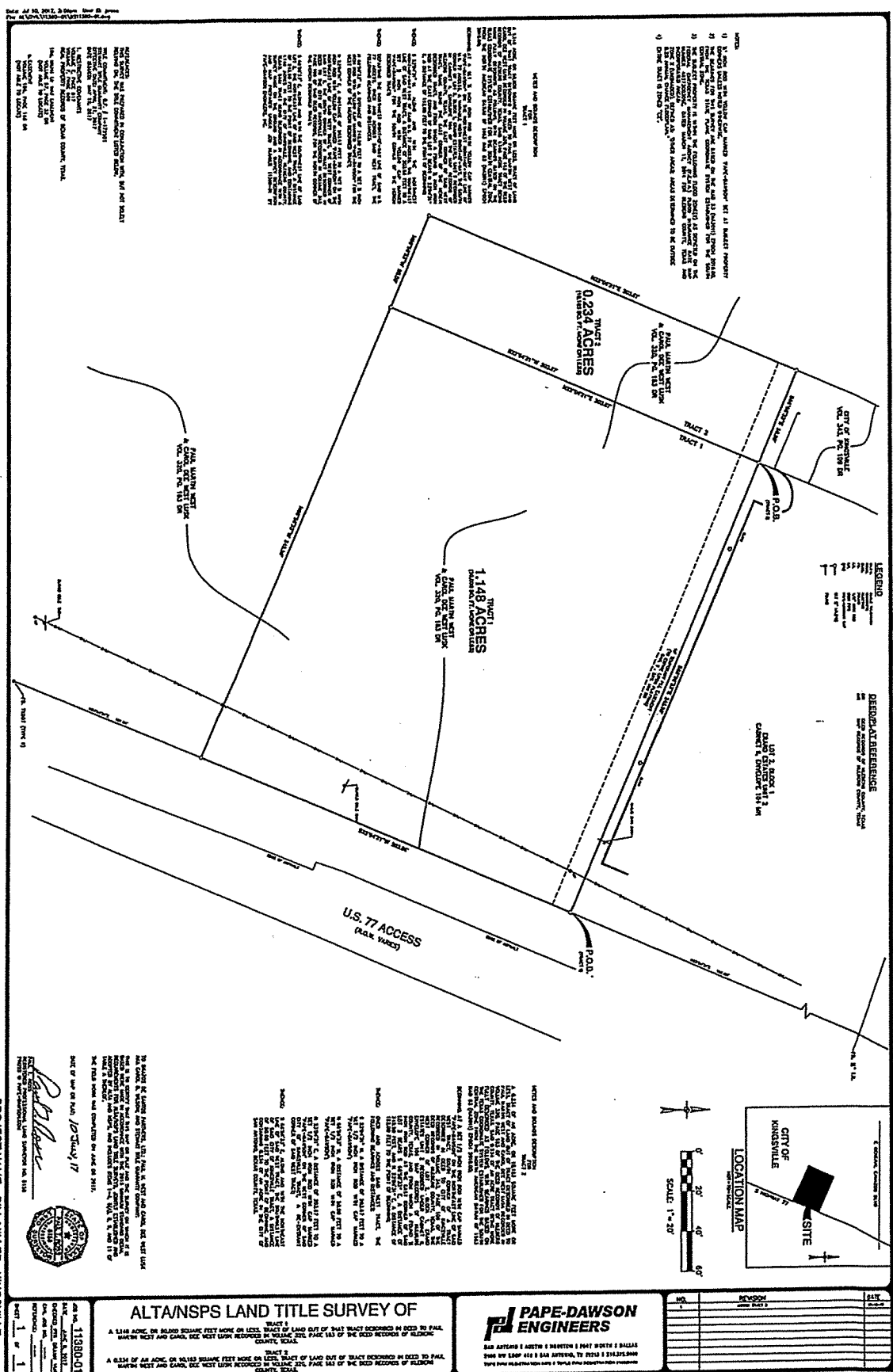
Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED:

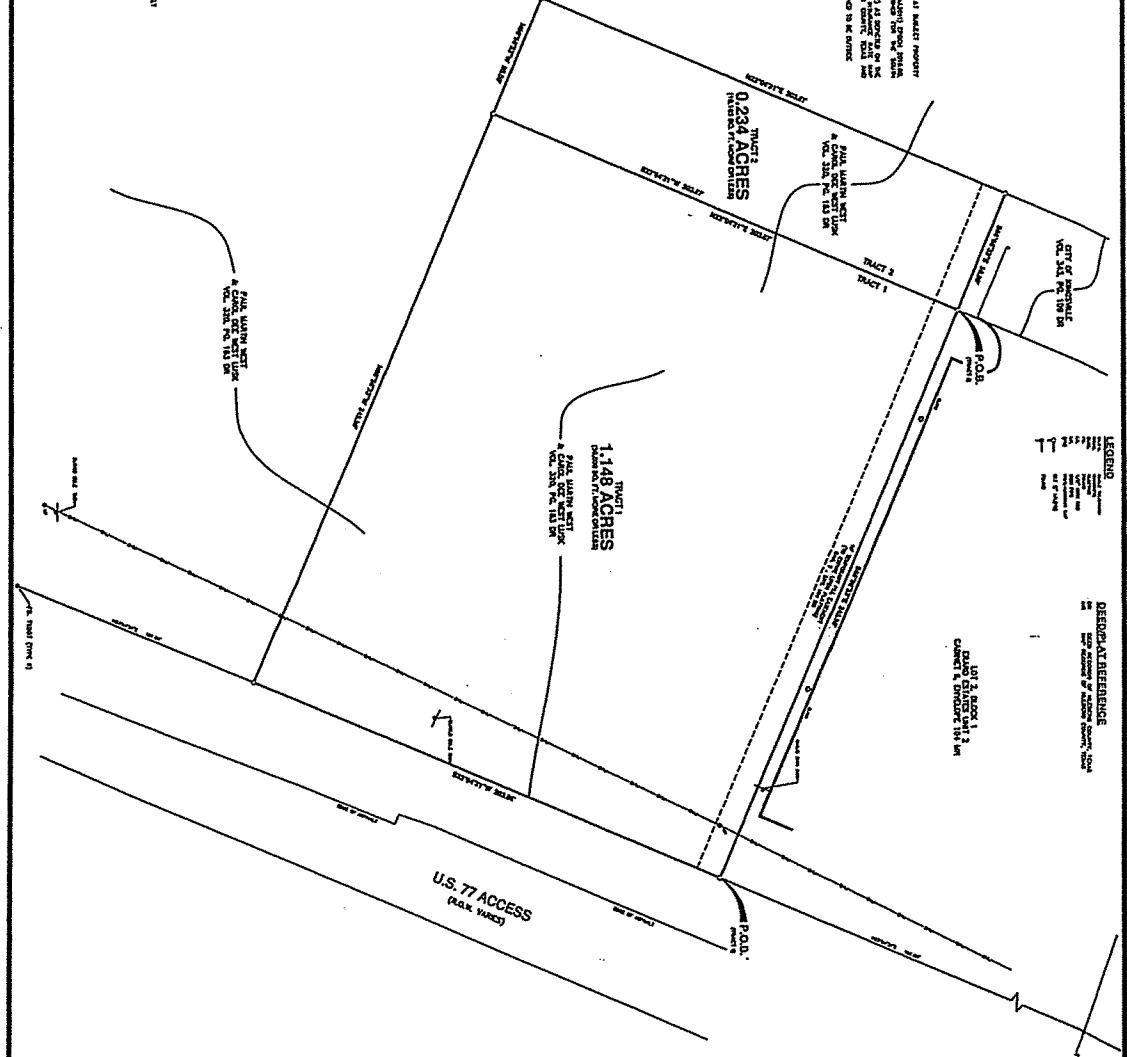
Courtney Alvarez, City Attorney



NOTES:
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5. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER MATTERS THAT MAY AFFECT THIS SURVEY.

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1. THIS SURVEY WAS MADE BY THE ENGINEER IN THE FIELD AND THE RESULTS ARE BASED ON THE DATA OBTAINED THEREFROM.
2. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER SURVEYS OR RECORDS THAT MAY AFFECT THIS SURVEY.
3. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER EASEMENTS OR RIGHTS THAT MAY AFFECT THIS SURVEY.
4. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER ENCUMBRANCES THAT MAY AFFECT THIS SURVEY.
5. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER MATTERS THAT MAY AFFECT THIS SURVEY.

NOTES AND EXPLANATIONS:
1. THIS SURVEY WAS MADE BY THE ENGINEER IN THE FIELD AND THE RESULTS ARE BASED ON THE DATA OBTAINED THEREFROM.
2. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER SURVEYS OR RECORDS THAT MAY AFFECT THIS SURVEY.
3. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER EASEMENTS OR RIGHTS THAT MAY AFFECT THIS SURVEY.
4. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER ENCUMBRANCES THAT MAY AFFECT THIS SURVEY.
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NOTES:
1. THIS SURVEY WAS MADE BY THE ENGINEER IN THE FIELD AND THE RESULTS ARE BASED ON THE DATA OBTAINED THEREFROM.
2. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER SURVEYS OR RECORDS THAT MAY AFFECT THIS SURVEY.
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4. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER ENCUMBRANCES THAT MAY AFFECT THIS SURVEY.
5. THE ENGINEER HAS NOT BEEN ADVISED OF ANY OTHER MATTERS THAT MAY AFFECT THIS SURVEY.

