

ORDINANCE NO. 1543

An Ordinance of the City of Pearland, Texas, deleting Chapter 28½, “Telecommunications,” and amending and replacing Article II, “Right-of-way Management,” of Chapter 26, “Rights-of-way,” of the City Code of Ordinances; regulating the physical use, occupancy and maintenance of the City’s rights-of-way by all users, including telecommunications service and wireless network providers; providing procedures for applications for permits; establishing time periods for approval of permit applications; providing permit fees and public rights-of-way rental rates; requiring land use approval prior to placement of new structures within public rights-of-way located in parks, residential areas, historic areas, underground areas and design areas; adopting a design manual in accordance with Chapter 284 of the Texas Local Government Code; providing a savings clause; making other provisions related to the subject; and declaring an emergency.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section I. Chapter 28½, Telecommunications, including all subsections, of the City of Pearland Code of Ordinances (“City Code”) is deleted in its entirety.

Section II. Article II, “Right-of-way Management,” of Chapter 26, “Rights-of-way,” of the City Code is amended and replaced as follows.

“ARTICLE II.- RIGHT-OF-WAY MANAGEMENT

DIVISION 1. – PERMIT REQUIRED FOR WORK IN RIGHT-OF-WAY

Sec. 26-81. - Definitions.

When used in this article, the following terms, as well as their singulars, plurals and possessives, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise. Terms defined in Section 1-3 of City Code shall have the meaning assigned in Section 1-3 unless defined otherwise by this Section.

Access line: a unit of measurement representing:

- I. each switched transmission path of the transmission media that is physically within a Public Right-of-way extended to the end-use customer's

- premises within the City that allows the delivery of local exchange telephone services within the City; and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale;
- II. each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a Public Right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or
 - III. each switched transmission path within a Public Right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the City, and in that instance, one path shall be counted for every 10 stations served.

An access line may not be construed to include interoffice transport or other Transmission Media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

Antenna: Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

Cable Service: "Cable Service" as defined in the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. § 532 et seq. (2017).

City Code: The Code of Ordinances of the City of Pearland, Texas, as amended.

Collocate and Collocation: The installation, mounting, maintenance, modification, operation, or replacement of Network Nodes in a Public Right-of-way on or adjacent to a Pole.

Consumer Price Index: The annual revised Consumer Price Index for All Urban Consumers for Texas, as published by the Federal Bureau of Labor Statistics.

Concealment: Any wireless facility that is covered, blended, painted, disguised, camouflaged, or otherwise concealed such that the wireless facility blends into the surrounding environment and is visually unobtrusive. Concealment includes but is not limited to covering with a façade, designs that blend with the surrounding character of an area, paint that matches surrounding Poles, disguising with landscaping, or locating underground.

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 City Code.

Design Area: An area that is zoned, or otherwise designated by City Code, and for which the City maintains and enforces unique design and aesthetic standards.

Design Manual: The design requirements in effect at the time of a construction Permit application, or the commencement of work not required to obtain a Permit, for specific types of Facilities, including any adopted Design Manuals, the City's unified development code, adopted construction codes and any other City requirements, as amended from time to time.

Direction of the City: All ordinances, laws, rules, resolutions, and regulations of the City that are now in force or may hereafter be passed and adopted.

Facilities: Any and all of the Network Nodes, Transport Facilities, equipment cabinets, Node Support Poles, duct spaces, manholes, Poles, conduits, underground and overhead passageways, and other equipment, structures, plant, and appurtenances and all Transmission Media used for the provision of Wireless Service or Telecommunication Service.

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

Historic Area: An area that is zoned or otherwise designated as a Historic Area under municipal, State, or Federal Law.

Highway Right-of-way: The Right-of-way adjacent to a State or Federal highway.

Law: common Law or a Federal, State, or local Law, statute, code, rule, regulation, order, or ordinance.

Line Fee: A monthly fee to be applied to each Access Line for the calculation of the total amount to be paid to the City as a Rights-of-way Fee.

Macro Tower: A guyed or self-supported Pole or monopole greater than the lesser of (i) 55 feet, or (ii) 10 feet higher than the tallest existing Utility Pole located within 500 linear feet of the New Pole in the same Public Right-of-way and that supports or is capable of supporting Antennas.

Micro Network Node: A Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior Antenna, if any, not longer than 11 inches.

Municipally Owned Utility Pole: A Utility Pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a Public Right-of-way.

Park: Any property dedicated or used as a Park or for public Park purposes or that may be dedicated or used as a Park or for public Park purposes within the City.

Public Works Director: The Public Works Director or designee of the Public Works Director.

Network Node or Node: Equipment at a fixed location that enables wireless communications between User equipment and a communications network. The term includes: (i) equipment associated with wireless communications; (ii) a radio transceiver, an Antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular Collocation; and does not include: (i) an electric generator; (ii) a Pole; or (iii) a Macro Tower.

New Node Support Pole or New Pole: A new installation, including any extension or replacement of an existing Pole where the replacement is not excepted from Permit requirements under this Article.

