

NOTICE OF RULE ADOPTION

ADOPTION DATE: June 4, 2019

By: Mr. Robert J. Spillar, Director
City of Austin Transportation Department

The Director of the City of Austin Transportation Department has adopted the following rule. Notice of the proposed rule was posted on April 5, 2019. Public Comment on the proposed rule was solicited in the April 5, 2019 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code, as explained below.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Hardcopies may be purchased at the locations at a cost of ten cents per page:

Austin Transportation Department, 901 S. Mopac Expressway, Building 5, Suite 300,
Austin, Texas; and

Office of the City Clerk, located at 301 W. 2nd Street, Austin Texas, 78701

EFFECTIVE DATE OF THE ADOPTED RULE

The rule adopted by this notice is effective on June 4, 2019.

TEXT OF THE ADOPTED RULE

The adopted rule contains the following changes from the proposed rule:

1. In order to recognize construction timeline constraints, section 12.4.1 (l) (8) (d) is deleted.
2. In order to further clarify the meaning of interference, section 12.2.21 is amended.

SUMMARY OF COMMENTS

Comments were received from Lizzy Schneider (ExteNet), Bob Digneo (AT&T), Amandus Derr (Crown Castle), Dylan Fuge (T-Mobile), and Danielle Agee (Verizon).

The comments received by the department were those from network providers deploying small cell facilities in the City. Several comments were on matters that are not proposed for adoption; beyond the scope of the proposed rule. The department has taken note of those comments and will consider those points in its right of way management decisions but will not respond to them here as they are beyond the scope of the proposed rule. Several comments were not suggesting changes but instead admonished the City regarding limitations in state and federal law. A few

comments asked for clarification and a few more asked for changes to accommodate the business needs of small cell network providers intent on installing nodes and associated towers and equipment in City rights-of-way, attached to City infrastructure.

In response to those comments admonishing the City to adhere to state and federal law, the department responds that it is compliant with state and federal law. The City has worked diligently to ensure that there is an even playing field for network providers given the obligation to develop policies and procedures consistent with the new law in Chapter 284 of the Texas Local Government Code as well as regulations of the Federal Communications Commission administering aspects of the Federal Telecommunications Act. The City's permitting program for small cell network facilities is competitively neutral and non-discriminatory, applicable to all small cell network providers. The rules being adopted are amendments to Section 12 of the Transportation Criteria Manual that were developed to clarify the existing rules and facilitate permitting of network nodes and facilities in response to prior request from the affected network providers.

JUSTIFICATION FOR ADOPTION OF RULE

This rule is being adopted to clarify and further define standards and design requirements in compliance with state law regarding placement of wireless network nodes in City right of way. This rule amends the Chapter 12 of the City's Transportation Criteria Manual which serves as the regulations and Design Manual for network nodes in public rights of way. This rule amends Chapter 12 as follows:

- Section 12.1 – This amendment deletes obsolete language referencing an expired pilot project.
- Section 12.2.3 - This amendment increases the maximum allowed height of an antenna and makes a grammatical correction.
- Section 12.2.8 – This amendment adds language clarifying the responsibilities of a wireless network provider.
- Section 12.2.13 – This amendment clarifies language regarding responsibilities of a wireless network provider for facility relocation.
- Section 12.2.21 – This amendment adds language to clarify that wireless network providers have a responsibility to reimburse for certain City costs and defines 'interference.'
- Section 12.2.22 – This amendment clarifies language regarding electrical disconnects and meters for wireless network nodes.
- Section 12.4.1 – This amendment makes a grammatical correction and deletes language requiring applications to identify work areas that impact traffic flow.
- Section 12.4.2 – This amendment deletes language referring to submitting an electrical service planning application.
- Section 12.4.3 – This amendment clarifies language regarding notice of inspections.
- Section 12.7 – This amendment adds Project Connect, mobility corridors and Municipal parks to the list of Design Districts.

- Section 12.7.1 – This amendment clarifies the site permitting prioritization and City-wide default design standards.
- Section 12.7.2 – This amendment clarifies design standards applicable to several named specific design districts and adds design standards specific to municipal parks.
- Section 12.7.3 – This amendment clarifies design standards applicable to Historic Districts.
- Section 12.7.4 – This amendment clarifies design standards applicable to Historic Landmarks.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the city clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

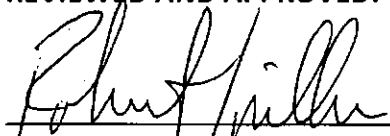
Notice that an appeal was filed will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

CERTIFICATION BY THE CITY ATTORNEY

By signing this Notice of Rule Adoption R161-19.08, the City Attorney certifies that the proposed rule has been reviewed by the City Attorney and is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED:



Robert J. Spillar, Director
City of Austin Transportation Department

Date: 6/3/2019



Anne L. Morgan
City Attorney

Date: 6/3/19

TEXT OF ADOPTED RULE

12.1 - Purpose

This section 12 ("this Rule") is adopted to administer those parts of Article 2 of Chapter 14-11 (Use of Right-of-Way for Construction, Excavation, Facility Installation, or Temporary Use) of the Austin City Code exercising the City's authority to manage and regulate the private use of City public right-of-way by small cell wireless network providers as that use is granted by Chapter 284 of the Texas Local Government Code.

This Rule sets forth process, terms, and conditions for requesting and permitting the use of City public right-of-way and City-owned traffic signal poles in City public right-of-way by network providers for network nodes, node support poles, and transport facilities. The parts of this Rule related to attachments to traffic poles administers those parts of Chapter 15-7 (Use of City-Owned Utility Infrastructure) of the City Code governing attachments to traffic poles.

This Rule also sets forth design parameters, limits, and standards that include aesthetic and concealment requirements for network nodes, node support poles, and transport facilities intended to be placed in City right-of-way under Chapter 284 of the Texas Local Government Code whether a facility is subject to City permitting or exempt by state law.

Unless otherwise determined by the director in writing, the terms of this Rule and all design parameters, limits, or standards set out in this Rule for network nodes, node support poles, and transport facilities, comprise the City's design manual for the purposes of Section 284.108 of the Texas Local Government Code. Unless otherwise apparent by the context and common meaning of a term, the terms used in this Rule have the meanings attributed to them by Section 284.002 of the Texas Local Government Code as those terms may be construed and further described by applicable Austin City Code.

In addition to complying with City of Austin City Code, in particular Chapters 14-11 and 15-7, a network provider as that term is defined by Section 284.002 of the Texas Local Government Code, must comply with the provisions in this Rule.

~~[As of September 1, 2017, the City will no longer issue or grant site licenses under the terms of a Master License Agreement for Wireless Facilities in the Right-of-Way Downtown Small Cell (the "Pilot Project MLA"), the terms of the Pilot Project MLA having been superseded by the enactment of Chapter 284 of the Texas Local Government Code and the adoption of this Rule. If by judicial order or ruling, the effect of Chapter 284 of the Texas Local Government Code is suspended or enjoined, in whole or in part, the director in the director's sole discretion and subject to applicable law, may resume processing and issuing permits and executing license agreements in accordance with the director's discretion and authority under Chapters 14-11 and 15-7 of the City Code.]~~

12.2.3 - Size Limitations of Equipment

- A. Unless otherwise specified in this Rule, a network node installed on any pole within the public right-of-way must conform to the following:
 - 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 ten [~~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 ten [~~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 [~~other~~] circumference of the existing structure or 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.

12.2.8 Repair

A network provider will promptly repair any damage to City property from the network provider's installation, placement, attachment, repair, modification, removal, operation, use, or relocation of a network node promptly and repair and return such property to its original condition. The City may opt to perform the repair and charge it to the network provider if the network provider fails to perform the repair if the unrepaired condition creates an imminent danger to the public. If installing a network node or associated equipment requires removal and reattachment of a traffic sign, any other sign or other City equipment on a pole owned or operated by the City, the network provider will coordinate with appropriate City personnel to remove, move and reattach the sign.

12.2.13 -- Removal or Relocation by Network Provider

- A. If the network provider proposes to remove or relocate ~~removes or relocates~~ a network node ~~[at its own discretion]~~, it shall notify the director in writing not less than 10 business days prior to removal or relocation. The network provider shall obtain all permits required for relocation or removal of its network node prior to relocation or removal.
- B. A network provider's removal or relocation does not entitle the network provider to fee or rate refunds for network nodes that have been removed or relocated.

12.2.21 - Installation

- A. Installation of network nodes will be done in a good and workmanlike manner and in accordance with the requirements established by the director in compliance with all applicable laws, ordinances, codes, standards, criteria, rules and regulations.
- B. Installation of a network node or network node support pole shall not interfere with the operation of City infrastructure unless approved by the City for a specific time and location. Interference with traffic signal operations may require the presence of City employees, for which the network provider will reimburse the City. **Interference includes physically moving, altering, or shutting off a component of the traffic signal system.**
- C. Installation or maintenance activities shall not impede traffic unless authorized by a permit.