PROJECT NAME: BILL MILLER - KINGSVILLE

DATE: 11/18/01

BY: [Signature]

1

ALTA/NSPS LAND TITLE SURVEY OF

A 1.148 ACRES, ON BLIND BEARING FEET MORE OR LESS, TRACT OF LAND OUT OF THAT TRACT DESCRIBED IN DEED TO PAUL MILLER, NEST AND CAVAL, SEE WEST EASEMENT RECORDED IN VOLUME 202, PAGE 143 OF THE DEED RECORDS OF KINGSVILLE COUNTY, TEXAS.

TRACT 1

A 0.234 ACRES, ON BLIND BEARING FEET MORE OR LESS, TRACT OF LAND OUT OF THAT TRACT DESCRIBED IN DEED TO PAUL MILLER, NEST AND CAVAL, SEE WEST EASEMENT RECORDED IN VOLUME 202, PAGE 143 OF THE DEED RECORDS OF KINGSVILLE COUNTY, TEXAS.

TRACT 2

PAPE-DAWSON ENGINEERS

200 EAST 10TH STREET, SUITE 100, KINGSVILLE, TEXAS 78401

PHONE: 361-571-1111

FAX: 361-571-1112

WWW.PAPE-DAWSON.COM

NO.	DESCRIPTION	DATE
1	11/18/01	

AGENDA ITEM #2

**City of Kingsville
Parks & Recreation Department**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Jason Alfaro, Parks & Recreation Director

DATE: August 21, 2017

SUBJECT: Receipt of \$300 donation from the Kleberg County Sheriffs' Association

Summary:

The Parks & Recreation Department would like approval from City Commission to receive a \$300 donation from the Kleberg County Sheriffs' Association. These funds would be used to help offset the cost of a movie in the park.

Background:

Kleberg County Sheriffs' Association has continuously provided support to the parks and recreation department.

Financial Impact:

This donation of \$300 will help offset the cost of the last movie in the park.

Recommendation:

We recommend that City Commission authorize the receipt of this donation in the amount of \$300 from the Kleberg County Sheriffs' Association, and amend the budget to record the acceptance of these funds into the parks budget.



ORDINANCE NO. 2017-_____

AN ORDINANCE AMENDING THE FISCAL YEAR 2016-2017 BUDGET TO ACCEPT AND EXPEND A PARK DONATION FROM THE KLEBERG COUNTY SHERIFF'S ASSOCIATION.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2016-2017 budget be amended as follows:

**CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT**

Dept No.	Dept Name	Account Name	Account Number	Budget Increase	Budget Decrease
Fund 001 General Fund					
Revenue					
4-4503	Parks & Recreation	Park Donations	58003	\$300	
				<u>\$300</u>	
Expenses					
5-4503	Parks & Recreation	Recreational Programs	31499	\$300	
				<u>\$300</u>	

[To amend the City of Kingsville FY 16-17 Budget to accept and expend a park donation from the Kleberg County Sheriff's Association as per the attached memo from the Parks & Recreation Director.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission

that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 28th day of August, 2017.

PASSED AND APPROVED on this the ____ day of _____, 2017.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #3

City of Kingsville
Department of Planning and Development Services

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Tom Ginter, Director

DATE: August 18, 2017

SUBJECT: Amendments to Chapter XV, Article 6, Zoning, Amending Section 15-6-21
Definitions and Appendix A Land Use Categories

Summary: Attached are recommended amendments to Section 15-6-21 Definitions and to Appendix A Land Use categories

Background: In the past few months we have had requests in relationship to Appendix A Land Use Categories that were not clear which then impacts my interpretation in comparing the request to the land use chart. Consequently I suggested to the Planning and Zoning Commission that they review the two pieces of the ordinance that were applicable. This is where the definition section came into play because there were no definitions for the request from the applicant.

To summarize the issues and our goal in clarification:

1. That surrounding uses of land that fits the ranch category be taken into account
2. Since rodeo type events were not defined, should they be defined and where do we want them

Financial Impact: I do not believe there will be a financial impact to the city and or to the applicant.



City of Kingsville
Department of Planning and Development Services

Recommendation: After reviewing the Appendix A – Land Use Categories and Section 15-6-21 Definitions, the following changes are being recommended:

1. Revise the definition of fairgrounds to add **on a permanent location**
2. Separate farm, ranch, orchard definitions in Section 15-6-21
3. Add Rodeo Grounds to the Appendix A and a definition in Section 15-6-21 for it. The land use of rodeo grounds is recommended to be permitted in I1, I2 and a Special Use Permit in Agriculture
4. Keep Park and Playground together in the Land Use Chart
5. Add Farm to the Land Use Chart with it being permitted in Agriculture
6. Add Ranch to Land Use with a Special Use Permit in I1, I2 and Agriculture.

The Planning and Zoning Commission voted 5 to 0 to recommend approval of the amendments to Appendix A – Land use Categories and Section 15-6-21 Definitions.



ORDINANCE NO. 2017-_____

AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES BY AMENDING CHAPTER XV, ARTICLE 6, ZONING, AMENDING SECTION 15-6-21 DEFINITIONS TO ADD FAIRGROUNDS, RODEO GROUNDS, FARM, RANCH, AND ORCHARD; AND, AMENDING APPENDIX A-LAND USE CATEGORIES TO ADD FAIRGROUNDS, RODEO GROUNDS, AND FARM; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.

WHEREAS, the Planning & Zoning Commission has forwarded to the City Commission its reports and recommendations concerning the proposed zoning ordinance changes; and

WHEREAS, the item PASSED with a 5-0 vote of the Planning Commission on the requested rezone with no abstentions; and

WHEREAS, this Ordinance is necessary to protect the public safety, health, and welfare of the City of Kingsville.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

I.

THAT Article 6: Zoning of Chapter XV, Land Usage, of the Code of Ordinances of the City of Kingsville, Texas, Section 15-6-21 and Appendix A-Land Use Categories shall be amended to read as follows:

Use Regulations and Districts

...

§ 15-6-21 DEFINITIONS.

For the purpose of this subarticle, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

...

Dwelling unit. A building or portion of a building which is arranged, occupied, or intended to be occupied as living quarters and includes sanitary, sleeping and food preparation facilities.

Fairground. Open space of land where fairs, exhibitions, or other public events are held on a permanent location.

Family. Defined for purposes of R1, R2 and MH Zones: Any number of individuals living together in a dwelling unit which are related by blood, marriage, or adoption, or up to and including three unrelated individuals. Defined for purposes of R3 and R4 Zones:

Any number of individuals living together in a dwelling unit which are related by blood, marriage, or adoption, or up to and including four unrelated individuals.

Family food production. Raising of crops for family use.

Farm. An area of 10 or more acres which is used for growing of usual farm products, vegetables, fruits, trees, and grains and for the raising thereon of the usual farm poultry and farm animals such as horse, cattle, and sheep and the necessary accessory uses for raising and treating and storing products used on the premises.

Farm accessory building. A structure other than a dwelling on a farm for the shelter, protection or storage of the usual farm equipment, animals or crops.

~~*Farm, ranch or orchard.* An area of ten or more acres which is used for the commercial production of crops or the keeping of the usual farm poultry and animals and normal accessory uses for these purposes.~~

Fraternity or sorority house. A building designed as group living quarters for members only and offering social and recreational activities.

...

Nursing home. An institution licensed by the State of Texas where those persons suffering from illness, injury, deformity, deficiency or age are given care or treatment on a prolonged or permanent basis.

Orchard. An area of 10 or more acres with the intentional planting of trees or shrubs maintained for food production. Usually composed of fruit or nut producing trees which are generally grown for commercial production.

Parcel. Any contiguous land under common ownership which does not satisfy the definition of a lot.

...

Ranch. An area of 10 or more acres including various structures, given primarily to the practice of ranching, raising, grazing livestock.

Residence home for the aged. A home where elderly people are provided with lodging and meals with or without nursing care.

Rodeo Grounds. An area or location of which rodeo events take place such as roping, steer wrestling, barrel racing and other events that are generally associated with a rodeo.

Secondary residential structure. A subordinate dwelling unit (detached), other than a mobile home.

...

(1962 Code, § 11-2-7; Ord. 99036, passed 10-25-99; Ord. 2001-15, passed 8-13-01; Ord. 2003-11, passed 5-12-03; Ord. 2009-20, § I, passed 8-10-09; Ord. 2010-12, passed 5-17-10; Ord. 2014-27, § I, passed 4-23-14; Ord. 2016-20, § I, passed 3-28-16)

...

APPENDIX A. - LAND USE CATEGORIES

Sec. 1. - Land use chart.