Node Support Pole: A Pole installed by a Wireless Network Provider for the primary purpose of supporting a Network Node.

Permit: A written authorization for the use of the Public Right-of-way, including Collocation on a Service Pole, required from the City before a User may perform an action under this Article.

Permit Holder: Any Person that has been issued a Permit pursuant to the terms of this Article.

Provider: A Wireless Network Provider or Telecommunications Service Provider.

Pole: A Service Pole, Municipally Owned Utility Pole, Node Support Pole, or Utility Pole.

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

Public Right-of-way or Right-of-way: The area on, below, or above a public roadway, highway, Street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include: (A) a Private easement; or (B) the airwaves above a Public Right-of-way with regard to wireless telecommunications. This includes but is not limited to all present and future public Streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, easements, bridges, and other such similar passageways, thoroughfares, and public ways within the City.

Public Utility: A Public Utility as that term is used in the Public Utility Regulatory Act, V.T.C.A., Utilities Code § 11.004, including municipally owned and/or operated utilities.

Rights-of-way Fee: The total amount paid to the City for the Use and Occupancy of the Rights-of-way. This fee shall be paid on a quarterly basis for Access Lines and on an annual basis for other structures and Facilities. For Wireless Network Providers, this is the rental charge paid in accordance with Chapter 284 of the Texas Local Government Code.

Service Pole: A Pole, other than a Municipally Owned Utility Pole, owned or operated by a municipality and located in a Public Right-of-way, including: a Pole that supports traffic control functions; a structure for signage; a Pole that supports lighting, other than a Decorative Pole; and a Pole or similar structure owned or operated by a municipality and supporting only Network Nodes.

Street: The portion of the Public Right-of-way, including a highway, designed or used for vehicular traffic, including that part of the Street marked or platted as a bicycle or public transit lane. Street width shall be the widest of the following measurements: (i) edge of pavement to edge of pavement, or (ii) curb to curb.

Substantially Similar: Includes the following: (i) A replacement or upgrade that does not include replacement of an existing Node Support Pole nor defeat existing Concealment elements of a Node Support Pole; and (ii) a new or upgraded Network Node, including the Antenna or other equipment element, will not be more than 10 percent larger than the existing Node, provided that the increase may not result in the Node exceeding the size limitations provided by Design Manual; and the new or upgraded Pole will not be more than 10 percent higher than the existing Pole, provided that the increase may not result in the Pole exceeding the applicable height limitations prescribed by the Design Manual.

Telecommunications Service: Any “local exchange telephone service,” as defined by Section 51.002 of the Texas Utilities Code, or voice communications services provided through wireline facilities located at least in part in the public Right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

Telecommunications Service Provider: Any “certificated telecommunications provider” as the term is defined by Section 283.002 of the Texas Local Government Code.

Transmission Media: Any and all of the cables, fibers, wires or other physical devices owned, maintained or placed by a User to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, data or other purposes.

Transport Facility: Each transmission path physically within a Public Right-of-way, extending with a physical line from a Network Node directly to the network, for the purpose of providing backhaul for Network Nodes.

Use and Occupancy: Acquisition, installation, construction, reconstruction, maintenance, repair, control, or operation of any Facilities within the Rights-of-way for any purpose whatsoever.

User: Any Person that applies for a Permit under this Article, or any person that owns, controls, constructs, installs, repairs, maintains, upgrades or removes a structure in the Right-of-way, including any contractor or subcontractor of a Person who owns or controls a structure in the Right-of-way.

Utility Pole: A Pole that provides: electric distribution with a voltage rating of not more than 34.5 kilovolts; or services of a Wireless Network Provider, as defined by Section 51.002, Utilities Code.

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

Wireless Network Provider: A Person that provides Wireless Service to the public; or a Person that does not provide Wireless Services and that is not an electric utility but builds or installs on behalf of a Person that provides Wireless Service to the public: Network Nodes, Node Support Poles, or any other structure that supports or is capable of supporting a Network Node.

Sec. 26-82. - Registration and construction permits.

No person shall commence or continue with the construction or installation of any structure within the Rights-of-way of the City except as provided by this Article, or as provided by other City permits or written agreements with the City. Registration and Permits will be issued in the name of the person who will own the structures.

- (a) *Registration required.* For the safety of all Users and the public, all Users of the Right-of-way must register annually with the City. Registration shall include:
 - i. The name of the User of the Right-of-way;
 - ii. The name, address, and telephone number of the User;
 - iii. The name(s) and telephone number of an emergency contact who shall be available twenty-four (24) hours a day;
 - iv. The location, including exact coordinates, of all structures located in the Rights-of-way; and
 - v. a description of each structure located in the Rights-of-way.
- (b) *Construction permit required.* Unless otherwise provided by this Article, no person shall perform any construction or installation of structures in the Right-of-way

without first obtaining a construction permit. The Permit must be completed and signed by the owner or authorized representative of the owner of the proposed structures. A construction Permit for a proposed Network Node, Node Support Pole, or Transport Facilities shall be processed in accordance with the timelines of Section 284.154 of the Texas Local Government Code.