12.2.22 - Electrical Supply

- A. A network provider shall be responsible for obtaining any required electrical power service to the network node. The City will not be liable to the network provider for any stoppages or shortages of electrical power furnished to the network node, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the City or the act or omission of any other tenant or user of the structure. The network provider will not be entitled to any abatement of any fee for any such stoppage or shortage of electrical power.
- B. The network provider shall be responsible, at the network provider's expense, for correcting any discovered pre-existing non-conforming conditions related to the provision of power for a network node.
- C. If the network node is to be installed on a different pole than the electric service is installed, it is the network provider's responsibility to install the necessary underground conduit and cabling to provide power to the network node.
- D. Network provider shall install a device or devices to disconnect network provider's network node, such as a fused linkage, cut-off switch or similar mechanism that is capable of disconnecting and de-energizing [de-energize] network provider's network nodes so that the City personnel performing maintenance may quickly and safely shut down the network node in order to prevent exposure to dangerous conditions [so that they are not exposed to dangerous electrical current or radiofrequency radiation or electromagnetic fields] generated by the network node. The disconnect device must be clearly identified and easily accessed, and the operation of the cut-off switch must be obvious and intuitive. The City will instruct its maintenance personnel to use the disconnect device to de-activate the network node while performing work in proximity to the network node.
- E. Network provider electric meter may not be installed on a traffic pole, unless the director determines that [placement on the traffic pole is necessary to avoid the use of right-of-way surface for the meter placement and] the meter's placement is consistent with the applicable design standards.

12.4.1 - Eligibility and Application

- A. Network providers may request to collocate network nodes on traffic poles provided that network nodes or associated equipment may only be installed and enclosed in the manner according to the allowed design, installation, and construction details for a traffic pole collocation shown and described in Exhibit A (Figures 1 through 7) incorporated into and attached to this Rule. For traffic poles with street light fixtures mounted by a vertical extension to the traffic pole, the director may allow an antennae to be mounted to the vertical extension supporting the street light in a manner that does not materially deviate from the construction details for a traffic pole collocation shown and described in Exhibit A (Figures 1 through 7), provided the overall height for the top of the antenna shroud is not more than 35 feet above ground level.
- B. To be eligible to ~~request a~~ collocate a network node on a traffic pole, a network provider must execute a Traffic Pole Attachment Agreement in the form attached and incorporated into this Rule as Exhibit B. No attachment may be placed on a traffic pole unless an application for the attachment is submitted and approved by the director in accordance with Chapter 15-7 (Use of City-Owned Utility Infrastructure) of the City Code.
- C. In order to minimize structural impact to the traffic pole or negative visual impact to the surrounding area, the director may deny an application for attaching to a traffic pole upon which a network node has been attached or for which a complete application for attachment has been approved or is pending approval.
- D. A network node or any associated equipment may not obstruct the visibility of a traffic control device or sign. A network node or any associated equipment may not interfere in any way with the function or operation of a traffic control device or sign. Should traffic control devices or signs be added, modified, or moved, a network provider shall relocate or remove its equipment after receiving written notice.
- E. Network providers shall comply with and observe all applicable City, State, and federal historic preservation laws and requirements.
- F. Unless approved by the director, a network node, including any shroud or mounting structure, shall be installed a minimum of 6" above the traffic mast arm infrastructure. The upper height limit for an antenna placed atop a traffic pole is 35 feet above ground level.
- G. Exposed equipment and shrouds shall match the existing pole color to the extent possible.
- H. If the director determines that cable necessary to connect the components of a node located on a traffic pole cannot be located internally within the traffic pole, external cables and wires must be enclosed in conduit. The maximum number and size of conduit that may be attached to a traffic pole is two 1½" EMT conduit. External conduit attached to a traffic pole must match the color of the existing pole. External conduit should be installed flush to the pole and in an unobtrusive manner as possible. If needed, the network provider may have a one foot radius drip loop exposed. Conduit shall be installed as to not conflict with access to any traffic signal activities.
- I. An application to collocate on a traffic pole must include information that the director determines is necessary to review and approve the application, including, but not limited to:
 - 1. A completed application on a form approved by the director, for each location requested;
 - 2. A map showing the intended location of the proposed network node and transport facilities serving that network node in the public right-of-way, with distances from any historic landmarks, parks, schools, or residentially zoned property, if any. The map must also include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location;
 - 3. Representative drawings or pictures of the specific traffic pole location.

4. Artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud;
5. Details on the attachment method proposed for the City's approval. No penetration of the traffic pole is allowed;
6. A photograph of the specific traffic pole to be attached to;
7. Pole load analysis in accordance with Section 12.4.2; and
8. Construction plan sheets (11 inches by 17 inches) at a scale of no smaller than 1 inch = 40 feet in plan view, and 1 inch = 6 feet in profile view, sealed by a professional engineer licensed in the State of Texas that represents:
 - a. the specific location of the existing traffic pole;
 - b. location and method of proposed installation (trench, bore, existing conduit pull) of proposed and existing transport facilities necessary to connect the network node to the PSTN;
 - c. horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment;
 - ~~d. proposed work areas required to install infrastructure that will disrupt or divert traffic;~~
 - e.d placement of network node and equipment on the traffic pole as well as any ground equipment, cabinets, etc.;
 - f.e any and all existing utilities, both underground and overhead; and
 - g.f the specific location of the existing traffic pole using latitude/longitude in decimal degrees to the 6th decimal point.

12.4.2 - Traffic Pole Load Analysis

- A. Each application for collocation of a network node on a service pole shall include a load analysis prepared by a Texas Registered Professional Engineer and must conform to the Transportation Department's approved process and methodology.
- B. The load analysis shall take into account and allow space for all attachments which are currently constructed or planned for future construction.
- C. The following information is required to be submitted:
 - 1. Specific location with X, Y coordinates and Traffic Signal Pole ID;
 - 2. Picture of entire Traffic Signal Pole;
 - 3. Traffic Signal Pole brand information (height and class);
 - 4. Height of each existing attachment present on the traffic pole and proposed height of wireless attachment;
 - 5. Identification of each attachment present on the traffic pole;
 - 6. Detailed drawings of the proposed wireless attachments and physical specifications (weight and dimensions);
 - 7. ~~[Electric Service Planning Application in accordance with the Austin Energy Design Criteria Manual;~~
 - 8.] Type, height, and size of all attachments present on the traffic pole; and
 - 8[9]. Ownership information on all attachments.

12.4.3 - Inspections

- A. Authorized City employees may inspect the collocation of network nodes on a traffic pole to ensure compliance with all applicable laws. Such inspection may occur during or after construction.
- B. In the event of an emergency situation, the director may, but is not required to, notify a network provider of an inspection. The City may take action necessary to resolve the emergency situation and the director shall notify the network provider as soon as practically possible after resolution is complete.
- C. The director may perform visual inspections of any network nodes located in the public right-of-way as the director deems appropriate without notice. If the inspection requires physical contact with the network node, the director ~~will~~ [shall] provide advance written notice to the network provider ~~[within five business days of the planned inspection]~~. The network provider may have a representative present during such inspection.

12.7 - Design Standards

The intent of the design standards is to ensure that the installation of network nodes, node support poles, and equipment cabinets is compatible with existing land use and urban design regulations.

The design standards in this section apply to the installation of network nodes, node support poles, cabinets, and associated equipment within public right-of-way throughout the City unless more specific design elements, concealment measures, or camouflage requirements are set out for a specific design or historic district. A design district is an area within the City with a zoning classification or other City Code designation for which unique design and aesthetic standards are applied uniformly. Design districts include, but are not limited to:

- (1) the Central Business District (CBD);
- (2) numerous Planned Unit Developments, Neighborhood Conservation Combining Districts, Planned Development Agreements, Master Development Agreements, and small-area Regulating Plans;
- (3) the Waterfront Overlay District;
- (4) neighborhoods subject to the Residential Design and Compatibility Standards and/or adopted neighborhood plans;
- (5) numerous historically significant districts, such as the East 6th/Pecan Street Overlay, Castle Hill Historic District, and general Historic District and Historic Area Combining Districts;
- (6) the University Neighborhood Overlay District;
- (7) the Lake Austin Overlay District;
- (8) the Traditional Neighborhood District; [and]
- (9) Project Connect and mobility corridors;
- (10) Municipal parks; and
- (11) [(9)] commercial and multi-family development subject to standards codified as "Design Standards and Mixed Use."