The following chart shall set out the land uses within the city:

P = Permitted

S = Special use permit required

X = Special review required

= Not permitted (absence of any symbol)

[Land Use Chart on the following pages]

Land Use Chart													
<i>Institutional and Special Service</i>	R1	R2	R3	R4	MH	C1	C2	C3	C4	I1	I2	Ag	
...													
Day nursery or kinder	S	S	S	P	P	P	P	P	P	P			P
Farm, ranch, or orchard													P
<u>Fairground/Rodeo</u>										P	P		S
<u>Rodeo Grounds</u>										P	P		S
Lodge or Club			S		P	P	S						P
...													
Library, art gallery, museum				S	S		P	P					
Park, playground, fairground	P	P	P	P	P	P	P	P	P	P	P		P

...													
<i>Agriculture and Related Uses</i>													
Dairy													P
<u>Farm</u>													<u>P</u>
Ranch											<u>S</u>	<u>S</u>	<u>S</u> P
Beekeeping, commercial													P
Crop production for sale													P
Orchard for home use	P	P	P	P	P	P	P	P	P	P	P	P	P
Orchard, commercial	S	S	S	S									P
...													

...

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall be codified and become effective on and after adoption and publication as required by law.

INTRODUCED on this the ____th day of _____, 2017.

PASSED AND APPROVED on this the ____th day of _____, 2017.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #4

City of Kingsville
Department of Planning and Development Services

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Tom Ginter, Director

DATE: July 15, 2016

SUBJECT: Amendment of electric code section 15-1-56

Summary: This past legislative session H.B. 3329 was passed. This bill essentially prohibits a municipality or region from collecting a fee from a state – licensed electrician for work performed in the municipality.

Background: The interested parties noted that the state already charges electricians a state licensing fee and yes municipalities will then charge the electrician a fee for registering in that particular town or city. The parties felt that this was redundant and created a financial burden for the electricians.

Financial Impact: We charge \$65.00 dollars for an electrician to register in Kingsville. We estimate that the loss of revenue will be in the range of \$3,000 to \$5,000 dollars.

Recommendation: Approve ordinance.



ORDINANCE NO.2017-_____

AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES BY AMENDING ELECTRIC CODE SECTIONS 15-1-56-DEFINITIONS AND 15-1-59-QUALIFICATIONS AND REGISTRATION; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.

WHEREAS, the City is updating some of its building codes and desires to bring the Electric Code in conformance with recently revised state law;

WHEREAS, this Ordinance is necessary to protect the public safety, health, and welfare of the City of Kingsville.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF KINGSVILLE BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

I.

THAT Sections 15-1-56 and 15-1-59 of Article I: Building Regulations of Chapter XV, Land Usage, of the Code of Ordinances of the City of Kingsville, Texas, shall be amended to read as follows:

...
§ 15-1-56 DEFINITIONS.

For the purpose of this subarticle, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words not defined in this section shall have the meaning given to them in the 2014 Edition of NFPA 70, National Electric Code.

APPROVED or **APPROVAL**. Approved by the Planning Department. Nationally recognized standards shall be the basis of such approval.

AUTHORIZED PERSON. An individual or authorized representative of a firm or corporation who is licensed under the provisions of this subarticle to do the work provided by this subarticle.

BOARD. The Electrical Examining Board as created in this subarticle.

CITY. The territory within the corporate limits of the City of Kingsville, Texas.

CONDUCTOR. A wire or cable or other form of metal suitable for carrying electrical current or potential.

ELECTRICAL CONSTRUCTION. All work and material used in installing, maintaining and extending a system of electrical wiring and all appurtenances, apparatus and equipment used in connection therewith, inside of or attached to any building or structure.

ELECTRICAL CONTRACTOR. Any person engaged in the business of installing, maintaining or altering, by contract, electrical conductors or equipment, and who is qualified under terms and provisions of this subarticle.

ELECTRICIAN. A person engaged in the business of electrical construction, maintenance and repair, and who is qualified under the provisions of this subarticle.

EQUIPMENT. Materials, fittings, motors and the like, used as a part of or in connection with electrical installations.

INSPECTOR. An individual who has been designated by the city as an Electrical Inspector.

MAINTENANCE WORK. The act of keeping in safe operating condition any conductor or piece of equipment in any and all existing electrical installations, but does not include the installation of additional electrical work, electrical equipment or apparatus.

OWNER. Any person holding legal title to any real property within the city.

PERMIT. A building permit (electrical) for work covered under this subarticle.

REGISTERING. That person who has satisfied the Examining Board of Electricians and has satisfied the Board that he is qualified to do the work stated in the application, that he has paid the necessary registration fees to date, and that his name is carried in the records of the Electrical Inspector as qualified under the provisions of this code.

SPECIAL RULING. A written ruling or decision passed by the Board and filed in the office of the Electrical Inspector.

...

Sec. 15-1-59. - Qualification and registration of electricians.

(A) *Registration required.*

(1) It shall be unlawful for any person to engage in the business of installing electrical equipment for which a permit is required by this subarticle unless such person is a holder of a certificate of registration as required by this subarticle.

(2) Every electrical contracting firm must maintain an established place of business and shall have a person in attendance to receive messages for the electrical inspection section of the city or concerned persons during business hours. Electrical contracting firms must maintain a local telephone listing at their principal place of business. Each electrical firm must be operated by a master electrician,

registered with the city, who is owner, part owner, or holds a responsible place in the employment of the company and be bonded as stated in the following sentences: A person holding a master license for an electrical contracting firm must be part owner or a responsible official of the firm and be duly bonded with the firm and legally responsible for his actions for the firm and responsible with the firm for all work performed by the firm or corporation. Affidavit to his position in the firm must be furnished the city by the firm or corporation.

(3) It shall be unlawful for any person to falsely represent himself or herself publicly as being in any other classification than that which the person is registered as provided in this subarticle.

(B) *Classification of registration.* There shall be four classes of electrical registration which shall be known as follows:

- (1) Master electrician.
- (2) Limited master electrician.
- (3) Journeyman electrician.
- (4) Apprentice electrician.

(C) *Method of registration.* Applications for registrations shall be made in writing to the Planning Department on forms available in the office of the inspector.

(1) An applicant, if of contractual basis, shall file an affidavit giving the names of owners, officers, or directors and their addresses. In addition the name and address of the person who shall be in charge of all work done under this subarticle, and the name and address of the registered electrician qualified to do work under this subarticle shall be provided.

(2) All applicants shall furnish a completed application to the Planning Department with copies of their state contractors license, masters license, journeyman license, drivers license and insurance.

(3) If the applicant is to conduct the business and supervise work himself or herself, he or she shall be examined for the class of work in which he or she intends to engage.

(D) *General.*

(1) In the actual work of installing, maintaining, altering or repairing any electric conductors or equipment for which a permit is required by law there shall be present and in direct supervision a qualified electrician of the proper qualification. It shall be required that an electrician of the registered classification of the first two grades as listed in division (B) of this section, reliable and responsible for layout and technical supervision of any work which has required the securing of permits, and a journeyman or higher classified grade electrician shall be in direct on-the-job supervision of work carried on as specified herein; except in work falling under the classifications of sign or elevator work which work shall be performed by, or directly supervised by, the person holding such certificate of registration.

(2) Should it come to the notice of the inspector or his or her assistants that such supervision and control are not being maintained, the inspector may order the work be discontinued and the person to whom the permit has been issued shall discontinue further work until proper supervision has been employed and supplied; provided, further, that nothing herein shall be construed as prohibiting the employment of a maximum of two apprentices or helpers to assist each person duly registered and qualified under the provisions of this subarticle. Apprentices shall be under the direct supervision of a licensed journeyman or master electrician on all job sites.

(E) *Registration fees.*

~~(1) The fees for a certificate of registration or a registration card shall be payable to the city at the office of the Planning Department as set forth in division (E)(3) of this section.~~

~~(2) Annual renewal of a certificate of registration shall accompany payment of fees and shall be authorized by a certified receipt signed by the license clerk or inspector. The holder of the certificate shall affix and display each yearly receipt. The registration card shall be available and be shown upon request.~~

~~(3) Table.~~

REGISTRATION CLASS	ANNUAL LICENSE FEE
Master electrician	\$65.00
Limited master electrician (sign and elevator)	65.00
Journeyman electrician	40.00
Apprentice electrician	20.00

~~(F-E)~~ *Certificate of registration.* A certificate of registration form shall be prepared by the Planning Department in registering all of the classifications listed in division (B) of this section.

(1) A certificate of registration shall not be transferable.

(2) A certificate of registration shall not be valid unless signed by the permit clerk, inspector or the Building Official.

(3) The annual receipt shall be attached to the certificate of registration in the space so designated.

(4) A certificate of registration shall expire on December 31, each year.

(5) Should the holder of a certificate take up another occupation full time, even though he or she may apply for registration each year, he or she shall be required to pass an examination each two years.

~~(G E)~~ *Registration slips.* Registration slips shall be issued all persons complying with the provisions of this subarticle for registration.

~~(H-G)~~ *Registration not transferable.* It shall be unlawful for any person to lend, rent or transfer his or her certificate of registration or any rights to any other person, and for any person to make use of any such rights which are not actually his or her own.

~~(I H)~~ *Display or evidence of registration.* It shall be required that all registrants shall properly display their certificates or cards of registration as provided herein.

(1) Every holder of a certificate as a master electrician or limited master electrician shall display his or her certificate in a conspicuous place in his or her principal place of business.