- (1) *Permit information required.* The person requesting a Permit will provide the Public Works Director with documentation describing:
- i. The proposed, approximate location, route and type of all structures to be constructed, installed, or modified and the User's plan for Right-of-way construction.
 - ii. Engineering plans provided on a drawing scale not smaller than one (1) inch equals one hundred (100) feet unless otherwise approved by the Public Works Director.
 - iii. Description of all existing public and private utilities in close proximity to User's proposed route (within 300 feet).
 - iv. Description of plans to remove and replace pavement or drainage works in streets. Plans submitted must conform to City of Pearland standard construction requirements and any other applicable law.
 - v. Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc. including depth.
 - vi. Three (3) sets of engineering plans.
 - vii. The construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the Right-of-way.
 - viii. The name and address of the person to whom notices are to be sent, a 24-hour per day contact number for the User in case of emergency.
 - ix. Location map that includes all other structures within 500 feet of the proposed location.
 - x. When a new pole is proposed, an industry standard pole load analysis certified by a licensed engineer, with soils test or geotechnical survey where required.
 - xi. A complete application and supporting documents for land use approval where required.
 - xii. Proof of payment of the construction permit fee and prorated Rights-of-way fee for the remaining portion of the current calendar year.
 - xiii. Complete legend of drawings submitted by User, which may be provided by reference to previously submitted documents.
 - xiv. The construction and installation methods to be employed for the protection of existing structures, fixtures, and Facilities within or adjacent to the Right-of-way, and the estimated dates and times work will occur, all of which (methods, dates, times, etc.) are subject to approval of the Public Works Director.
 - xv. Proof of insurance or net worth.

- (2) *Access to site.* All construction and installation in the Right-of-way shall be in accordance with the Permit for the structures. The Public Works Director shall be provided access to the work and to such further information as may reasonably be required to ensure compliance with the Permit.
- (3) *Plans at site.* A copy of the construction Permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the Public Works Director at all times when construction or installation work is occurring.
- (4) *Timeliness.* All work authorized by Permit must be completed in the time specified in the construction Permit. If the work cannot be completed in the specified time period, the Permit Holder may request an extension from the Public Works Director.
- (5) *Insurance and bonds.*
 - i. A User must provide proof of liability insurance in the amount of one million dollars (\$1,000,000.00). Such requirements may be waived by the Public Works Director if the User provides acceptable evidence of self-insurance backed by assets equal to but not less than a net worth in the amount of at least five million dollars (\$5,000,000.00).
 - ii. The coverage provided shall be on an "occurrence" basis and shall include coverage for personal injury, contractual liability, premises liability, medical damages, underground, explosion, and collapse hazards.
 - iii. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits.
 - iv. The User shall file the required original certificate of insurance prior to any commencement of work. The certificate shall State the policy number; name of the insurance company; name and address of the agent or authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.
 - v. The User shall file a surety bond from a surety company authorized to do business in the State of Texas in the amount of fifteen thousand dollars (\$15,000.00) to guarantee the restoration of the Right-of-way in the event the User leaves a job site in the Right-of-way unfinished, incomplete, or unsafe. Such requirement for a surety bond may be waived by the Public Works Director upon a showing of financial responsibility by the applicant.
- (6) *Approval.* Unless otherwise provided by this Article, requests for Permits shall be approved or disapproved by the Public Works Director within a reasonable time of receiving all the necessary information.
- (7) *Pre-construction meeting.* The Public Works Director or User may request a pre-construction meeting.

(c) *Exception to construction permit and registration requirement.* The following activities shall not be required to obtain a permit under this Article.

(1) *Emergencies.* Emergency responses related to existing structures may be undertaken without first obtaining a permit; however, the Public Works Director must be notified in writing within two (2) business days of any construction related to an emergency response. A reasonably detailed description of the work performed in the Right-of-way and an updated map of any structures moved shall be provided as soon as practicable.

(2) *Routine maintenance.* The following routine activities are not required to obtain a permit:

- i. routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public Right-of-way;
- ii. replacing or upgrading a network node or network pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public Right-of-way; or
- iii. the installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing Poles or Node Support Poles in compliance with the National Electrical Safety Code.

At least 24 hour advance written notice to the Public Works Director of work performed under this section is required, including proof that the User is acting with approval of a Pole's owner if structures are being collocated on an existing pole.

(3) *Building permits.* The owner of driveways, streets, and other permanent structures constructed in the public Right-of-way pursuant to a building permit obtained under the adopted construction codes of the City is not required to register the structures annually.

Sec. 26-83. - Construction standards.

(a) *Advance notice required.* The Public Works Director shall be notified twenty-four (24) hours in advance that construction is ready to proceed by either the Right-of-way User, their contractor or representative, including the name, address, and phone numbers of the contractor performing the actual construction, and the name and telephone number of the individual who will be available at all times during construction. Failure to provide the above information will result in the suspension of the Permit until the required information is received.