12.7.1 - Design Standards City-Wide

- A. Where design district or historic district boundaries overlap, the more restrictive of the standards shall apply. Design standards, including concealment measures, applicable to a specific design district prevail over conflicting city-wide design standards.
- B. Site Selection - It is the City's policy to preserve as open, as much as possible, the surface and air above the public right-of-way to keep sight-lines open for public safety and aesthetic purposes. Subject to design standards applicable to the specific design district, the City in its sole discretion, will consider permit applications [To achieve that end, permits to use the public right-of-way] for network nodes and node support poles [will be prioritized] in the following order of priority:
 1. Node support poles. Outside the CBD, node support poles must be separated by at least 250 feet. Within the CBD, node support poles may be placed only at street intersections with a maximum of four node support poles per intersection – no more than one at each corner. Node support poles may not obstruct a pedestrian clear zone or conflict with existing utilities.
 2. ~~[1.]~~ Collocation [First, collocation] on existing utility poles. The allowed design, installation, and construction details, for utility pole collocation is shown and described in the Utilities Criteria Manual.
 3. ~~[2.]~~ Collocation [Second, collocation] on existing traffic poles – No more than 75% of the existing traffic signal poles at an intersection of two streets is—are available for node collocation [In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be made available for network node installation]. Unless the director issues a separate written design standard that allows more than two antennae on a traffic signal pole for a particular design district, no more than two antennae [Only one antenna and base equipment cabinet] may be permitted on a traffic pole. The design, installation, and construction must comply with section 12.4.1 of this Rule.
 4. ~~[3.]~~ Collocation [Third, collocation] on non-decorative streetlight poles. Network nodes may not be placed on historic or decorative poles. The allowed design, installation, and construction details for non-decorative streetlight poles is shown and described in the Utilities Criteria Manual.
 4. ~~Last, node support poles. In order to receive a permit to install a node support pole, the network provider must demonstrate that no collocation options are available for the service area. Node support poles must be separated by at least 250 feet.]~~
- C. Underground Utility Districts.
 1. Node [Nodes] support poles may not be placed in public right-of-way in areas of the City where wireline based public utilities such as electricity and telecommunications are provided by underground distribution networks rather than by aerial support on utility poles. Such an area is, for the purposes of this Rule, an Underground Utility District: an area where poles, overhead wires, and other above-ground utility equipment have been removed and placed underground or have been approved for future placement underground.
 2. If the director determines that a section of public right-of-way within an Underground Utility District has, as of September 1, 2017, utility poles supporting aerial wireline based public utility distribution extending more than 300 feet, node support poles may be placed in that section of right-of-way subject to the requirements in this Rule applicable to node support poles.
 3. Except for base-mounted and shrouded equipment for collocations on traffic poles consistent with construction details for a traffic pole collocation set out in section 12.4.1 of

this Rule, network node equipment, other than the antenna, must be placed below ground in an Underground Utility District.

- D. Equipment shall be installed in a manner that does not hinder pedestrian walkways or interfere with traffic signal equipment. All attachments to a pole that are projecting, or any equipment or appurtenance mounted on the ground, shall comply with the sidewalk standards in Section 4 of the Transportation Criteria Manual and the Americans With Disabilities Act and shall not obstruct an existing or planned path of travel [sidewalk].
- E. For network nodes placed on existing poles, the color of the network nodes shall match the existing pole color, such that the network nodes blend with the existing pole.
- F. The following requirements apply to all node support poles: [Where applicable, node support poles shall be placed within the planting zone in alignment with existing street trees or light poles. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole. The planting zone is an area adjacent to the curb in which street trees may be planted. The zone is also intended for the placement of street furniture, public utility equipment such, and similar elements in a manner that does not obstruct pedestrian access or motorist visibility.]
 - 1. Node support poles may be placed within the planting zone in alignment with existing street trees or light poles, equidistant between street trees, with a minimum separation of 11 feet from tree to pole. The planting zone is an area adjacent to the curb in which street trees may be planted and in which street furniture, public utility equipment, and similar elements may be placed provided it does not obstruct pedestrian access or motorist visibility.
 - 2. Equipment may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.
 - 3. Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
 - 4. Network nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
 - 5. The color of network nodes and node support poles must match the color of existing poles in the area.
 - 6. The total height of a node support pole plus any network equipment may not exceed 30-feet above ground level unless the application for a node support pole exceeding a height of 30-feet above ground level, but not exceeding 55-feet above ground level, demonstrates to the director's satisfaction that an exception is warranted because: (a) the surrounding aesthetic conditions, utility criteria, and zoning are compatible with a node support pole of the proposed height, and (b) a height any less than that proposed would effectively prohibit the provision of wireless services. In no event may the height of a node support pole exceed the lesser of: (a) the height of the tallest existing utility pole located within 500 linear feet of the proposed pole in the same public right-of-way plus 10 feet, or (b) 55-feet above ground level.
 - 7. Equipment cabinets may be mounted to the node support pole, placed in the designated street furniture area, or located underground. Cabinets placed on node support poles must be located at least nine feet above ground level. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.
 - 8. Coordinate placement of any proposed sidewalk cabinet with City Urban Design personnel to ensure the cabinet does not interfere with the development of standard streetscapes.
 - 9. Any area disturbed by the installation of node support poles, associated equipment, or transport facilities shall be restored to its original condition. In areas where pavers have been installed, paver restoration must be shown in the permit application plans. The restoration of paving must follow the existing pattern, joints, grade, and crown so as to blend

in with the adjacent existing paving. Only pavers that are in good condition, without cracks or chips, may be reused. Replacement pavers are to conform in size and color to the existing pavers.

- G. Faux Treatments - Concealment may not include faux trees, faux landscaping, or other faux decorative items.
- H. The network provider is responsible for all make-ready costs, whether performed by the provider, a third party or the City.
- I. Where micro-trenching is used, any sealant must match the color of the surrounding surface.

12.7.2 - Design District Requirements

12.7.2.1 - Downtown Austin District

- A. Downtown Austin is an area bounded by Martin Luther King, Jr. Boulevard [MLK Blvd.], Interstate Highway 35 [IH-35], Lady Bird Lake, and Lamar Boulevard Blvd., as established in the Downtown Austin Plan.
- B. Site Selection - Network nodes may ~~[only]~~ be located ~~only~~ in the following public right-of-way locations in Downtown Austin ~~in the following~~ ~~[by]~~ order of ~~priority~~ ~~[preference]~~:
1. ~~[First,]~~ Colocation on Traffic Poles - Great Street standards consist of eight traffic pole foundations at each intersection. ~~[In order to minimize visual clutter and maintain future infrastructure availability for both the City and other projects, a maximum of two traffic poles per intersection may be made available for small cell equipment installation. Only one antenna and equipment cabinet may be permitted on a traffic pole and must comply with the allowed design, installation, and construction details for a traffic pole collocation set out in section 12.4.1 of this Rule.]~~
 2. Node Support Poles.
 - a. Node support poles may be placed at intersections, in the street furniture zone, within 17 feet of the edge of the curb ramp and at least 8 feet from a traffic pole. In areas without a street furniture zone, node support poles must be placed at least 18 inches from the back of the curb or aligned with existing poles.
 - b. The placement of a node support pole may not conflict with an existing tree canopy.
 - c. The placement of a node support pole may not obstruct pedestrian travel. The required pedestrian clearance is described in Section 4 of the Transportation Criteria Manual. If existing non-conforming sidewalks make strict compliance infeasible, the applicant shall coordinate with city staff on a possible location placement of the node support pole.
 - d. A maximum of two nodes may be placed on a node support pole.
 - e. The maximum diameter of a node support pole is 16 inches.
 - f. The color and finish of the pole must match the color and finish of the City's Great Street's poles.
 3. Colocation ~~[Second, colocation]~~ on existing service poles and other non-decorative poles. Great Street poles are considered decorative poles and not available for the attachment of network nodes.
- C. Underground Utility District - Downtown Austin is an Underground Utility District.
- D. If an existing utility conflict makes underground placement of network provider equipment unfeasible, a network provider ~~[applicants]~~ may request a waiver from the Director to collocate the cabinet in street furniture and shall ~~[on the sidewalk and]~~ coordinate with City Urban Design personnel on ~~[the]~~ design and placement ~~[of the cabinet]~~ to ensure ~~[that]~~ the cabinet complies ~~[does not interfere]~~ with Great Street design standards. ~~[the development of Great Street standard streetscapes. If surface placement is requested due to utility conflicts, an equipment cabinet:~~
1. ~~may only be placed in the designated planting zone; and~~
 2. ~~may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming necessary to maintain the tree's natural shape and growth pattern.~~
- E. ~~Network nodes must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.]~~

12.7.2.2 - University Neighborhood Overlay

- A. The University Neighborhood Overlay (UNO) includes the West Campus neighborhoods of Outer West Campus, Inner West Campus, Guadalupe, and Dobie. The boundaries of UNO are established by Appendix C of Chapter 25-2 of the City Land Development Code.
- B. Network nodes may not be placed on the UNO Pecan Street decorative poles.
- C. ~~A maximum of two nodes may be placed on a node support pole. [Node support poles shall be placed within the planting zone, in alignment with existing or future UNO decorative poles and street trees. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole.]~~
- D. ~~The maximum diameter of a node support pole is 16 inches. [Nodes support poles may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.]~~
- ~~E. Network node and Node Support Pole Design - Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
 - 1. ~~Placement - Network nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.~~
 - 2. ~~Color - The color of network nodes and node support poles must match the color of the UNO Pecan Street decorative pole such that they blend with the color of the district's streetscape elements.~~
 - 3. ~~The total height of a node support pole plus any network equipment may not exceed 30 feet from ground level.~~~~
- F. ~~Cabinet Placement and Design - Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection D.
 - 1. ~~The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.~~
 - 2. ~~Applicant shall coordinate the placement of any proposed sidewalk cabinet with Urban Design to ensure that that the cabinet does not interfere with the development of UNO standard streetscapes.]~~~~

12.7.2.3 - Core Transit Corridors, Waterfront Overlay, Specific [Special] Regulating Districts, Planned Unit Developments (PUD), Mobility Corridors, and Planned Development Agreements (PDA)

A. Geographic Areas

- 1. Core Transit Corridors - Core Transit Corridors (CTCs) and Future Core Transit Corridors (FCTCs) were established in 2005 and 2006 by City Council in order to improve design standards along major roadways. The roads identified as CTCs and FCTCs are established in Chapter 25-2, subchapter E of the City Land Development Code.
- 2. The Waterfront Overlay encompasses land surrounding Lady Bird Lake and the Colorado River and includes parkland, part of Downtown, and the South Central Waterfront. The boundaries of the Waterfront Overlay district are established by Appendix B of Chapter 25-2 of the City Land Development Code.