(2) Electricians shall carry their registration slip on their person at all times while doing electrical work along with any state required license and shall produce and exhibit it when requested by any inspector or any proper official of the city. Failure to produce the registration slip shall constitute an offense punishable under § 15-1-62(E).

(J I) *Exceptions from registration requirements.* The following classes of work may be carried out by persons who are not registered electricians:

(1) The replacement of lamps, fuses and connection of portable devices to suitable receptacles which have been permanently installed.

(2) The installation, alteration or repairing of any wiring, devices or equipment for the operation of signal or the transmission of intelligence, where such wiring, devices, appliances, or equipment operates at a voltage not exceeding 50 volts between conductors and does not include generating or transforming equipment.

(3) The installation, alteration or repair of electric wiring, devices, appliances and equipment installed by or for an electrical public service corporation operating under a franchise from the city when for the use of such corporation in the generation, transmission, distribution or metering of the electrical energy or for the use of such a corporation in the operation of street railways, signals or the transmission of intelligence.

(4) Any work involved in the manufacture or test of electrical materials, devices, appliance or apparatus, but not including any installation of wiring other than that required for testing purposes, if such equipment as completed is approved by the inspector before it is installed or used within the city under a permit covering such installation.

(1962 Code, § 4-4-5; Ord. —, passed 8-16-51; Ord. 91040, passed 12-9-91; Ord. 93008, passed 4-12-93; Ord. 95012, passed 6-12-95; Ord. 200022, passed 11-20-00; Ord. 2004-11, passed 6-14-04; Ord. 2006-16, passed 4-17-06)

Cross reference— Penalty, see § 15-1-999.

...

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall be codified and become effective on and after adoption and publication as required by law.

V.

THAT nothing in this ordinance or in the National Electric Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

INTRODUCED on this day on the 28th day of August, 2017.

PASSED AND APPROVED on this the 29th day of August, 2017.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

EFFECTIVE: _____

AGENDA ITEM #5

City of Kingsville
Department of Planning and Development Services

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Tom Ginter, Director

DATE: August 24, 2017

SUBJECT: Ordinance concerning the approval of a design manual pertaining network nodes in the public right of way

Summary: In this past legislative session a bill was passed which allows the deployment of network nodes in the public right of way. In that legislation cities are allowed to adopt a design manual which would give guidance concerning the installation and construction of network nodes. The legislation is S.B. No. 1004. The legislation becomes effective September 1, 2017.

Background: This issue is one of which the state wanting to reduce regulations by cities stepped in and passed this legislation for that purpose.

Financial Impact: The financial impact is yet to be determined. Obviously it will depend upon how many for if any communication companies decide to install network nodes in Kingsville.

Recommendation: Approve ordinance. This is the best method that we have in trying to conduct oversight regarding this issue.



ORDINANCE #2017- _____

AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES BY ADOPTING ARTICLE 8-USE OF PUBLIC R.O.W.-NETWORK NODES & SUPPORT STRUCTURES, IN CHAPTER V-PUBLIC WORKS; REGULATING THE PHYSICAL USE, OCCUPANCY, AND MAINTENANCE OF CITY RIGHTS-OF-WAY BY WIRELESS NETWORK PROVIDERS; DESCRIBING THE PURPOSE; PROVIDING DEFINITIONS; REQUIRING COMPLIANCE WITH THE CITY DESIGN MANUAL AND APPLICABLE CODES FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO CHAPTER 284 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING CITY PROCEDURES FOR APPLICATIONS FOR PERMITS; ESTABLISHING TIME PERIODS FOR APPROVAL OF PERMIT APPLICATIONS; PROVIDING APPLICATION FEES AND ANNUAL PUBLIC RIGHT-OF-WAY RENTAL RATES; PROVIDING RESTRICTIONS ON PLACEMENT OF NETWORK NODES AND NODE SUPPORT POLES IN MUNICIPAL PARKS, RESIDENTIAL AREAS, HISTORIC DISTRICTS, AND DESIGN DISTRICTS; PROVIDING INDEMNITY FOR THE CITY; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN IMPLEMENTATION DATE OF SEPTEMBER 1, 2017 AND PUBLICATION.

WHEREAS, the City of Kingsville, Texas ("City") recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

WHEREAS, Chapter 284 of the Texas Local Government Code ("the Code") allows certain wireless network providers to install in the City's public rights-of-way their wireless facilities, described and defined in Section 284.002 of the Code as "Micro Network Nodes", "Network Nodes", and "Node Support Poles;" and

WHEREAS, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City has enacted a

Design Manual for the Installation of Network Nodes and Node Support Poles ("the Design Manual") in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Commission desires to regulate the installation of Network Nodes and Network Support Poles pursuant to Chapter 284 of the Code in a way that is fair, reasonable and nondiscriminatory; and

WHEREAS, this Ordinance is necessary to protect the public safety, health, and welfare of the City of Kingsville.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

SECTION I FINDINGS OF FACT

THAT Article 8-Use of Public Rights-of-Way- Network Nodes & Support Structures of Chapter V-Public Works of the Code of Ordinances of the City of Kingsville, Texas, shall be adopted to read as follows and that the forgoing recitals are incorporated into this Right-of-Way Management Ordinance as findings of fact:

SECTION II. USE OF PUBLIC R.O.W.-NETWORK NODES & SUPPORT STRUCTURES

§ 5-8-1 PURPOSE.

The purpose of this chapter is to:

(A) Assist the City in the competitively neutral and nondiscriminatory management of the physical use, occupancy and maintenance of its public rights-of-way by wireless network providers;

(B) Secure fair and reasonable compensation for the physical use and occupancy of the public rights-of-way by wireless network providers in a nondiscriminatory and competitively neutral manner; and

(C) Assist the City in protecting the public health, safety, and welfare.

§5-8-2 GOVERNING LAW.

This chapter shall be construed in accordance with Chapter 284 of the Texas Local Government Code ("the Code") to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

§ 5-8-3 DEFINITIONS.

For the purpose of this chapter, the definitions found in the *City Design Manual for the Installation of Network Nodes and Node Support Poles* ("the Design Manual") are hereby incorporated into this chapter and shall apply unless the context clearly indicates or requires a different meaning. The following definitions as found in the Design Manual are specifically applicable to this chapter:

Applicable codes means:

- (A) the City uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of Kingsville, Texas or its lawful successor.

City Commission means the municipal governing body of the City of Kingsville, Texas.

Chapter 284 means Texas Local Government Code, Chapter 284.

Code means the Texas Local Government Code.

Collocate and *collocation* mean the installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a public right-of-way on or adjacent to a pole.

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

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

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

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

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

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

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City-approved and lawfully permitted location for the Network Node.

Mayor means the mayor of the City of Shepherd, Texas, or designee.

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

Municipal park means an area that is zoned or otherwise designated by the City as a public park for the purpose of recreational activity.

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

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower

Network provider means:

- (A) a wireless service provider; or

(B) 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:

(i) Network Nodes; or

(ii) Node Support Poles or any other structure that supports or is capable of supporting a network node.

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

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

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

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as "Network Provider."

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Service pole means a pole, other than a City-owned utility pole, owned or operated by the City and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;

(B) a structure for signage;

(C) a pole that supports lighting, other than a decorative pole; and

(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A "Street" is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements. A "Street" does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

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

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

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

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

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

Wireless facilities mean "Micro Network Nodes," "Network Nodes," and "Node Support Poles" as defined in Texas Local Government Code, Chapter 284.

§ 5-8-4 USE AND OCCUPANCY OF PUBLIC RIGHTS-OF-WAY.

Pursuant to this chapter and subject to the Design Manual and the Code, a wireless network provider has the nonexclusive right to use and occupy the public rights-of-way in the City for the purpose of constructing, maintaining, and operating its facilities used in the provision of Wireless facilities.

The terms of this chapter shall apply to all wireless network providers' facilities used, in whole or part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of annexation or the date the City provides the company written notice, whichever date occurs later.

§ 5-8-5 COMPLIANCE WITH DESIGN MANUAL AND APPLICABLE CODES.

All wireless network providers shall comply with the terms of this right-of-way management ordinance, City applicable codes, and the terms and conditions of the City's Design Manual.

§ 5-8-6 GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS.

A network provider shall construct and maintain Network Nodes and Network Support Poles described in the Code in a manner that does not:

(A) Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;

(B) Obstruct the legal use of a public right-of-way by other utility providers;

(C) Violate nondiscriminatory applicable codes;

(D) Violate or conflict with the City's publicly disclosed public right-of-way design specifications; or

(E) Violate the federal Americans with Disabilities Act of 1990 (ADA).

§ 5-8-7 PERMIT APPLICATIONS.

(A) Except as otherwise provided in Chapter 284 of the Code, a network provider shall obtain a permit or permits from the City to install a Network Node, Node Support Pole, or Transport Facility in a City public right-of-way.

(B) As required by Chapter 284 of the Code, the City shall not require a network provider to perform services for the City for which the permit is sought.

(C) A network provider that wants to install or collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than 30 Network Nodes and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.

(D) The network provider shall provide the following information in its permit applications:

(1) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City's Design Manual and applicable codes;

(2) Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual and this chapter;

(3) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission; and certification that the proposed Network Node(s) will be placed into active commercial service by or for the network provider not later than the 60th day after the date of construction and final testing of each Network Node is completed.