(b) *Conformance to other Laws.* All construction shall be in conformance with all City Codes and applicable local, State, and Federal Laws.

- (c) *Erosion control.* Erosion control measures (*i.e.*, silt fence) and advance warning signs, markers, cones, and barricades must be in place before work begins. Permit Holder may be required to show proof of EPA approved plans relating to storm water and erosion when applicable or a letter stating such plans are not required. User shall comply with City, State, and Federal guidelines regulating storm water management erosion control. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing, or straw bales, as appropriate.
- (d) *Lane closures.* Lane closures on collectors and thoroughfares, as identified by the City's thoroughfare plan, are limited to periods after 8:30 a.m. and before 4:00 p.m. unless the Public Works Director grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and thirty-six-inch (36") reflector cones placed according to the specifications of the Public Works Director.
- (e) *Workmanship.* Users are responsible for the workmanship and any damages caused by a contractor or subcontractor.
- (f) *Notice of damage.* All Users shall notify the Public Works Director immediately of any damage to utilities or other structures, either City or privately owned.
- (g) *Prior approval required for Street or Sidewalk cut.* Except in the event of an emergency, prior approval must be obtained from the Public Works Director when a Street or Sidewalk cut is required and all requirements of the City shall be followed. Repair of all Street and Sidewalk removals shall be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (h) *Interference prohibited.* Newly installed structures shall not interfere with Facilities or structures of other Users, in particular gravity dependent Facilities.
- (i) *Depth.* Underground structures shall be installed at a minimum of two (2) feet depth, unless approved by the Public Works Director or as otherwise provided by this Article.
- (j) *Working hours.* Except in the event of an emergency, working hours in the Rights-of-way are 7:00 a.m. to 7:00 p.m., Monday through Saturday. Work that needs to be performed after 7:00 p.m. Monday through Saturday must be approved in advance. Except in the event of an emergency, any work performed on Sunday must be approved twenty-four (24) hours in advance by the Public Works Director. Directional boring is permitted only Monday through Friday, unless approved in advance.

- (k) *Plans of record.* Right-of-way Users shall provide the Public Works Director with "plans of record" within ten (10) days of completion of structures in the Right-of-way. Submittal of "plans of record" should be in digital formatting as well as written or in any other format requested by the Public Works Director.

Sec. 26-84. - General terms applicable to permit holders.

- (a) *Permit rights apply to Permit Holder only.* The rights granted by this Article inure to the benefit of the Permit Holder only. The rights granted by Permit may not be assigned, transferred, or sold to another. For the purposes of this Section, assignment, transfer or sale means a change of operating control of the Permit Holder, expressly excepting an assignment or transfer to entities that control, are controlled by, or are under common control with the Permit Holder.
- (b) *Not exclusive.* No rights agreed to in this Article by the City shall be exclusive and the City reserves the right to grant franchises, licenses, easements or permissions to use the Rights-of-way within the City to any person as the City, in its sole discretion, may determine to be in the public interest.
- (c) *Deed restrictions.* A User installing Structures in a Public Right-of way shall comply with private deed restrictions and other private restrictions in the area.
- (d) *Cable Service not authorized by Permit.* A Permit Holder is not authorized to provide Cable Service as a cable operator in the City under this Article, but must first obtain a franchise agreement from the City for that purpose, under such terms and conditions as may be required by Law. A Permit for the installation, placement, maintenance, or operation of a Network Node or Transport Facility under this Article shall not confer authorization to provide Cable Service or video service, as defined by Section 66.002, Utilities Code, or information service as defined by 47 U.S.C. Section 153(24), or Wireless Service as defined by 47 U.S.C. Section 153(53), in the Public Right-of-way.
- (e) *Interference not permitted; Notice and time for correction of interference.* A Wireless Network Provider shall ensure that the operation of a Network Node does not cause any harmful radio frequency interference to a Federal Communications Commission-authorized mobile wireless operation of the City operating at the time the Network Node was initially installed or constructed. On written notice, a Wireless Network Provider shall take all steps reasonably necessary to remedy any harmful interference. If a Wireless Network Provider fails to correct any harmful interference within 60 days of written notice, the City may upon 14 day advance written notice revoke any and all Permits and registrations for the Network Node.
- (f) *Permit limited.* A Permit provided under this Article does not provide authorization for attachment of Network Nodes on Poles and other structures owned or operated by investor-owned electric utilities, as defined by Section 31.002, Utilities Code,

electric cooperatives, telephone cooperatives, as defined by Section 162.003, Utilities Code, or wireless Providers, as defined by Section 51.002, Utilities Code.

- (g) *Other requirements.* The City may impose additional requirements on the activities of Providers in the Public Right-of-way to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

Sec. 26-85. - Structure location and conformance with public improvements.