3. Specific [Special] Regulating Districts are areas zoned as Transit Oriented Development (TOD), North Burnet Gateway (NBG), and East Riverside Corridor (ERC).
4. Planned Unit Developments (PUDs) are a type of special purpose zoning district established in Chapter 25-2 of the City Land Development Code.
5. Mobility Corridors are roads included in the COA Corridor Construction Program adopted by the COA City Council on April 26, 2018 (<https://data.austintexas.gov/stories/s/Corridor-Mobility-Program/guki-e8fh/>).
- 6[5]. Planned Development Agreements (PDAs) are a type combining zoning district established in Chapter 25-2 of the City Land Development Code.
- ~~[B. Node support poles shall be placed within the planting zone in alignment with existing street trees or light poles. Poles shall be placed equidistant between street trees, with a minimum separation of 15 feet from tree to pole.~~
- ~~C. Poles may not be located so as to inhibit a consistent, uniform streetscape, or tree trimming. Any tree trimming must maintain the tree's natural shape and growth pattern.~~
- ~~D. Node and Pole Design - Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.~~
 - ~~1. Placement - Network nodes and equipment shall be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.~~
 - ~~2. The color of a network node placed on any existing pole must match the color of the existing pole.~~
- ~~E. Cabinet Placement and Design - Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.]~~

12.7.2.4 Municipal Parks.

- A. Network nodes may be permitted in public rights-of-way in municipal parks subject to the following standards and only in the following order of priority:
 1. Collocation on existing utility poles.
 2. Collocation on existing traffic signal poles.
 3. Collocation on non-decorative light poles. Network nodes may not be placed on decorative poles.
 4. Node support poles. Before applying for a node support pole, the applicant must obtain written consent from an authorized representative (in the case of parks owned, operated, or maintained by the City of Austin, the Director of the Austin Parks and Recreation Department). An application for a permit to install a node support pole must demonstrate that: no collocation options are available for the service area and no existing node support poles are within 250 feet of the proposed node support pole.
- B. Equipment Underground. Except for the antenna, a network node shall not include equipment placed above ground level unless:

1. the network node equipment does not protrude from the outer surface of the pole supporting the network node's antenna and that pole is no more than 18" in diameter at its widest point; or
 2. concealment of the proposed network node equipment is of a design and appearance that has been approved in writing by the Director of the Austin Parks and Recreation Department prior to filing the application for the network node.
- C. No Encroachment Into Municipal Parks. No part of a node, node support pole, transport facility, or associated network equipment may be permitted that encroaches into a municipal park beyond the right of way line as that line is established of record by deed or plat. No part of a node, node support pole, transport facility, or associated network equipment may occupy area on, above, or below that part of an improved or unimproved pedestrian path that extends beyond a right of way line, as that line is established of record by deed or plat.

12.7.3 - Historic Districts

- A. The City of Austin has both locally designated historic districts and National Register Historic Districts. Properties in Local Historic Districts are indicated by the addition of "HD" in the zoning designation for each parcel. National Register Historic Districts are administered by the Texas Historical Commission. A list of contributing properties and district maps can be found on the City of Austin's Historic Districts webpage. Nothing in this section is a local allowance or variance from approval under applicable federal law and regulations implementing the National Historic Preservation Act.
- ~~[B. Node support poles shall be placed within the planting zone and aligned with any existing trees or poles. Node support poles shall be placed between street trees, with a minimum separation of 15 feet from tree to pole.]~~
- B. ~~[G.]~~ Node support poles may not be placed in the public right-of-way within the Congress Avenue, Bremond Block, or Sixth Street National Register Historic Districts.
- ~~[D. Network nodes may not be placed on historic or decorative poles.~~
- E. ~~Network Node and Node Support Pole Design~~ Network nodes and node support poles must be designed to be compact and unobtrusive so as to minimize the visual impact on the surrounding streetscape. The applicant shall avoid using enclosures that are bulky or include distracting materials.
 - ~~1. Placement~~ Nodes and equipment should be grouped or stacked close together on the same side of the pole. Large gaps between equipment and enclosures should be avoided.
 - ~~2. The color of a new node placed on any existing pole must match the color of the existing pole. For new poles in districts with a designated historic pole, the pole and node shall match the color of the designated historic pole for that district.~~
- F. ~~Cabinet Placement and Design~~ Equipment cabinets may be mounted to the pole, placed in the designated street furniture area, or located underground. Cabinets placed on poles must be located at least nine feet above ground level and follow the design standards described above in subsection E. The center of the cabinets must be located the same distance from the face of curb as street trees and service poles. Cabinets shall be designed to be unobtrusive and compatible with the surrounding environment.]

12.7.4 - Historic Landmarks

- A. Historic Landmarks in the City of Austin are indicated by the addition of "-H" zoning designation for each parcel. Nothing in this section is a local allowance or variance from approval under applicable federal law and regulations implementing the National Historic Preservation Act.
- B. Site Selection - Nodes or new node poles must be placed at least 15 [20] feet from a property zoned as a Historic Landmark.