(4) A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage.

(E) **Exception:** As provided in Section 284.157 of the Code, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:

- (1) Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) Replacing or upgrading a Network Node or Network Pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or
- (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code;
- (4) Notwithstanding Subdivision (D) above, the network provider or its contractors shall notify the City at least 24 hours in advance of work described in this Subdivision (D).

§ 5-8-8 INSTALLATION IN HISTORIC DISTRICTS OR DESIGN DISTRICTS

A network provider must obtain advance written consent from the City Commission before collocating new Network Nodes or installing new Node Support Poles in an area of the City that has been zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements described in the City's Design Manual. The City has the authority to designate new historic districts and design districts at a future date.

§ 5-8-9 INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS

A network provider may not install a new Node Support Pole in a public right-of-way without the City Commission's discretionary, nondiscriminatory and written consent if the public right-of way:

- (1) Is in a municipal park; or
- (2) Is adjacent to a street or thoroughfare that is:
 - i. Not more than 50 feet wide; and

- ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.
- (3) In addition to the above, a network provider installing a Network Node or Node Support Pole in a public right-of way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.
- (4) The network provider shall be further required to comply with guidelines set out in the City's Design Manual.

§ 5-8-10 MUNICIPAL REVIEW PROCESS BY THE CTIY.

(A) Determination of Application Completeness: The City shall determine whether the permit application is complete and notify the applicant of that determination:

- (1) For Network Nodes and Node Support Poles: no later than 30 days after the date the City receives the permit application.
- (2) For a Transport Facility: no later than 10 days after the date the City receives the permit application.

(B) Approval or Denial of Application: The City shall approve or deny a completed application after the date it is submitted to the City:

- (1) For Network Nodes: No later than 60 days after the date the City receives the complete application.
- (2) For Network Support Poles: No later than 150 days after the date the City receives the complete application.
- (3) For Transport Facilities: No later than 21 days after the City receives the complete application.

(C) Basis for Denial of Application: If an application is denied by the City, it shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based. The documentation for the denial must be sent by electronic mail to the applicant on or before the date that the City denies the application.

(D) Resubmission of Denied Application: The applicant may cure the deficiencies identified in the denial application.

- (1) The applicant has 30 days from the date the City denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual costs incurred by the City.
- (2) The City shall approve or deny the revised completed application after a denial not later than the 90th day after the City receives the revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.

(E) Nondiscriminatory Review: Each completed application shall be processed by the City on a nondiscriminatory basis.

§ 5-8-11 TIME OF INSTALLATION.

A network provider shall begin installation for which a permit is granted not later than six months after final approval of the application and shall diligently pursue installation to completion. ~~The City Mayor may~~ in his/her sole discretion grant reasonable extensions of time as requested by the network provider.

§ 5-8-12 APPLICABLE FEES AND RENTAL RATES TO THE CITY.

(A) As compensation for the network provider's use and occupancy of the City public rights-of-way, the network provider shall pay application fees and annual public right-of-way rental rates as set forth below, which shall be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street cut or inspection fee; or other right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City.

(B) Network Nodes:

- (1) Application Fee: The application fee shall be \$100.00 for each Network Node for up to but not more than 30 Network Nodes.

(2) **Annual Public Right-of-Way Rate Fee:** The annual public right-of-way rate shall be \$250.00 per Network Node installed in the City public rights-of-way.

(3) **Public Right-of-Way Rate Adjustment:** As provided in Section 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The City shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60th day following the written notice.

(C) Node Support Poles:

(1) The application fee for each Network Support Pole shall be \$100.00.

(D) Transfer Facilities:

(1) The application fee for each Transfer Facility shall be \$100.00.

(2) The annual Transfer Facility rental rate shall be \$28.00 monthly for each Network Node site located in a public right-of-way. However, no rate is required if the network provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

(E) Micro Network Nodes:

(1) No application fee is required for a Micro Network Node if the installation is attached on lines between poles or node support poles.

(F) Collocation of Network Nodes on Service Poles

(1) Subject to the City's Pole Service Agreement, the collocation of Network Nodes on City service poles shall be at a rate of \$20.00 per year per service pole.

(G) City-Owned Municipal Utility Poles:

(1) A network provider shall pay an annual pole attachment rate for the collocation of a Network Node supported by or installed on a City-owned

utility pole based upon the pole attachment rate consistent with Section 54.024 of the Texas Utilities Code, applied on a per-foot basis.

(H) The City shall not seek or accept in-kind services in lieu of or as additional payment or consideration from any user of the public rights-of-way for use of the public rights-of-way.

§ 5-8-13 INDEMNITY.

As provided in Section 284.302 of the Code, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions ("claims") covered by this indemnity after which the Network Provider shall defend the claims. The Network Provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the Network Provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law.

§ 5-8-14 EFFECT ON OTHER UTILITIES AND TELECOMMUNICATION PROVIDERS.

Nothing in this Ordinance shall govern attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunication providers.

SECTION III. **REPEALING ALL ORDINANCES IN CONFLICT**

THAT all other ordinances or parts of ordinances inconsistent or in conflict with this

Ordinance are, or to the extent of such inconsistency or conflict, hereby repealed.

SECTION IV.
SAVINGS CLAUSE

THAT the City Commission of the City of Kingsville, Texas does hereby declare that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that in such event, it would have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

SECTION V.
COMPLIANCE WITH OPEN MEETINGS ACT

THAT it is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VI.
IMPLEMENTATION DATE & PUBLICATION.

THAT this Ordinance shall be implemented on September 1, 2017 and be codified and become effective on and after adoption and publication as required by law.

INTRODUCED on this the 28th th day of August, 2017.

PASSED AND APPROVED on this the 29th th day of August, 2017.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #6

City of Kingsville
Department of Planning and Development Services

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Tom Ginter, Director

DATE: August 24, 2017

SUBJECT: Design Manual for the oversight concerning construction of small cell nodes network

Summary: Due to state bill S.B. No. 1004 the city has limited ability in conducting oversight. It is apparent from our research that a design manual which is allowed in the legislation the best method to have oversight. We did not have this before so that is why we are requesting approval of this document.

Background: As you know from prior experience we have had requests regarding communication poles to be placed in Kingsville. The operation small cell nodes are different and they have the right to put them in our right of way. It is still important for the City to have oversight regarding construction.

Financial Impact: It is hard to determine if there will be any financial impact. It will depend upon how many or if any requests that we get.

Recommendation: Approve design manual which will give us a document to provide oversight for the installation of small cell network nodes.



ORDINANCE #2017-_____

AN ORDINANCE BY THE CITY OF KINGSVILLE, TEXAS, APPROVING A DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES; AND APPROVING A POLE ATTACHMENT AGREEMENT REGULATING THE INSTALLATION OF NETWORK NODES ON CITY SERVICE POLES AND UTILITY POLES; DECLARING GOVERNING LAW; PROVIDING REPEALING AND SAVINGS CLAUSES; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN IMPLEMENTATION DATE OF SEPTEMBER 1, 2017 & PUBLICATION.

WHEREAS, the City of Kingsville, Texas ("City") recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities; and

WHEREAS, Chapter 284 of the Texas Local Government Code ("the Code") allows certain wireless network providers to install in the public rights-of-way their wireless facilities, described and defined in Section 284.002 of the Code as "Micro Network Nodes", "Network Nodes", and "Node Support Poles;" and

WHEREAS, as expressly allowed by Section 284.108 of the Code and pursuant to its police power authority reserved in Sec. 284.301 of the Code, the City desires to enact a *Design Manual by the City of Kingsville, Texas for the Installation of Network Nodes and Node Support Poles* ("the Design Manual") in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment; and

WHEREAS, the City Commission desires to approve a *Pole Attachment Agreement* by which wireless telecommunication network providers may attach and collocate their network nodes on city service and utility poles subject to the Code, the Design Manual, and the City Right-of-Way Management Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:

SECTION I
FINDINGS OF FACT

THAT the forgoing recitals are incorporated into this Ordinance as true and correct findings of fact.

SECTION II.
APPROVING DESIGN MANUAL

THAT the City Commission hereby approves the *Design Manual by the City of Kingsville, Texas for the Installation of Network Nodes and Node Support Poles*, which is attached here as Exhibit "A."

SECTION III.
APPROVING POLE ATTACHMENT AGREEMENT

THAT the City Commission hereby approves the *Pole Attachment Agreement*, which is attached here as Exhibit "B."

SECTION IV.
GOVERNING LAW

THAT this Ordinance shall be construed in accordance with Chapter 284 of the Texas Local Government Code ("the Code") to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas.

SECTION V.
REPEALING ALL ORDINANCES IN CONFLICT

THAT all other ordinances or parts of ordinances inconsistent or in conflict herewith, or to the extent of such inconsistency or conflict are hereby repealed.

SECTION VI.
SAVINGS CLAUSE

THAT the City Commission of the City of Kingsville, Texas does hereby declares that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction,

that, in such event that it would have passed and ordained any and all remaining portions of this Ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declare that its intent is to make no portion of this Ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

SECTION V.
COMPLIANCE WITH OPEN MEETINGS ACT

THAT it is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VI.
IMPLEMENTATION DATE & PUBLICATION.