Prior to initiating construction of a "City project" in the Right-of-way, the City will provide each Right-of-way User preliminary project plans at various stages of completion (i.e., thirty (30) percent plans, sixty (60) percent plans, ninety (90) percent plans and final plans). Upon receipt of the first submittal of preliminary project plans (thirty (30) percent plans), each Right-of-way User shall be responsible for verifying the location of its underground structures in the vicinity of the City's project. In verifying the location of structures as required by this section, each Right-of-way User shall compile the information obtained regarding any structures located in the Right-of-way that are potentially affected by the City project and shall, within thirty (30) days of receipt of the first submittal of the preliminary project plans, make that information available to the City in a written and verified format acceptable to the Public Works Director. Whenever by reasons of widening or straightening of Streets, water or sewer line projects, or any other City projects (i.e., install or improve storm drains, water lines, sewer lines) it shall be deemed necessary by the governing body of the City to remove, alter, change, adapt, or conform the underground or overhead structures of a Right-of-way User, such alterations shall be made by the owner of the structures at the owner's expense within forty five (45) calendar days from the receipt of written notice to make the alterations, unless a different schedule has been approved by the Public Works Director. The owner of the structures shall be responsible for any direct costs incurred by the City, associated with project delays resulting from owner's failure to conform structures within the time limits established by this section. Reimbursement for all costs provided for by this paragraph shall be made within thirty (30) calendar days from the day which the owner receives written notice of such costs.

Sec. 26-86. - Improperly installed structures.

- (a) *Proper installation required.* Structures in the Rights-of-way shall be properly installed, repaired, upgraded and maintained. Structures shall be considered to be improperly installed, repaired, upgraded, or maintained if:
- iv. The installation, repairs, upgrade, or maintenance endangers people;
 - v. The structures do not meet the applicable City requirements;
 - vi. The structures are not capable of being located using standard practices; or
 - vii. The structures are not located in the proper place in accordance with the plans approved by the Public Works Director.
- (b) *Existing structures.* This Section shall not apply to structures installed prior to the effective date of this ordinance unless such structures are repaired or upgraded.
- (c) *Public Works Director review of Poles.* When Poles are used, the type of Poles, location, depth, upgrades, etc. shall be subject to review of the Public Works Director, unless otherwise provided by this Article.

Sec. 26-87. - Restoration of property.

- (a) *Restoration of affected property required.* Users of the Right-of-way shall restore property affected by construction in the Right-of-way to a condition that is equal to or better than the condition of the property prior to the performance of the work. This includes, but is not limited to, replacing all natural ground cover with an equal or better type of ground cover damaged during work, either by sodding or seeding, as directed by Public Works Director.
- (b) *Restoration requirements.* Restoration shall be to the reasonable satisfaction of the Public Works Director. The restoration shall include, but not be limited to:
- i. Installation of all manholes and handholes, as required;
 - ii. All bore pits, potholes, trenches, or any other holes shall be covered or barricaded daily;
 - iii. Leveling of all trenches and backhoe lines; and
 - iv. Restoration of excavation site to City specifications.
- (c) *Locator flags.* All locator flags shall be removed during the cleanup process by the Permit Holder or Permit Holder's contractor at the completion of the work.

Sec. 26-88. - Revocation or denial of Permit.

If any provisions of this Article are not followed, a Permit may be revoked by the Public Works Director. If any User fails to follow the terms and conditions of this Article, new Permits may be denied or additional terms required prior to issuance of Permits to the same User.

Sec. 26-90. - Construction and maintenance of structures.

- (a) *Construction requirements.* Except where expressly provided otherwise by State Law, a User shall construct and maintain structures in the public Rights-of-way in accordance with the Design Manual to ensure structures do not:
- i. Obstruct, impede, or hinder the usual travel or public safety on a Public Right-of-way;
 - ii. Obstruct the legal use of a Public Right-of-way by other utility Users;
 - iii. Violate nondiscriminatory applicable codes;
 - iv. Violate or conflict with the City's publicly disclosed Public Right-of-way design specifications; or
 - v. Violate the Federal Americans with Disabilities Act of 1990 (ADA).
- (b) *Design Manual.* Structures to which this Article applies must conform to the specifications required by the construction codes and Design Manual as adopted by the City at the time the permit application is submitted.
- (c) *Requests for temporary moves.* Upon request, the Permit Holder shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the Permit Holder may require payment in advance. The Permit Holder shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangements.
- (d) *Tree trimming.* The Permit Holder, its contractors and agents have the right, permission and license to trim trees upon and overhanging the Rights-of-way to prevent trees from coming in contact with the Permit Holder's Facilities. When directed by the City, tree trimming shall be done under the supervision and Direction of the Public Works Director.