COMMENTS

#	Company	Section	Comment	Response
1	ExteNet	12.2.21	ExteNet would request the clarification and definition of interference in the following sentence. "interference with traffic signal operations may require the presence of City employees, for which the network provider will reimburse the City". ExteNet would propose that "interference" include "physically move or shut off" to qualify as needing the presence of a City employee.	The City accepts the proposed definition of "interference" for traffic signal operations, but to include "alter" as well. "physically move, alter, or shut off."
2	ExteNet	12.4.3	ExteNet proposes inclusion of a two (2) day notice period in place of the removed five (5) day notice period. ExteNet believes this to be a reasonable timeframe for mobilization of our team to the small cell.	The City will provide as much advance notice as possible given the circumstances. With scheduled activities, it will be possible to provide advance notice. For unscheduled maintenance, such as replacement of broken signal lights, the ability to provide advance notice will be greatly limited.
3	ExteNet	12.7.1	ExteNet would argue that all requirements must be non-discriminatory to all utilities and applied consistently. Requirements for telecommunications companies that are not implemented to the City, Austin Energy, or other utilities are not permitted. Must be compliant with the FCC and Section 284.	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of its continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
4	ExteNet	12.7.1 (B) 3	ExteNet would ask for clarification on the language of "No more than 75% of the existing traffic signal poles at an intersection of two streets are available for node collocation" Does this allow users to physically locate two network nodes on a single pole in the intersection?	Clarification is provided in section 12.7.1 B.3 as far as the number of nodes on a pole. The number of poles at intersections can vary greatly. The City must be able to retain the right to access poles for traffic control purposes.
5	ExteNet	12.7.1 (B) 4	The outright prohibition of use of historic or decorative poles is not permitted. ExteNet has proposed language to allow use of these poles on a case by case basis.	The City does not desire attachments on decorative or historic poles in order to preserve the unique character and aesthetics in parts of Austin.
6	ExteNet	12.7.1 C	ExteNet would clarify that the City can not require undergrounding of equipment if not required of other utilities in the public ROW. ExteNet would remind the City that undergrounding most equipment would not be technically feasible and requiring such undergrounding would be a de facto moratorium, in that it would make it impossible for ExteNet and other network providers to install in undergrounded districts. ExteNet would instead suggest inclusion of base mounted equipment, as permitted by other utilities in these districts.	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
7	ExteNet	12.7.2	ExteNet would again argue that the City must be in compliance with the FCC and Ch. 284. This section has many inconsistencies and standards that conflict and the pole selection process is so diluted that it constitutes as an effective moratorium.	The City's Design Guidelines lay out the attachment options available in any particular district.
8	ExteNet	12.7.2.4	ExteNet would ask for clarification on the access to the streets in and around the parks and their qualifications of ROW. If access for other utilities is provided then ExteNet and other network providers must also be afforded the same access rights.	It is the applicant's duty when preparing an application to include a survey showing the right of way and parkland. Access to ROW is allowed pursuant to state law and the City is committed to enforcing regulations in a fair and non-discriminatory manner.
9	AT&T	12.1	The stated purpose of the proposed rules is "to clarify rules governing the application process, information required, design standards, design guidelines, and design districts for permits for public right of way use by wireless network providers for placement of wireless network equipment in the public right of way and on City owned poles." To the extent the rules hold wireless providers to a higher or different standard than other users of the ROW, the rules would be inconsistent with Sec. 284.110 which prohibits discrimination in the City's management of the ROW.	The Design Standards are applied to all wireless providers according to Chapter 284 in a non-discriminatory manner.
10	AT&T	12.2.21	Prohibits interference with traffic signals when a provider is installing a node or pole and allows the City to charge a network provider for the "presence" of a City employee during construction. This requirement conflicts with Sec. 284.057 which provides that a "municipality may not require a network provider to pay any compensation other than the compensation authorized by this chapter for the right to use a public right of way..." AT&T has successfully installed 9 nodes on City of Austin traffic signals in the last year without any risk to traffic signal operations. Moreover, the City's design requirements which mandate separate conduit, electrical meter, electrical cut-switch, equipment cabinet, and which prohibit penetration of the traffic pole make any interference exceptionally unlikely. It is particularly unclear how this requirement would apply to node support poles. How would placement of a new pole interfere with a traffic signal and how would the presence of a City employee prevent that interference? Existing one call processes address the risk of underground cable cuts; moreover, the risk to a traffic signal from a small cell installation is no different than any other construction in the ROW where the presence of an inspector is not required. To AT&T's knowledge, the City does not have an onsite inspector during gas main work - an inherently more dangerous activity. This requirement is unlawful as it is unique to small cells and impermissibly increases the compensation required in violation of Sec. 284.055. Moreover, of the 18 required approvals, there are 10 City departments that typically have a representative present during some of the typical 30 days of construction necessitated by excavation activities and City-imposed restrictions on work hours. Which of these employee directives will apply to the construction activity? This is not a speculative concern. Earlier this week, a Department of Transportation employee shut down AT&T construction of a new node on Second Street following more than a year of reviews and approvals. The permit was filed on March 30, 2018 and was found complete by the City on April 23, 2018. The approved shroud at this location is the same design the City has approved for all 9 nodes that AT&T has built to date. AT&T experienced a similar incident during construction of its first 2 small cell sites on City traffic signals in April 2018; conflicting directions were given, and the work delayed by the opposition of one City employee while those internal City issues were worked out.	Make-ready work is separate from an application. The City proposes to include "alter" in the definition of "interference" to read: "physically move, alter, or shut off."
11	AT&T	12.4.1	Subsection C allows "the Director to deny an application for attaching to a traffic pole upon which a network node has been attached" to minimize "negative visual impact to the surrounding area." The proposed standard "minimize visual impacts" is vague and subjective. (While chapter 284 is controlling law in Texas where consistent with the FCC Order, that order is instructive on this issue. Under that order, any aesthetic requirements must be (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.) More importantly, while Sec. 284.108 allows a municipality to adopt a design manual "...that includes additional installation and construction details" those details must not "... conflict with this chapter." The proposed rules conflict with Sec. 284.110 which prohibits discrimination in the City's management of the ROW. This exceptionally vague standard leads to discriminatory treatment and significant delays. Just this past week, AT&T's construction of a node on second street was shut down by a Traffic Department employee even though the site has received final approval (after more than a year in processing) and the shroud at issue is identical to the 9 approved and installed nodes already in service in Austin. The proposed rules also refer to a requirement for a "Traffic Pole Attachment Agreement." What agreement is being referred to here? Providers were required to execute an infrastructure usage agreement under the original rule; is this the same agreement or is the proposed rule imposing a new agreement form?	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
12	AT&T	12.4.1	Subsection I lists the information required for a complete application. Some of the items are excessive and unrelated to the requirements of network nodes and therefore inconsistent with Sec 284.108 and 284.110 (allowing design requirements consistent with Chapter 284; and requiring nondiscriminatory management of the ROW). * Among the requirements are a "map showing the intended location of the proposed network node and transport facilities..." Information on transport should not be required at the time that a node or node support pole permit is filed. As permitted in Sec 284.055, network providers may rely on a separate company for transport. Accordingly, the network provider relying on another entity for transport, will not have information on the transport. Moreover, the transport route will be dependent on the final approved permit for the node or pole location. The proposed rule should reflect that the information on transport will only be required for a transport permit application. Fiber locations are not determined until a node is finally approved and a E911 address is issued which could be months after a node is finally approved.	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.

13	AT&T	12.4.1	<p>* The proposed rule also requires the map to include information "on distances from any historic landmarks, parks, schools, or residentially zoned property, if any. The map must also include all existing utilities and surface features (including trees, street furniture, etc.) within 20 feet of the proposed node support pole location." Chapter 284 allows a City express discretionary consent over parks, residential areas, design districts with decorative poles and historic areas. Accordingly, any restrictions related to landmarks or schools are not permissible under Chapter 284. Further, to the extent this requirement is a proxy for radio frequency exposure concerns, AT&T reminds the City that federal law prohibits the City from regulating "the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the commission's regulations concerning such emissions." See 47 USC 332c7b(iv). AT&T's network nodes comply with all relevant federal regulations. Because subsection 12.4.1.8.F of the proposed rule already requires information on buried facilities, a map is duplicative and unnecessary, driving up costs and slowing down permit processing.</p>	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
14	AT&T	12.4.1	<p>The proposed rule requires "artistic renderings, drawings, cut sheets, or pictures showing the location with network provider's equipment installed, including conduit, attachment method, and shroud." The required site plans already depict the installations in accordance with the City's approved design guidelines. Additionally, where a provider has already installed equipment or brings sample shrouds in for City review, an artistic rendering is unnecessary driving up costs and slowing down permit processing.</p>	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
15	AT&T	12.4.1	<p>The proposed rule requirement to provide horizontal alignment of proposed or existing fiber or conduit in relation to the proposed fiber assignment should only be required for a transport permit. Fiber assignments are not done by the network provider when that provider relies on a separate wireline entity to provide transport; the network provider would not have this information particularly before a site has been approved. A final approved site location is necessary to determine the fiber route.</p>	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
16	AT&T	12.4.1	<p>The requirement for information on the "proposed work areas required to install infrastructure that will disrupt or divert traffic" is unclear. This appears to be a traffic control plan requirement which the City has previously determined can be provided once a site has been approved since the site location will affect traffic control requirements.</p>	This requirement has been removed.
17	AT&T	12.7	<p>12.7 - Design Standards identifies neighborhoods and districts the City considers to be Design Districts. Under §284.105 the City has the authority to exercise discretionary approval over nodes or poles in a Design Districts only where such districts have decorative poles: "a network provider must obtain advance approval from a municipality before collocating new network nodes or installing new node support poles in an area of the municipality zoned or otherwise designated as a historic district or as a design district <i>if the district has decorative poles.</i>" AT&T will abide by any reasonable, nondiscriminatory aesthetic standards, but any denial, for aesthetic reason, of nodes or poles in such districts absent decorative poles would violate Chapter 284.</p> <p>Of additional concern is the addition of Parks to the list of Design Districts; it is unclear how this is intended to be applied as there is also a separate section in the proposed rules applicable to parks (12.7.2.4 Municipal Parks). Treating all parks as design districts would be an impermissible attempt to limit the collocation of nodes in parks inconsistent with §284.104 which gives municipalities the discretionary authority to deny new poles in parks, but not network nodes collocated on existing structures.</p>	The City is exercising its authority and obligation to regulate ROW in a manner that is compliant with state and federal law and promotes the use of public ROW in a fair and non-discriminatory manner while promoting the appropriate use of City assets and ROW.
18	AT&T	12.7.1	<ul style="list-style-type: none"> This section of the proposed rule sets city-wide design standards, many of which are unlawful in light of Chapter 284. 12.7.1.B - Site Selection gives the city "sole discretion" over site selection city-wide. The only sole discretion a city has under Chapter 284 is in Design Districts and Historic areas for both poles and nodes and in parks and residential areas for new poles. The proposed rule violates Chapter 284. Moreover, it sets up a priority process and specific restrictions on certain areas that are in fact a prohibition on the placement of some poles in areas not restricted by 284. 	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of its continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
19	AT&T	12.7.1	<ul style="list-style-type: none"> The proposed standards require node support poles to be a minimum of 250 feet apart. An early draft of what would become Chapter 284 of the Local Government Code contained a 300-foot spacing requirement, but that requirement was not included in the final enacted bill.³ In fact, the Texas Legislature expressly and intentionally deleted that restriction. Because the requirements apply only to the facilities of network providers they are inconsistent with §284.110 which requires a municipality to manage the ROW in a competitively neutral manner. AT&T recognizes that there could be circumstances when spacing restrictions may be necessary to address very specific health, safety or welfare needs; but a blanket pole placement restriction applied exclusively to network providers violates Chapter 284. <p>³ See Tex. S. B. 1004 § 284.103 (introduced version), 85th Leg., R.S. (2017) ("A network provider shall ensure that each new, modified, or replacement utility pole or node support pole installed in a public right-of-way in relation to which the network provider received approval of a permit application . . . is spaced at least 300 linear feet from the nearest existing pole that is capable of supporting network nodes and is located in a public right-of-way").</p>	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of its continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
20	AT&T	12.7.1	<ul style="list-style-type: none"> Node support poles outside the CBD "must be separated by at least 250 feet and within the CBD, node support poles may be placed only at street intersections with a maximum of four node support poles per intersection — no more than one at each corner. . . . and collocation on existing traffic poles is limited to "no more than 75% of the existing traffic signal poles at an intersection of two streets..." Additionally, no more than two antennas on a traffic signal pole are permitted. <p>These arbitrary and unlawful restrictions on new poles and on collocation on City service poles will unreasonably limit newer technologies, like 5G and millimeter wave technology, which may offer a diverse array of antennas some integrated into the radio themselves. Allowing collocation on only 75% of traffic lights at a traffic light intersection would effectively mean only one network provider could install nodes in those locations. Section 284.002(21) defines a service pole as "a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including...a pole that supports traffic control functions...a structure for signage...[and] a pole that supports lighting, other than a decorative pole..." Except for decorative poles and safety considerations specific to a particular pole, the statute does not allow a city to restrict collocation.</p>	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of its continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.