THAT this Ordinance shall be implemented on September 1, 2017 and shall not be codified but become effective on and after adoption and publication as required by law.

INTRODUCED on this the 28th th day of August, 2017.

PASSED AND APPROVED on this the 29th th day of August, 2017.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

Design Manual by the City of Kingsville, Texas

for the

*Installation of Network Nodes and Node Support Poles
pursuant to Tex. Loc. Gov. Code, Chapter 284.*

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SECTION 1. PURPOSE AND APPLICABILITY.

The City of Kingsville, Texas ("City") recognizes that the State of Texas has delegated to the City the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public to Texas municipalities.

Purpose: Loc. Gov. Code, Chapter 284 allows certain wireless Network Providers to install in the public rights-of-way their wireless facilities, described and defined in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 as "Micro Network Nodes", "Network Nodes", and "Node Support Poles".

As expressly allowed by Tex. Loc. Gov. Code, Chapter 284, Section 284.108, and pursuant to its police power authority reserved in Sec. 284.301¹, the City enacts these Design Guidelines in order to meet its fiduciary duty to the citizens of the City, and to give assistance and guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe and aesthetically pleasing installation of technologically competitive equipment.

Applicability: This Design Manual is for siting and criteria for the installation Wireless Facilities, including Micro Network Nodes, Network Nodes, Node Support Poles and related ground equipment being installed pursuant to Loc. Gov. Code, Chapter 284

This Design Manual shall apply to any sitings, installations, collocations in, on, over or under the public rights-of-way of Network nodes, Node support poles, Micro network nodes, Distributed Antenna Systems, microwave communications or other Wireless Facilities, by whatever nomenclature, whether they are installed pursuant to Chapter 284, or installed pursuant to an agreement as agreed to and consented to by the City in its discretion, or installed as may otherwise be allowed by state law.

City Rights-of-Way Management Ordinance: A Network Provider shall comply with the City's Rights-of-Way Management Ordinance except where in conflict with this Design Manual or Chapter 284, Subchapter C.

SECTION 2. DEFINITIONS.

The definitions as used in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual, unless otherwise noted in this Section 2, below.²

Abandon and its derivatives means 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 non-functioning condition for more than 120 consecutive calendar days unless, after notice to Provider, Provider has established to the reasonable satisfaction of the City that the applicable facilities, or portion thereof, is still in active use.

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

Applicable codes means:

- (A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

City means the City of Kingsville, Texas or its lawful successor.

City Commission means the municipal governing body of the City of Kingsville, Texas.

Chapter 284 means Tex. Loc. Gov. Code, Chapter 284.

City Manager means the City Manager for the City of Kingsville, Texas, or designee.

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

Concealment or Camouflaged means any Wireless Facility or Pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the Wireless Facility blends into the surrounding environment and is visually unobtrusive as allowed as a condition for City advance approval under Chapter 284, Sec. 284.105 in Historic or Design Districts. 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 façade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches.

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

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

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

Distributed Antenna System or DAS shall be included as a type of "Network Node."

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

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

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

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

Law means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City approved and lawfully permitted location for the Network Node.

Macro tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Chapter 284, Section 284.103 and that supports or is capable of supporting antennas.

Mayor means the Mayor for the City of Kingsville, Texas, or designee.

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

Municipal park means an area that is zoned or otherwise designated by municipal code, use, or agreement, as a public park for the purpose of recreational activity. Includes County owned parks within the city limits.

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

MUTCD means Manual of Uniform Traffic Control Devices.

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

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;

- (ii) a pole; or
- (iii) a macro tower

Network provider means:

- (A) a wireless service provider; or
- (B) 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:
 - (i) network nodes; or
 - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

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

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

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

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as "Network Provider."

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

- (A) a private easement; or
- (B) the airwaves above a public right-of-way with regard to wireless telecommunications.

Public right-of-way management ordinance means an ordinance that complies with Chapter 284, Subchapter C.

SCADA or Supervisory Control and Data Acquisition systems means a category of software application programs and hardware used by the City for process control and gathering of data in real time from remote locations in order to monitor equipment and conditions of the City public water and wastewater utility facilities. These systems may utilize both cable and wireless communications.

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

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a decorative pole; and
- (D) a pole or similar structure owned or operated by a municipality and supporting only

network nodes.

Small cell shall be included as a type of “Network Node.”

Street means only the paved portion of the right-of-way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire right-of-way, while a right-of-way may include sidewalks and utility easements, a “Street” does not. A “street” does not include the curb or the sidewalk, if either are present at the time of a permit application or if added later.

SWPPP shall mean Storm Water Pollution Prevention Plan.

TAS means Texas Accessibility Standards.

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

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

Underground Requirement Area shall mean means 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, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or right-of-way, depending on the context.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

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

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

Wireless facilities mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles” as defined in Texas Local Government Code Chapter 284.

SECTION 3. PROHIBITED AND PREFERRED LOCATIONS OF MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

A. Prohibited or Restricted Areas for Certain Wireless facilities, except with Separate City Agreement or Subject to Concealment Conditions.

1. ***Municipal Parks and Residential Areas.*** In accordance with Chapter 284, Sec. 284.104 (a), a Network Provider may not install a Node Support Pole in a public right-of-way without the City's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a Municipal park or is adjacent to a street or thoroughfare that is:

a. not more than 50 feet wide of paved street surface, being the area measured as the shortest distance between the inside of the curb to the inside of the opposite curb, or the area measured as the shortest distance between the two parallel edges of the paved roadway for vehicular travel where there is no curb; and

b. adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b), 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.

1.2 Each permit application shall disclose if it is within a Municipal Park and Residential Areas as described above.

2. ***Historic District and Design Districts.*** In accordance with Chapter 284, Sec. 284.105, a Network Provider must obtain advance written approval from the City before collocating Network Nodes or installing Node Support Poles in a Design District with Decorative Poles or in an area of the City zoned or otherwise designated as a Design District or Historic District.

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

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

2.3. A Network Provider shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.

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

3. **Historic Landmarks.** A 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 City, 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. It is recommended that each permit application disclose if it is with 300 feet of such a structure.

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

4.1 Areas may be designated from time to time by the City as Underground Requirement Areas in accordance with filed plats, and or conversions of overhead to underground areas, as may be allowed by law.

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

B. Least preferable locations.

1. **Residential Areas and Parks.** A Network Provider is discouraged from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Commission if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a municipal park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

1.1 In accordance with Chapter 284, Sec. 284.104 (b) a Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

2. **Historic Districts and Design Districts.** A Network Provider is discouraged from installing a Network Node or a Node Support Pole in the public right-of-way in any area designated by the City as a Design Districts or in an area of the City zoned or otherwise designated as a Historic District unless such a Network Node or a new Node Support Pole is camouflaged.

C. Most preferable locations

1. *Industrial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

2. *Highway Rights-of-Way* areas if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

3. *Retail and Commercial areas* if not adjacent to a Municipal Park, Residential area, Historic District or Design District.

D. Designated Areas.

1. The City Commission may designate an area as a Historic District or a Design District under Chapter 284.105 at any time.

2. The failure to designate an area in this Chapter shall not mean that such an area is not within a defined district, if so designated by the City Commission. Future areas may be designated as one of these Districts at any time. Such a designation does not require a zoning case.

3. While not required under Chapter 284 to designate Underground Compliance Areas to prohibit above ground Wireless facilities, the City may also, from time to time, also designate Underground Compliance Areas.

E. Exceptions

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

F. Order of Preference regarding Network Node attachment to existing facilities and New Node Support Poles.

1. *Existing telephone or electrical lines between existing utility poles.* Micro Network Nodes shall only be lashed or afixed 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. *Existing Utility Poles* (electric poles or telephones poles), shall be the preferred support facility for Network Nodes and related ground equipment.

3. Municipal Service Poles:

a. *Non-decorative street lights* with a height of more than 20 feet.

b. *Traffic signal structures* when such installation will not interfere with the integrity of the facility and will not interfere with the safety of public and in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

c. *Street signage* shall be a low priority use for attachment of a Network Node.

d. *Other municipal service pole* use is discouraged.

4. *New node support poles* shall be the least preferred type of allowed facility for attachment of Network Nodes.

5. *Ground Equipment.* Ground equipment should be minimal and the least intrusive.

SECTION 4. GUIDELINES ON PLACEMENT.

A. Generally.

In accordance with Chapter 284.102, 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 City'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. General Requirements and Information:

1. *Size Limits.* Network Providers shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.³

2. *State and Federal Rights-of-way permit.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

3. *Confirmation of non-interference with City Safety Communication or SCADA Networks.*

a. The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, SCADA system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304.

b. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

4. *Improperly Located Network Node facilities, Node Support Poles and related ground equipment:*

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

b. Notice to Remove unauthorized facilities and relocate and penalty: After 30 days' notice to remove of Network Node facilities, Node Support Poles or ground equipment that is located in the incorrect permitted location, if not relocated the Network Provider shall be subject to a penalty of \$500.00 per day penalty until the Network Node facilities, Node Support Poles or ground equipment is relocated to the correct area within the permitted Location, regardless of whether or not the Network Provider's contractor, subcontractor, or vendor installed the Network Node facilities, Node Support Poles or ground equipment in strict conformity with the City Rights-of-way management ord., and other applicable ordinances concerning improperly located facilities in the rights-of-way.