Sec. 26-91. – Permit and Right-of-way Fees

- (a) *Construction Permit fee.* Except as otherwise provided by Chapter 283 of the Texas Local Government Code, the User shall pay to the City a construction Permit fee that is calculated as of the date of application for Permit by applying the appropriate Permit fee to each of the proposed structures included in the application, in accordance with the City's fee schedule, not to exceed the values provided in the table below.
- (b) *Rights-of-way Fee.* The Permit Holder shall pay to the City a Rights-of-way Fee that is calculated in accordance with Chapter 283 of the Texas Local Government Code, an agreement with the City, or the table below, as applicable. The Rights-of-way Fee for Access Lines shall be as proscribed by the Texas Public Utilities Commission. Rights-of-way Fees for all Facilities other than Access Lines shall be prorated for the first year in which a construction Permit fee is paid, and shall be paid at the time of the Permit application.

Equipment Type	Construction Permit Fee	Rights-of-way Fee
Transport Facilities	\$500 per Node for first 5 Nodes, \$250 for each additional Node	\$28 per month per Node ^{1 4}
Network Nodes	\$500 per Node for first 5 Nodes, \$250 for each additional Node	\$250 per year per Node ^{2 3}
Node Support Poles	\$1000 per Pole	NA

¹ Unless equal or greater amount is paid under Chapter 283 of the Local Government Code or Chapter 66 of the Utility Code.

² As adjusted by an amount equal to one-half the annual change, if any, in the Consumer Price Index .The City shall provide written notice to each Network Provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60th day following the written notice.

³ Collocated Network Nodes on City Service Poles shall also pay an annual Collocation fee at a rate not greater than \$20 per year per Service Pole.

⁴ A Wireless Network Provider may not install its own transport Facilities unless the Provider: (i) has a Permit to use the Public Right-of-way; and (ii) pays to the City a monthly Public Right-of-way fee for Transport Facilities in an amount equal to \$28 multiplied by the number of the Provider's Network Nodes located in the Public Right-of-way for which the installed Transport Facilities provide backhaul unless or until the time the Provider's payment of fees to the City exceeds its monthly aggregate per-Node compensation to the City. A Wireless Network Provider that wants to connect a Network Node to the network using the Public Right-of-way may: (i) install its own Transport Facilities as provided in this section; or (ii) obtain transport service from a User that is paying Right-of-way fees to occupy the Public Right-of-way that are the equivalent of not less than \$28 per Node per month. A Public Right-of-way fee required by this section is in addition to any other Public Right-of-way fee required by the City.

(c) *Annexation and disannexation.* For the purpose of compensating the City under this Article, a User shall start including or excluding structures within an annexed or disannexed area within thirty (30) days of written notice by the City to the User of the annexation or disannexation.

(d) *Timing of Rights-of-way Fee payment.* Permit Holder shall remit the Rights-of-way Fees on an annual basis, unless otherwise proscribed by Chapter 283 of the Texas Local Government Code or a written agreement with the City. Unless otherwise mandated by State Law, the payment of Rights-of-way Fees shall be due on January 31st of each year following the year in which a construction Permit fee and prorated Rights-of-way Fee was paid, and each subsequent year until (i) the structures are removed from the Right-of-way and written notice provided to the City, or (ii) the structures are no longer owned by the Permit Holder and written notice of the new owner's name, address, and phone number are provided to the City.

Sec. 26-92. - Indemnification.

The Permit Holder shall indemnify and hold the City harmless from all costs, expenses, and damages to Persons or property arising directly or indirectly from the construction, maintenance, repair, or operation of the Permit Holder's Facilities located within the Rights-of-way found to be caused solely by the negligence of the Permit Holder. Expenses shall include any reasonable and necessary attorney's fees and court costs. The City shall give the Permit Holder prompt written notice of any claim for which the City seeks indemnification. The Permit Holder shall have the right to investigate, defend and compromise any such claim. This provision is not intended to create a cause of action or liability for the benefit of third parties, but rather this provision is solely for the benefit of the City.

Sec. 26-93. - Relocation and removal of structures.

- (a) *Street widening or straightening.* Upon thirty (30) days notice by the City, Permit Holder shall begin relocation of its structures within the Rights-of-way at its own expense in a timely manner to permit the widening or straightening of Streets, unless expressly provided otherwise by State Law. The notice by the City shall include a specification of the new location for the Permit Holder's structures along the Rights-of-way.
- (b) *City's right to relocate.* The City retains the right to move any structures within the Rights-of-way to cure or otherwise address a public health or safety emergency. The City shall cooperate to the extent possible with the Permit Holder in such instances to assure continuity of service and to afford to the Permit Holder the opportunity to make such relocation.

Sec. 26-94. - Future contingency.

In the event this Article, or any fee or other provision of this Article, becomes unlawful or is declared or determined by a judicial or administrative authority exercising its jurisdiction to be excessive, unenforceable, void, or illegal, in whole or in part, then the City and all Permit Holders shall negotiate a new compensation arrangement that is in compliance with the authority's decision.

Sec. 26-95. - Conflicts with other requirements.


Where this Article conflicts with any other provision of the City Code of Ordinances, this Article shall control. Where Facilities are governed by the Texas Utilities Code or Chapter 283 of the Texas Local Government Code and there is a conflict with a specific provision of this Article, the provision of this Article shall not apply to those specific Facilities to the extent of the conflict.”