21	AT&T	12.7.1	<ul style="list-style-type: none"> Historic Poles. This proposed rule would create an entirely new category of poles ineligible for collocation. Chapter 284 recognizes and gives the City's complete discretion over decorative poles defined as "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." §284.002(4). If a "historic" pole meets the statutory definition, then the City can set special standards, but otherwise it would violate the law. 	Historic poles are a subtype of decorative pole and not a new class of pole.
22	AT&T	12.7.1	<ul style="list-style-type: none"> Node Support Poles. The proposed rules set detailed criteria applicable exclusively to node support poles, including "aligned and equidistant with trees, 11 feet distance from tree to pole." These small cell-specific requirements clearly violate §284.110 which requires management of the ROW to be "competitively neutral with regard to other users of the public right-of-way." Trees line both sides of most Austin streets; and outside of the Downtown District, there are often overhead lines limiting where new poles can be placed. 	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
23	AT&T	12.7.1	<ul style="list-style-type: none"> Color. The proposed rule continues to requires that the "color of network nodes and node support poles must match the color of existing poles in the area." This subjective requirement is unreasonable. Paint colors change with wear on existing city structures which could require a different color for every location. There are close to 18 variations of grey colors on existing poles. The city must have objective criteria applicable to all users of the ROW. All Austin Energy transformers do not appear to be the same color of grey. Network providers should not be held to a different aesthetic standard for their facilities which are much smaller and more unobtrusive than city electric company equipment. 	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
24	AT&T	12.7.1	<ul style="list-style-type: none"> Pole Height. The proposed rule impermissibly limits the height of node support poles plus any network equipment such that they "may not exceed 30-feet above ground level unless the application ... demonstrates to the director's satisfaction that an exception is warranted because: (a) the surrounding aesthetic conditions, utility criteria, and zoning are compatible with a node support pole of the proposed height, and (b) a height any less than that proposed would effectively prohibit the provision of wireless services. These city-wide height restrictions, applicable to node support poles alone, are clearly inconsistent with §284.103 which sets a height limit of "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 (2) 55 feet above ground level" and an additional 3 feet for the node and node equipment pursuant to §284.003. Aesthetic criteria cannot be unique for small cells under §284.110--which is why, under that statute, the height of new poles is tied to the height of existing poles in the area; new poles consistent with the height of existing poles should not unduly impact aesthetics. Additionally, tying the criteria to zoning rules violates §284.101, which clearly exempts nodes and node support poles from zoning regulation "... a network provider is authorized, as a permitted use, without need for a special use permit or similar zoning review and not subject to further land use approval, to do the following in the public right-of-way: (1) construct, modify, maintain, operate, relocate, and remove a network node or node support pole...." 	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
25	AT&T	12.7.1	<ul style="list-style-type: none"> Restoration of ROW. The proposed rules provide that when restoring the ROW "only pavers that are in good condition, without cracks or chips may be reused." This requirement that a provider restore to better than existing conditions is not permissible under Chapter 284 which prohibits any form of in-kind compensation. §284.151(b). 	The City is exercising its authority and obligation to regulate ROW. This rule is intended to encourage responsible third party use of public ROW and this is a common construction practice, as well as meeting ADA requirements.
26	AT&T	12.7.2	<p>12.7.2 - Design District Requirements. Sets unique siting criteria for Downtown and the University Overlay District. Under §284.105 the City has the authority to exercise discretionary approval over nodes or poles in a Design Districts only where such districts have decorative poles: "a network provider must obtain advance approval from a municipality before collocating new network nodes or installing new node support poles in an area of the municipality zoned or otherwise designated as a historic district or as a design district if the district has decorative poles." AT&T will abide by any reasonable, nondiscriminatory aesthetic standards in the designated neighborhoods, but any denial of nodes or poles in such districts absent decorative poles would violate Chapter 284.</p>	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
27	AT&T	12.7.2	<ul style="list-style-type: none"> The proposed rule notes that "Great Street poles are considered decorative poles and not available for the attachment of network nodes." If the Great Streets poles meet the definition of decorative pole: "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" this restriction is permissible, but if the poles are not unique or limited in attachments, then the poles cannot be exempt from collocation. 	They are decorative poles.
28	AT&T	12.7.2	<ul style="list-style-type: none"> The proposed rule restricts node support pole circumference to 16 inches--well below the standard of up to 24 inches needed depending upon the height of the structure. AT&T, like many providers, uses integrated poles that have radios and antennas embedded in order to minimize visual impacts. As a result of this design, some poles may need to be 18 - 24 inches in circumference. The City's rules should be flexible anticipating and welcoming new technologies. 	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.

			<p>12.7.2.4 Municipal Parks. It is not entirely clear from the wording of the proposed rule that a provider is permitted to collocate network nodes on existing structures in municipal parks as it provides that such nodes <i>may</i> be permitted, rather than <i>are</i> permitted. Section 284.104 restricts a network provider from placing new poles in a park without a city's express discretionary consent, but network nodes are not restricted. The rule also prohibits any encroachment into Municipal Parks beyond the ROW for a node, node support pole or transport. A restriction on buried facilities anywhere other than in the park ROW could effectively prohibit collocation of nodes in parks. Requiring all ground equipment and transport facilities in parks to be underground, absent a complete and nondiscriminatory ban on underground facilities, violates §284.107, as does a requirement that the provider exhaust all other possible collocation options. Parks are where emergency services are likely to be needed especially during Austin's popular festivals and concerts; an effective bar on network nodes or transport could lead to a public safety crisis.</p>		
29	AT&T	12.7.2.4			The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
30	Crown Castle	12.2.21	<p>B. Installation of a network node or network node support pole shall not interfere with the operation of City infrastructure unless approved by the City for a specific time and location. Interference with utility signal operations may require the provision of City equipment for the duration of the installation.</p> <p>C. Installation or maintenance activities shall not impede traffic unless authorized by a permit.</p> <p>Commented (DA1): Any requirement to get additional permission to the City above and beyond the permit application and applicable annual ROW fees in Chapter 284 of the Local Government Code is prohibited by Section 284.051 of Chapter 284 of the Local Government Code.</p>		Make-ready work is separate from the application process.
31	Crown Castle	12.7	<p>and associated equipment within public right-of-way throughout the City unless there is a specific design element, conceptual measures, or engineering requirements are set out for a specific design or historic district. A design district is an area within the City with a zoning classification or other City Code designation for which unique design and aesthetic standards are applied uniformly. Design districts include, but are not limited to:</p> <p>Commented (DA2): This provision is overbroad and appears to violate Section 284.105 of Chapter 284 of the Local Government Code which requires advance approval before collocating new network nodes or installing new node support poles in a historic district or a design district. If the district has decorative poles, this provision appears to require approval in areas that do not have decorative poles.</p>		The definition is taken from state law.
32	Crown Castle	12.7.1	<p>Node support poles. Outside the CBD, node support poles must be determined by at least 750 feet. Within the CBD, node support poles may be placed only at street intersections with a maximum of four node support poles per intersection - no more than one at each corner. Node support poles may not obstruct a pedestrian clear zone or conflict resolution abilities.</p> <p>Commented (DA3): This provision violates Section 284.110 of Chapter 284 because it is discriminatory and not competitively neutral for all users in the ROW. For example, telecommunications and electric utility providers are not required to comply with spacing requirements. This provision also violates Section 284.001(c) of Chapter 284 because it does not fall "strictly within the requirements and limitations" of the state law. Furthermore, a spacing requirement was included in one of the original drafts of the state law, but it was purposely removed. If there are safety concerns regarding a specific node support pole location, Crown Castle will certainly work with the City to address such concerns.</p>		The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
33	Crown Castle	12.7.1	<p>3. (A.) Collocation facilities color shall on existing traffic poles - No more than 75% of the existing traffic signal poles along an intersection of two streets are available for node collocation in order to maintain visual clarity and maintain the ability for the City and other providers a maximum of two traffic poles per intersection may be available for node collocation. Unless the director issues a separate written design standard that allows more than two poles on a traffic signal pole, a maximum design standard for more than two poles on a traffic signal pole is not permitted. A separate standard may be permitted as a traffic pole. The design, installation, and construction must comply with section 12.4.1 of this Rule.</p> <p>Commented (DA4): Crown Castle respectfully requests reconsideration of this provision. Does the rule refer to two external antenna or newer technologies such as 5G radios which contain integrated radios? These non-integrated radio antennas are absolutely critical for 5G deployments.</p>		The City is aware and sensitive to the evolving nature of wireless equipment. The rule includes language giving the Director authority to issue a design standard to accommodate those needs.
34	Crown Castle	12.7.1	<p>F. Node support poles may be placed within the pedestrian zone in alignment with existing street lines or lot lines, subject to the following conditions: a minimum separation of 11 feet from the street line; the planned zone is an area adjacent to the curb in which street trees may be planted and in which street furniture, public utility equipment, and similar elements may be placed provided it does not obstruct pedestrian access or impair visibility.</p> <p>Commented (DA5): This provision violates Section 284.110 of Chapter 284 because it is discriminatory and not competitively neutral for all users in the ROW. For example, telecommunications and electric utility providers are not required to comply with spacing requirements. This provision also violates Section 284.001(c) of Chapter 284 because it does not fall "strictly within the requirements and limitations" of the state law.</p>		The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
35	Crown Castle	12.7.1	<p>G. The installation of a node support pole and associated equipment may not exceed 30 feet above ground level unless the installation for a node support pole exceeds a height of 30 feet above ground level, but not exceeding 55 feet above ground level. A maximum of 30 feet above ground level is an exception is an exception to the rule. The maximum height of the node support pole is 55 feet above ground level. The maximum height of the node support pole is 55 feet above ground level. The maximum height of the node support pole is 55 feet above ground level.</p> <p>Commented (DA6): This provision appears to violate Section 284.101 of Chapter 284 which governs the height of new, modified, or replacement utility poles or node support poles.</p>		The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
36	Crown Castle	12.7.2	<p>H. The maximum diameter of a node support pole is 18 inches.</p> <p>Commented (DA7): Crown Castle respectfully requests reconsideration of this limitation on the maximum diameter of a node support pole. There are numerous examples of node support poles deployed in Texas and other states with larger diameters used to conceal equipment. At this juncture, maybe clear confinement of node diameters is a priority for the City, and as such, the City should not limit the design of node support poles but rather have the flexibility to allow for designs that incorporate new technology and new designs.</p>		The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.