B. Underground Requirement Areas.

1. In accordance with Chapter 284.107, a Network Provider shall, in relation to installation for which the City approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

2. If a location is designated by the City to transits to be an Underground Requirement 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 revoked 90 days after the designation, 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 reasonably allowed by the City for the transition of other overhead facilities.

3. Before commencing underground installation, 811 Dig Alert Test must be called so that the area can be flagged for underground utilities.

C. Network Node facilities placement:

1. *Right-of-Way:* Network Node facilities, Node Support Poles and related ground equipment shall be placed, as much as possible, within two feet of the outer edge of the Right-of-Way line to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way.

2. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108, and 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.

3. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

4. *Limit on number of Network Nodes per Site.* There shall be no more than one Network Node on any one Pole.

D. New Node Support Poles.

1. *New Node Support Poles Spacing.* New node support poles shall be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another Node Support Pole to minimize the hazard of poles adjacent to road ways and to minimize effect on property values and aesthetics on the area.

2. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

- a. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
- b. 55 feet above ground level.

E. Ground Equipment.

1. *Ground Equipment near street corners and intersections:* Ground equipment should be minimal and the least intrusive. In accordance with Chapter 284.102 (1), 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 small 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 City Manager in writing.

3. *Minimize Ground equipment density:*

In accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City Manager, or 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 25 sq. ft. or more.

4. *Water, Sewer and Storm Drainage Lines:*

Special precautions must be taken where underground fiber optic cable is installed in public street rights-of-ways commonly used for utility corridors.

- a. Underground utilities and service connections must be identified prior to excavation. "Dig Alert," "One Call," or similar underground utility contractor must be contacted to identify the locations of subsurface utilities.
- b. If temporary disruption of service is required, the installation contractor must notify the City, the service provider, and customers at least 24 hours in advance. No service on such lines may be disrupted until prior approval from the City and the service provider.
- c. At locations where the fiber optic cable will cross other subsurface utilities or structures, the cable must be installed to provide a minimum of 12 inches of vertical clearance between it and the other subsurface utilities or structures, while still maintaining the other applicable minimum depth requirement. To maintain the minimum depth requirement, the cable must be installed under the existing utility. If the minimum 12-inch clearance cannot be obtained between the proposed cable facility and the existing utility, the fiber optic cable must be encased in steel pipe of avoid future damage.
- d. *Existing Water Lines:* No communication lines shall be placed on top of a water line but may be placed to the side of a water line at least 4 feet from the center line of the water line. When crossing a water line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a water line.
- e. *Existing Sewer Lines:* No communication lines shall be placed on top of a sewer line but may be placed to the side of a sewer line at least 4 feet from the center line of the sewer line. When crossing a sewer line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a sewer line.
- f. *Existing Storm Drainage Lines:* No communication lines shall be placed on top of a storm drainage line but may be placed to the side of a storm drainage line at least 4 feet from the center line of the storm drainage line. When crossing a storm drainage line, a 12-inch vertical or horizontal clearance must be maintained. Poles must be at least 3 feet from a storm drainage line.

5. *Blocking streets, roads, alleys or lanes:*

Texas Department of Transportation (TxDOT) standards must be followed for work zone areas that will block streets, roads, alleys or lanes. A traffic plan must be submitted to the City prior to construction.

F. Municipal Service Poles:

1. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

2. *Required industry standard pole load analysis:* 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, in accordance with Chapter 284.108.

3. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2) and 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.

4. *Installations on Traffic Signals:* 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 an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). 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; and
- c. Have a separate access point than the traffic signal structure; and

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. Installation of Network Node facilities on any street signage structures that has electrics shall:

- a. Be encased in a separate conduit than any City signage electronics;
- b. Have a separate electric power connection than the signage structure;
- c. Have a separate access point than the signage structure; and

6. *Restoration of City facilities and private property:* The Network Provider shall be responsible for repairing any damage to any street, street right-of-way, ditch or any structure to its original condition immediately upon completing the installation. Any change to the slope of the land must be remedied, and there must be replacement of top soil and grass to its original condition.

SECTION 5. GENERAL AESTHETIC REQUIREMENTS

A. Concealment.

1. Concealment of Network Nodes and Node support poles shall be required by the City in Design Districts with Decorative Poles and in Historic Districts pursuant to Chapter 284.105.

2. It is also the City's preference that all new node support poles be camouflaged, except those located in an area zoned or predominantly industrial area. Companies shall submit their proposal for camouflage with the permit application.

3. The Network Node facilities shall be concealed or enclosed as much as reasonably 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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

4. 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, except to the extent not consistent with Chapter 284.

B. New Node Support Pole Spacing.

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.

C. Minimize Ground Equipment Concentration.

In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, Sec. 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City'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 25 sq. ft. or more to minimize effect on property values and aesthetics on the area.

D. Allowed Colors.

1. Colors in Historic Districts and Design Districts must be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. Colors in Historic Districts and Design Districts must be approved by the City Manager from a palette of approved colors. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the facilities are located upon and all efforts shall be made for the colors to be inconspicuous. Colors in areas other than in Historic Districts and Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas.

SECTION 6. 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 City 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 City.

B. Network Provider shall not allow or install generators or back-up generators in the Public Right-of-Way in accordance with Chapter 284, Sec. 284.002 (12) (B) (1).

SECTION 7. INSURANCE, INDEMNITY, BONDING AND SECURITY DEPOSITS.

A. Insurance, bonding and security deposits shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

B. Indemnity shall be in accordance with Chapter 284, Sec. 284.302, as provided for in Chapter 283, Sec. 283.057 (a) and (b) of the Texas Loc. Gov't Code.

SECTION 8. REQUIREMENTS IN REGARDS TO REMOVAL, RELOCATION, REPLACEMENT, MAINTENANCE AND REPAIR

A. REMOVAL OR RELOCATION BY NETWORK PROVIDER.

1. Removal and relocation by the Network provider of its Micro Network Node, Network Node facilities, Node Support Pole or related ground equipment at its own discretion, shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. 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 City Manager in writing not less than 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.

3. The City shall not issue any refunds for any amounts paid by Network Provider for Micro Network Node, Network Node facilities, Node Support Poles or related ground equipment that have been removed.

B. REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT.

1. Removal and Relocation of Network Provider's Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof required for a City project shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284, Sec. 284.107, except as provided in existing state and federal law.

2. In accordance with Chapter 284, Sec. 284.107, except as provided in existing state and federal law, a Network Provider shall relocate or adjust Micro Network Node, Network Node, Node Support Pole and related ground equipment in a public right-of-way in a timely manner and without cost to the City managing the public right-of-way

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

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

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

6. Network Provider shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Micro Network Node, Network Node, Node Support Pole or related ground equipment, or portion thereof.

C. REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS.

1. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. If the City Manager reasonably determines that there is imminent danger to the public, then the City 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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3. Network Provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Micro Network Node, Network Node, Node Support Pole and related ground equipment within the time frame and in the manner required by the City Manager if the

City Manager reasonably determines that the disconnection, removal, or relocation of any part of a Micro Network Node, Network Node, Node Support Pole and related ground equipment (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Micro Network Node, Network Node, Node Support Pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Network Provider fails to obtain all applicable licenses, Permits, and certifications required by Law for its Micro Network Node, Network Node, Node Support Pole and related ground equipment, or use of any Location under applicable law. If the City Manager reasonably determines that there is imminent danger to the public, then the City 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.

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

5. Network Provider shall reimburse City for the City's actual cost of removal of Micro Network Node, Network Node, Node Support Pole and related ground equipment within 30 days of receiving the invoice from the City.

SECTION 9. 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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. 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 City Manager, as such may be amended from time to time. Network Provider's work shall be subject to the regulation, control and direction of the City Manager. 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 all applicable laws, ordinances, codes, rules and regulations of the City, applicable county, the state, and the United States ("Laws").

B. INSPECTIONS.

1. The City Manager, or designee, may perform visual inspections of any Micro Network Node, Network Node, Node Support Pole or related ground equipment located in the Right-of-Way shall be allowed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284

2. The City Manager, or designee, 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 City Manager 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 City Manager shall provide written notice to the Network Provider within five

business days of the planned inspection. Network Provider may have a representative present during such inspection.

SECTION 10. REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT.

1. Abandoned or obsolete Micro Network Node, Network Node, Node Support Pole and related ground equipment shall be removed in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2. Network Provider shall remove Micro Network Node, Network Node, Node Support Pole and related ground equipment when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 90 days of the Micro Network Node, Network Node, Node Support Pole and related ground equipment being abandoned or within 90 days of receipt of written notice from the City. When Network Provider removes, or abandons permanent structures in the Right-of-Way, the Network Provider shall notify the City Manager in writing of such removal or Abandonment and shall file with the City Manager the location and description of each Micro Network Node, Network Node, Node Support Pole and related ground equipment removed or Abandoned. The City Manager may require the Network Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

SECTION 11. GENERAL PROVISIONS.