Section III. The Design Manual attached as Exhibit A to this Ordinance is adopted and incorporated by reference for all purposes.

Section IV. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any Person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of Pearland, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section V. The Council finds and determines that the regulation of public right-of-way inures to the benefit of the public and, therefore, bears directly upon the health, safety and welfare of the citizenry; and that this ordinance shall be adopted as an emergency measure, and that the rule requiring this ordinance to be read on two (2) separate occasions be, and the same is hereby waived.

PASSED AND APPROVED ON FIRST AND ONLY READING on the 31st day of August, A.D., 2017.



TOM REID
MAYOR

ATTEST:

Young Loring

YOUNG LORFING TRMO
CITY SECRETARY



APPROVED AS TO FORM:

Darrin M. Coker

DARRIN M. COKER
CITY ATTORNEY

EXHIBIT A - DESIGN MANUAL

I. Introduction

A. Purpose

The following design specifications are required by the City to: (i) prevent obstruction, impediment, or hindrance of the usual travel or public safety on a Public Right-of-way; (ii) prevent obstruction of the legal use of the Public Rights-of-way by utility Providers; and (iii) protect the health, safety, and welfare of the public.

B. Scope

Any Person that constructs, modifies, maintains, operates, relocates, or removes structures within the Rights-of-way shall conform to the following design specifications and all applicable construction codes of the City. The Public Works Director shall deny any Permit application that does not strictly conform to applicable requirements.

C. Definitions

Terms defined in Chapter 26 of the Code of Ordinances of the City of Pearland, Texas shall have those same meanings when used in this Design Manual.

II. Design Requirements for all Rights-of-way

A. Pole stability requirements

Nodes, equipment cabinets, and Poles shall be constructed based on an industry standard pole load analysis completed and submitted to the City indicating that the Service Pole or network support Pole to which the Network Node is to be attached will safely support all proposed and existing equipment. Documentation shall be completed and submitted to the City indicating that the Pole foundation or anchoring mechanism is (i) sufficient for the type of soil in the proposed location, and (ii) sufficient to withstand typical area wind loads as identified by the adopted construction codes of the City. Poles shall be constructed with foundations based on a (i) soils test if the proposed Pole is over thirty (30) feet in height, or (ii) a geotechnical survey if the proposed Pole is over forty-five (45) feet in height.

B. Limit on number of Network Nodes per Pole.

The number of Network Nodes allowed per Pole shall be limited based on the pole load analysis.

C. Minimum placement height

Network Node equipment placed on new and existing Poles shall be placed more than twelve (12) feet above ground level. If a Network Node or other equipment is projecting toward the Street, for the safety and protection of the public and vehicular traffic, the attachment shall be installed no less than sixteen (16) feet above the ground.

D. Equipment size limitations

All Facilities shall be constructed and limited in size in accordance with Section 284.003 of the Texas Local Government Code.

E. Compliance with National Electrical Safety Code

Facilities must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and any Utility Pole owner's construction standards.

F. New Pole locations and construction requirements

New Poles shall be constructed with break away bases and located as close as possible to the outside edge of the Right-of-way. New poles shall be spaced apart from existing poles by no less than 100 feet. New poles may not be located within three (3) feet of sidewalks, pedestrian paths or bicycle paths. New poles may not be located within ten (10) feet of driveways, streets, or highways. New Poles should provide minimum disruption of visibility and site lines for nearby driveways, windows and other existing improvements.

G. Installations near intersections

A User shall not install structures within 100 feet of any intersection, as measured from the closest outside corner of the two intersecting Streets.

H. Installation near schools and parks

For the safety of pedestrians, particularly small children, and to allow full line of sights near school property and Parks, a User shall not install ground equipment or new Poles within a Right-of-way inside the boundary line of school property or within 250 feet of the boundary line of school property. A User shall not install ground equipment within a Right-of-way inside the boundary line of a Park or within 250 feet of the boundary line of a Park.

I. Installation of wires, conduits or cables

Any structures that include wires, conduits, or cables shall be located underground, except where the City Engineer identifies based on the Permit application that existing utility or other structures prevent the safe installation of the proposed structures underground. Where wires, conduits, or cables are required to be installed aboveground, they shall be attached to existing Poles where possible and must not hang lower than twelve (12) feet above ground level. New Poles installed to support aboveground wires, conduits, or cables shall comply with all location and construction requirements for new Poles.

J. Installations in utility easements

Facilities may be installed in utility easements where i) the installation will not interfere with existing or planned utilities, and ii) the underlying property owner grants written authorization, except where installation of a Collocated Network Node does not require installation of any ground equipment.

K. Height limitation

A User shall ensure that the vertical height of a structure installed in a Public Right-of-way does not exceed the lesser of:

- i. 10 feet in height above the tallest existing Utility Pole located within 500 linear feet of the proposed structure in the same Public Right-of-way; or
- ii. 55 feet above ground level.