37	Crown Castle	12.7.2.4	<p><u>A. Network nodes may be permitted to be installed on third party poles provided that support is in accordance with standards and only in the following order of priority:</u></p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p><u>Commented (DAR): Crown Castle respectfully requests clarification of this provision as it is unclear whether this allows the City prohibit any node installation in multiple parts of the city. Section 284.104 of Chapter 284, new node support poles in municipal parks require the (municipal park's) designatory, nondiscriminatory, and written consent. This provision only applies to new node support poles and not the collocation of nodes. 12.7.2.4(B)(3)(a)</u></p> </div>	All applicants are required to obtain consent per state law and City code.
38	Verizon	12.7.1	<p>Pole Spacing: The Proposed Rule contains certain spacing requirements for node support poles, including the following:</p> <ul style="list-style-type: none"> Section 12.7.1(B)(1) within the Proposed Rule applies a blanket spacing requirement of 250 feet between node support poles placed within the public right of way within any district, other than the central business district (CBD). Section 12.7.2.4(A)(4) of the Proposed Rule provides that an applicant for a permit to install a node support pole within a Municipal Park must demonstrate that no collocation options are available for the service area and that no existing node support poles are within 250 feet of the proposed node support pole. <ul style="list-style-type: none"> The spacing requirement of 250 feet between each node support pole in both of the sections referenced above appears to be arbitrary and could result in operational challenges for Verizon Wireless. As such, Verizon Wireless requests that each of these sections be revised to state that it is the City's <i>preference</i> to place node support poles at least 250 feet apart, however, the City is willing to deviate from this preference if the network provider's placement of node support poles within the public right of way conforms to the spirit of the spacing preference by not impeding or unnecessarily cluttering the public right of way. Further, we have worked with several municipalities in which a similar 250-foot spacing requirement was initially adopted, but was then subsequently relaxed by either reducing or eliminating the requirement, or shifting to interpret the spacing guidelines as a preference rather than a requirement. If the City is interested in discussing this issue further, we would be happy to share a list of municipalities in which we have seen this evolution of the spacing guidelines implemented successfully. 	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of its continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
39	Verizon	12.7.1	<ul style="list-style-type: none"> Multi-Node Installations: Verizon Wireless appreciates the City's efforts to incorporate language into the Proposed Rule which will facilitate network providers' installations as they evolve with changes and advancements in wireless technology. However, in order to more accurately describe the needs of Verizon Wireless' installations, we suggest that the Proposed Rule include the following revisions and/or concepts: <ul style="list-style-type: none"> Rather than limiting the number of "antennae" or "nodes" to be installed on a traffic signal pole, we suggest that the City adopt a limitation on the number of "attachments" on each traffic signal pole. In this context, "Attachment" would be defined as an installation of one or more nodes and/or antennas at a particular centerline elevation on a pole provided that each node or antenna installed at the particular centerline does not exceed the size and volume limitations established under Section 284.003 of the Code and Section 12.2.3 of the Proposed Rule. For clarification, all nodes and/or antennas installed at a single centerline elevation would collectively constitute one "Attachment". Adoption of the defined term "Attachment" would then require Section 12.7.1(B)(3) of the Proposed Rule to be revised as follows: <p>Unless the director issues a separate written design standard that allows more than two Attachments antennae on a traffic signal pole for a particular design district, no more than two Attachments antennae may be permitted on a traffic pole.</p> We also request that Sections 12.7.2.1(B)(2)(d) and 12.7.2.2(C) of the Proposed Rule be deleted because these sections impose limitations on the number of network nodes that are allowed on node support poles. We respectfully suggest that Verizon Wireless should have the opportunity to install as many Attachments to its node support poles as it deems necessary in its reasonable discretion, provided each Attachment conforms to an approved design and the applicable size requirements set forth in Section 12.2.3 of the Proposed Rule. 	The City is aware and sensitive to the evolving nature of wireless equipment. The rule includes language giving the Director authority to issue a design standard to accommodate those needs.
40	Verizon	12.7.1	<ul style="list-style-type: none"> The Proposed Rule is silent as to installation of network nodes on third party poles. Accordingly, we request that the following language be inserted as a new Section 12.7.1(J): <p>"Provided the network provider has signed a pole attachment agreement with the third party pole owner, then such network provider shall be permitted to install as many Attachments as reasonably permitted by such third party pole owner, provided each Attachment conforms to an approved design and the applicable size requirements set forth in Section 12.2.3 herein."</p> 	All nodes are governed by the design standards.
41	Verizon	12.7.2	<ul style="list-style-type: none"> Finally, we note that the bulk of the design criteria in Sections 12.7.2.1 (Downtown Austin District), 12.7.2.2 (University Neighborhood Overlay), 12.7.2.3 (Core Transit Corridors, Waterfront Overlay, Specific Regulating Districts, Planned Unit Developments, Mobility Corridors and Planned Development Agreements) and 12.7.3 (Historic Districts) have been deleted. We interpret the deletion of these specific design criteria to mean that the City-Wide Design Standards apply to all of the districts referenced above. Please confirm that this interpretation is accurate or provide additional clarification as to what design criteria apply to the above-listed design districts. 	All nodes are governed by the design standards.
42	Verizon	12.2.21	<ul style="list-style-type: none"> We do not have an objection to reimbursing the City for the costs of having employees present during installation of network nodes or node support poles; however, such costs need to be reasonable and demonstrated as being caused by VZW. Accordingly, we ask that additional revisions be included in Section 12.2.21(B) of the Proposed Rule as shown in the <i>italicized text</i> below: <p><u>...for which the Network provider confirmed to have caused the interference will reimburse the City its actual and reasonable costs for such City employees.</u></p> 	The entity causing interference would be responsible for costs.