1. **As Built Maps and Records.** Network Provider's as built maps and records shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

1.1 A Network Provider shall maintain accurate maps and other appropriate records of its Network Node facilities, Node Support Poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network Provider will provide additional maps to the City upon request.

2. **Courtesy and Proper Performance.** Courtesy and Proper Performance of Network provider's personnel, and contractors shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

2.1 A Network Provider shall make citizen satisfaction a priority in using the Right-of-Way. Network Provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its Micro Network Node, Network Node, Node Support Pole and related ground equipment in the Right-of-Way. Network Provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Manager

or designee, Network Provider is not interacting in a positive and polite manner with citizens, he or she shall request Network Provider to take all remedial steps to conform to these standards.

3. DRUG POLICY. Drug policy of Network provider's personnel, and contractors in the public rights-of-way shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

3.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Network Provider's employees, contractors, subcontractors, sub-Network Provider's, or vendors while on City rights-of-way is prohibited.

4. ALLOCATION OF FUNDS FOR REMOVAL AND STORAGE. The City Commission has currently appropriated no funds to pay for the cost of any removal or storage of Micro Network Node, Network Node, Node Support Pole and related ground equipment, as authorized under the law.

5. OWNERSHIP. Ownership of Network Node and related equipment shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable codes and ordinances, except to the extent not consistent with Chapter 284.

5.1 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 City 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 City Manager prior to any work in the Right-of-Way.

6. Tree Maintenance. Tree maintenance shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

6.1 A Network Provider, its contractors, and agents shall obtain written permission from the City Manager before trimming trees hanging over its Micro Network Node, Network Node, or Node Support Pole, to prevent branches of such trees from contacting attached Micro Network Node, Network Node, or Node Support Pole. When directed by the City Manager, Network Provider shall trim under the supervision and direction of the City Manager. The City shall not be liable for any damages, injuries, or claims arising from Network Provider's actions under this section.

7. Signage. Signage shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

7.1 Network Provider shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the Network Node 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 City Manager.

7.2 Except as required by law or by the Utility Pole owner, a Network Provider shall not post any other signage or advertising on the Micro Network Node, Network Node, Node Support Pole, Service pole, or Utility Pole.

8. Graffiti Abatement. Graffiti abatement shall be in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

8.1 As soon as practical, but not later than fourteen (14) calendar days from the date Network Provider receives notice thereof, Network Provider shall remove all graffiti on any of its Micro Network Node, Network Node, Node Support Pole, and related ground equipment located in the Right of Way. The foregoing shall not relieve the Network Provider from complying with any City graffiti or visual blight ordinance or regulation.

9. Restoration.

9.1 A Network Provider shall restore and repair of the public rights-of-way from 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) in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

9.2 A 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 ten (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 City Manager.

10. Network provider's responsibility.

10.1 A Network Provider shall be responsible and liable for the acts and omissions of the 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 in strict accordance with the City's rights-of-way management ordinance, and other applicable ordinances, except to the extent not consistent with Chapter 284.

10.2 A Network Provider shall be responsible and liable for the acts and omissions of the 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, Transport Facility and related ground equipment, as if such acts or omissions were Network Provider's acts or omissions.

SECTION 12. ADMINISTRATIVE HEARING – REQUEST FOR EXEMPTION

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

12.2 The process for an application, hearing and vote shall follow the process set out for a variance.

SECTION 13-19 RESERVED

SECTION 20. DESIGN MANUAL - UPDATES

Placement or Modification of Micro Network Node, Network Node, Node Support Pole, Transport Facility, and related ground equipment shall comply with the City's Design Manual at the time the Permit for installation or Modification is approved and as amended from time to time.

¹ Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

² The definitions as used in Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002 shall be used in this Design Manual.

Tex. Loc. Gov. Code, Chapter 284, Sec. 284.002. DEFINITIONS. In this chapter:

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

(2) "Applicable codes" means:

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

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic

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

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

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

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means 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.

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

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

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal code as a public park for the purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

(13) "Network provider" means:

- (A) a wireless service provider; or
- (B) 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:

- (i) network nodes; or
- (ii) node support poles or any other structure that supports or is capable of supporting a network node.

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

(15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;

(B) a structure for signage;

(C) a pole that supports lighting, other than a decorative pole; and

(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

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

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

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

(25) "Wireless service provider" means a person that provides wireless service to the public.

³ Sec. 284.002. DEFINITIONS (8) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:

(A) must be located inside an enclosure of not more than six cubic feet in volume;

(B) may not exceed a height of three feet above the existing structure or pole; and

-
- (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
 - (2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:
 - (A) must fit within an imaginary enclosure of not more than six cubic feet;
 - (B) may not exceed a height of three feet above the existing structure or pole; and
 - (C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;
 - (3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
 - (A) be more than 28 cubic feet in volume; or
 - (B) protrude from the outer circumference of the existing structure or a node support pole by more than two feet;
 - (4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and
 - (5) pole-mounted enclosures may not be taller than five feet.
- (b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):
- (1) electric meters;
 - (2) concealment elements;
 - (3) telecommunications demarcation boxes;
 - (4) grounding equipment;
 - (5) power transfer switches;
 - (6) cut-off switches; and
 - (7) vertical cable runs for the connection of power and other services.
- (c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.
- (d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

TEXAS LOCAL GOVERNMENT CODE CHAPTER 284

POLE ATTACHMENT AGREEMENT

THE STATE OF TEXAS

§

§

COUNTY OF KLEBERG

§

THIS AGREEMENT is made and entered into pursuant to Section 284.056, Section 284.201, and Section 284.301 of the Texas Local Government Code, effective this ____ day of _____ 20____, by and between the CITY OF KINGSVILLE, TEXAS, hereinafter called "the City", and _____, hereinafter called "the Network Provider," and is as follows:

WHEREAS, the Network Provider is a wireless telecommunications *network provider* as that term is defined in Section 284.002 of the Texas Local Government Code ("the Code"); and

WHEREAS, the City owns certain public rights-of-way with service and or utility poles within its municipal territorial limits; and

WHEREAS, the Network Provider desires to attach certain *Network Nodes*, as that term is defined in Section 284.002 of the Code, on City-owned service poles and/or utility poles; and

WHEREAS, the Network Provider and the City desire to enter into this Agreement to secure authority from the City for the Network Provider to install certain Network Nodes on such City poles, subject to the City's Design Manual for the Installation of Network Nodes and Node Support Poles ("the Design Manual") and the City's Right-of-Way Management Ordinance; and

WHEREAS, this Agreement is entered into pursuant to Chapter 284 of the Texas Local Government Code, in order to address the desires of the Network Provider and the procedures of the City; and

WHEREAS, the Network Provider and the City acknowledge that this Agreement is binding upon the City and the Network Provider and their respective successors and assigns for the term (defined below) of this Agreement; and

NOW, THEREFORE, BE IT MUTUALLY AGREED AS FOLLOWS:

1. **Location of the City Poles.** The Service and/or Utility Poles owned by the City on which the Network Nodes are to be attached by the Network Provider are generally described as:

2. The Network Provider acknowledges that it has received and reviewed the applicable provisions in the City Design Manual and the Right-of-Way Management Ordinance; and further acknowledges that this Pole Attachment Agreement is subject to the terms and regulations of each.

3. The Network Provider agrees to pay the City for collocation of its Network Nodes at the following annual rates:

a. City Service Poles: \$20.00 per year per service pole.

b. City Utility Poles: An annual pole attachment rate applied on a per-foot basis consistent with Section 54.024 of the Texas Utilities Code.

4. The City acknowledges that it will comply with the requirements of the Code and that it will allow the collocation of Network Nodes on the City service and utility poles on a non-exclusive, nondiscriminatory basis, subject to the Network Provider paying the applicable fees to the City and complying with the Design Manual and the Right-of-Way Management Ordinance.

5. Pursuant to Section 284.301 of the Texas Local Government Code, the Network Provider agrees that the City is authorized to enforce all of the City's regulations that do not materially interfere with the use of Network Nodes.

6. The primary term of this Agreement shall be five (5) years commencing upon the effective date first set forth above. This Agreement shall be automatically renewed and extended for subsequent one (1) year terms unless at least sixty (60) days prior to the expiration of the term either party shall give written notice to the other of the party's intent to terminate the Agreement at the end of the current term.

7. Any notice required or permitted under this Agreement shall be in writing and shall be delivered in hand or by registered or certified US mail. Notice to the Network Provider and the City may be addressed as follows:

City of Kingsville
City Hall
400 West King Ave.
Kingsville, Texas 78363

8. This Agreement may be enforced by Network Provider or City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the Agreement thereafter.

9. If any provision contained in this Agreement is held unconstitutional, invalid or unenforceable, then the remaining provisions shall be deemed severable and shall remain in full force and effect.

10. This Agreement shall be governed by the law of the State of Texas and construed in conformity with the provisions of Texas Local Government Code, Chapter 284. Venue shall lie in Kingsville, Kleberg County, Texas.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement effective as of the date first set forth above.

CITY OF KINGSVILLE, TEXAS

City Manager

Dated: _____

ATTEST:

City Secretary

NETWORK PROVIDER:

Signature of Authorized Officer

Title of Authorized Officer

Dated: _____

REGULAR AGENDA

AGENDA ITEM #7