43	Verizon	12.2.22	<ul style="list-style-type: none"> While we do not have an objection to the City's revisions to Section 12.2.22 of the Proposed Rule, we would like to see this section further revised. Specifically: <ul style="list-style-type: none"> 12.2.22(B) of the Proposed Rule requires a network provider to be responsible, at the network provider's expense, for correcting any discovered pre-existing non-conforming conditions related to the provision of power for a network node. This requirement represents impermissible burden-shifting as it is the City's obligation to maintain the public right of way and it is the obligation of third parties to maintain their installations within the public right of way. A network provider should not be obligated to correct a pre-existing issue that was not caused by or exacerbated by such network provider's actions or inactions. Further, this provision effectively imposes an additional cost on the use of the public right of way which is contrary to both the Code and the FCC Order.¹ Accordingly, we ask that Section 12.2.22(B) of the Proposed Rule be deleted. 	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
44	Verizon	12.2.22	<ul style="list-style-type: none"> Section 12.2.22(D) of the Proposed Rule requires that a network provider install a shut-off mechanism which would allow the City to shut power off to the installation. Verizon Wireless always includes such a shut-off mechanism with its installations; however, we ask that the Proposed Rule be revised to require the City to provide Verizon Wireless (i) with as much prior notice as possible of such shut-off in non-emergency situations, but not less than forty-eight (48) hours prior notice, and (ii) in emergency situations, with as much notice of such shut-off after it has occurred as reasonably possible under the circumstances so that Verizon Wireless can inspect its equipment for damage and replace if necessary. The City has already demonstrated its willingness to provide advance written notice in certain situations², and we respectfully ask that the City expand the circumstances under which this advance notice will be granted to include our comments in this paragraph. 	The City will provide as much advance notice as possible given the circumstances. With scheduled activities, it will be possible to provide advance notice. For unscheduled maintenance, such as replacement of broken signal lights, the ability to provide advance notice will be greatly limited.
45	Verizon	12.4.1	<ul style="list-style-type: none"> The language in Section 12.4.1(C)³ of the Proposed Rule appears to be inconsistent with the City's decision to allow multiple installations on a single traffic pole. Please advise us to how the City intends to address this apparent inconsistency between the new traffic pole design criteria and Section 12.4.1(C) of the Proposed Rule. 	Please refer to Section 12.7.1.B.3.
46	Verizon	12.2.1	<p>In addition to the comments to the Proposed Rule above, Verizon Wireless hereby renews its comments to the original Rule No. R161-17.02 adopting the TCM, which comments were submitted to the City in Verizon Wireless' Notice of Appeal of Rule Adoption received by the City on December 11, 2017 and which are restated here for reference:</p> <ul style="list-style-type: none"> Section 12.2.1(C) of the TCM requires all network providers to submit an application to place a network node in the public right-of-way (ROW). This requirement does not make allowances for the statutory exceptions to the permit/application requirement set forth in Section 284.157 of the Code for routine maintenance, replacements or upgrades with substantially similar equipment or installation of micro network nodes. Accordingly, we renew our request that the Rule be amended to quote the language from Section 284.157 of the Code pertaining to exceptions to the permit requirement. 	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
47	Verizon	12.2.1	<ul style="list-style-type: none"> Section 12.2.1(D) of the TCM allows the director to make a determination that a network provider has failed to submit an application in good faith based on the absence or inaccuracy of essential information and states that the director may reject such submission without an obligation to comment on completeness. This provision is contrary to paragraph 143 of the FCC Order which provides that applications for small wireless facilities must be reviewed for completeness within ten (10) days of submission of such application. Moreover, if the application is determined to be incomplete, then the City is required to specifically identify the missing information in accordance with Section 284.154(b) of the Code. Further, the TCM, the Proposed Rule, and the related provisions of the City Code each fail to reference the shot-clock timeframes⁴ for review of complete applications for approval. Finally, if a municipality rejects a complete application, Section 284.154(e) of the Code requires the municipality to document the basis for such denial, including the specific applicable code provisions or other rules, regulations or laws on which such denial was based. Accordingly, we ask that the timeframes for review of applications and the shot-clock approval timeframes stated in the FCC Order be incorporated into the TCM via the Proposed Rule. We also ask that the Proposed Rule be revised to include language which requires the City to provide documentation in the event a complete application is denied, including specific references to the applicable code provisions or other rules, regulations or laws on which such denial was based. 	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions. Applications deemed incomplete will be provided information as provided for by state and federal laws.
48	T-Mobile	12.7	<p>Order of Site "Priority" (Secs. 12.7.1, 12.7.2.1(B), 12.7.2.4(A)). Hierarchies or prioritizations of locations or right-of-way pole types that seek to limit network nodes and support poles to certain locations unless the provider can satisfy a showing to the local government that service cannot be provided using a higher priority location or pole are not permissible under applicable state or federal law.</p> <p>First, local governments cannot materially limit or inhibit companies from competing on a fair and balanced regulatory playing ground. 47 U.S.C. § 253; <i>Decl. Ruling</i> ¶¶ 35-37. By attempting to limit wireless facilities to certain areas, while imposing no such limits on telecommunications providers that do not use wireless technologies, local governments create a clear regulatory benefit for wireline competitors. Wireline providers are not limited to certain areas or preferred locations. Access to residential areas will be critical for next generation wireless networks to be able to compete to provide service in residential areas, where consumers demand and expect service inside their homes.</p> <p>Second, the FCC made clear that local regulations based on aesthetics must be "reasonable," and to be reasonable, the regulations must be technologically feasible. <i>Decl. Ruling</i> ¶ 87. The <i>Declaratory Ruling</i> makes clear that what is "technically feasible" is dictated by the performance characteristics that the provider chooses and seeks to achieve. <i>Id.</i> ¶ 37, n.87. "[L]ocal jurisdictions do not have the authority to require that providers offer certain types or levels of service, or to dictate the design of a provider's network." <i>Id.</i> ¶ 37, n.84 (emphasis added). With the proposed "priority" or "hierarchy" of locations and pole types, the City is improperly dictating network design by trying to force a provider to certain location or provide more detailed justifications if they are unable to go to such locations.</p>	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
49	T-Mobile	12.4.1	<p>Discretionary Denial for Second Traffic Pole Node (Sec. 12.4.1(C)). This provision appears to allow the City to deny an application for a second network node on a given traffic support pole based on "negative visual impact." This is not an objective aesthetic criterion as it clearly has the potential to be subjectively applied, and therefore is discriminatory. See <i>Decl. Ruling</i> ¶ 86. A subsequent section, Sec. 12.7.1(B)(3), purports to limit each traffic pole to no more than two antennas.</p>	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.
50	T-Mobile	12.4.1, 12.7.1	<p>Color Matching (Secs. 12.4.1(G), 12.7.1(D)). To the extent the provision requiring network nodes to match the color of the pole are not applied to other utilities attached to poles, it is discriminatory in violation of Ch. 284 and the <i>Decl. Ruling</i>.</p>	The notice of proposed rule amended an existing rule and the comment does not address the proposed amendment. The department has taken note of this comment and will consider it in its right of way management decisions.

51	T-Mobile	12.7.1	<i>Minimum Spacing Requirements (Sec. 12.7.1(B)(1))</i> : This Section, which imposes a 250-foot minimum spacing requirement for poles outside the CBD and further restricts poles inside the CBD is outside the scope of permissible regulation under Ch. 284 and is discriminatory to the extent it is not imposed on other utilities in the right-of-way. <i>See Decl. Ruling ¶ 91</i> . The "minimum" spacing requirement may also effectively prohibit the provision of service because of the geographically limited coverage of small wireless facilities.	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
52	T-Mobile	12.7.1	<i>Aesthetic Requirements (Sec. 12.7.1(F))</i> : The aesthetic requirements in this Section are discriminatory and do not meet the requirements of the <i>Decl. Ruling</i> and Chapter 284. For instance, the City seeks to limit the height of a node support pole beyond what is permissible under § 284.103, with a complicated, discretionary exception process for any pole higher than 30 feet above ground level based on subjective criteria. The City's requirement that a provider make a showing to justify its desired pole height attempts to allow the City to adjudicate the existence of an effective prohibition of service. Moreover, the requirements listed in (F)(2)-(F)(4) employ subjective criteria such as "bulky" and "distracting," which runs counter to the City's obligation to provide objective criteria. <i>See Decl. Ruling ¶ 88</i> .	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
53	T-Mobile	12.7.2	<i>Banning Nodes on Certain Poles Outright (Sec. 12.7.2.2(B)) or Subjecting Others to More Restrictive Requirements (Sec. 12.7.2.1)</i> : The City does not have the authority to ban node placement on certain poles under § 284.105. As explained above, such a blanket ban may effectively prohibit service under 47 U.S.C. § 253(a). Relatedly, we are concerned that the draft proposal appears to treat "Great Streets" poles as decorative without articulating a specific and supportable basis for that determination.	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
54	T-Mobile	12.7.2	<i>Municipal Parks (Sec. 12.7.2.4)</i> : The City's regulation in this section exceeds its authority to require its nondiscriminatory consent for placement in a municipal park under § 284.104. In particular, the undergrounding requirement appears to apply only to the installation of network nodes and not to other utilities.	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.
55	T-Mobile	12.7.3	<i>Banning Nodes Support Poles in Certain Districts (Sec. 12.7.3(B))</i> : The City does not have the authority to ban pole placement in certain historic districts under § 284.105. This may also effectively prohibit service under 47 U.S.C. § 253(a).	The City is committed to comply with state and federal law, and believes the proposed rules are in furtherance of it's continued compliance while promoting appropriate use of City assets and ROW in a fair and non-discriminatory manner.