L. Electrical supply

Users shall be responsible for obtaining any required electrical power service to the structures. Users shall not allow or install generators or back-up generators in the Rights-of-way.

III. Designated areas; Right-of-way Management Map

Providers are not required to obtain conditional use permits or other land use approvals for location in Rights-of-way, except as specified in this section. In addition to the requirements of Section II of this Design Manual, the following requirements shall apply to any structures to be located in designated areas as described by this Section. The requirement for a conditional use permit or other land use approval in designated areas is in addition to any other Permit required by City Code.

A. Historic Areas / Design Areas with Decorative Poles

A User must obtain advance written consent from the City Council before installing structures in an area of the City that has been designated as a Historic Area or as a Design Area with Decorative Poles. The City may designate additional Historic Areas and Design Areas.

B. Underground areas

A User shall comply with undergrounding requirements where applicable, including City ordinances, zoning regulations, State Law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a Public Right-of-way without first obtaining zoning or land use approval.

C. Parks / residential areas

A User may not install a new Pole in a Public Right-of-way without City Council's written consent if the Public Right-of way is in a Park or is adjacent to a Street that is:

- i. Not more than 50 feet wide; and
- ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

D. Designation of areas under this section

Design Areas with Decorative Poles, Historic Areas, underground areas, Parks, and residential areas adjacent to Streets not more than 50 feet wide are those shown on the Rights-of-way Management Map, as adopted and amended from time to time by City Council. A User's structures in a particular location shall be subject to the area designations in place at the time of a Permit application for those particular structures.

Any area where all Poles within 1,000 feet of a proposed location are of a similar design with no additional permanent appurtenances attached are designated by this section as Design Areas with Decorative Poles, even where such an area is not shown as a Design Area on the Right-of-way Management Map.

E. Land Use Approval process

The following shall constitute the process for obtaining advance written consent of City Council or land use approval for installation of any structures required to obtain such approval by this Design Manual.

(1) *Application.* The User shall submit an application for conditional use permit, in addition to any other Permits required for construction of structures and use of the Public Rights-of-way. This conditional use permit application shall include documentation for the following:

- i. plans or design specifications compliant with specific design criteria for an area;
- ii. a conditional use permit fee, provided the total fees paid by a Provider for a Facility do not exceed the maximum allowed construction permit fee in Chapter 26 of the City Code;
- iii. the locations of all other buildings, structures, Facilities and Poles located within 1000 feet of the proposed location; and
- iv. at least one photo of the nearest Pole to the proposed location.

(2) *Processing.* The User's application for conditional use permit shall be processed for review by the City's planning and zoning commission and the City Council using the City's standard notice procedures, administrative processes, and scheduling procedures for zoning applications.

(3) *Evaluation criteria.* Conditional use permit applications for Facilities shall be evaluated using only the following criteria:

- i. alternative locations available within 1000 feet for the specific type of structure being requested;
- ii. Concealment measures proposed for minimizing the impact of the proposed structures on surrounding land uses; and
- iii. conditions to the Permit requested by landowners within 200 feet of the proposed location.

Note: Conditional use permits where the proposed plans for Facilities meet the design criteria for a proposed location should be granted for that location or an alternate location within 1,000 feet, as determined by the City Council.

IV. Design requirements in underground areas

In designated underground areas, including areas where utilities are required to be installed underground by City ordinance, zoning regulations, State Law, private deed restrictions and other public or private restrictions that prohibit installing aboveground utilities or structures in a Public Right-of-way without first obtaining zoning or land use approval, the User must install structure underground, or obtain land use approval in accordance with Section III E. of this Design Manual to install above ground structures. The City may designate additional underground areas in accordance with filed plats, or conversions of overhead to underground areas.

V. Design requirements in historic and Design Areas

A. Concealment measures required

As a condition for land use approval of structures in Design Areas with Decorative Poles or in a Historic Area, the City shall require Concealment measures for any above ground structures. Any request for installations in designated areas must be accompanied with proposed Concealment measures that are similar to an existing structure that is 1) within the area, 2) within 1,000 feet of the proposed location, and 3) is not a nonconforming structure. Structures shall be constructed and maintained in compliance with all City, State, and Federal historic preservation laws and requirements.

B. Concealment shall comply with other City Code requirements

Where a User is required to employ Concealment measures, the User shall comply with other City Code requirements, including zoning and Uniform Development Code requirements, where applicable. Colors in designated areas must be approved by the Public Works Director from a palette of approved colors for that area. Unless otherwise provided, all colors shall be earth tones or shall match the background of any structure the Facilities are located upon and all efforts shall be made for the colors to be inconspicuous.

VI. Design requirements in Parks and residential areas

A. Conditional use permit required.

A User may not install a new Pole in a Public Right-of-way without the City's written consent obtained in accordance with Section III E. of this Design Manual if the Public Right-of-way is in a Park or is adjacent to a Street or thoroughfare that is:

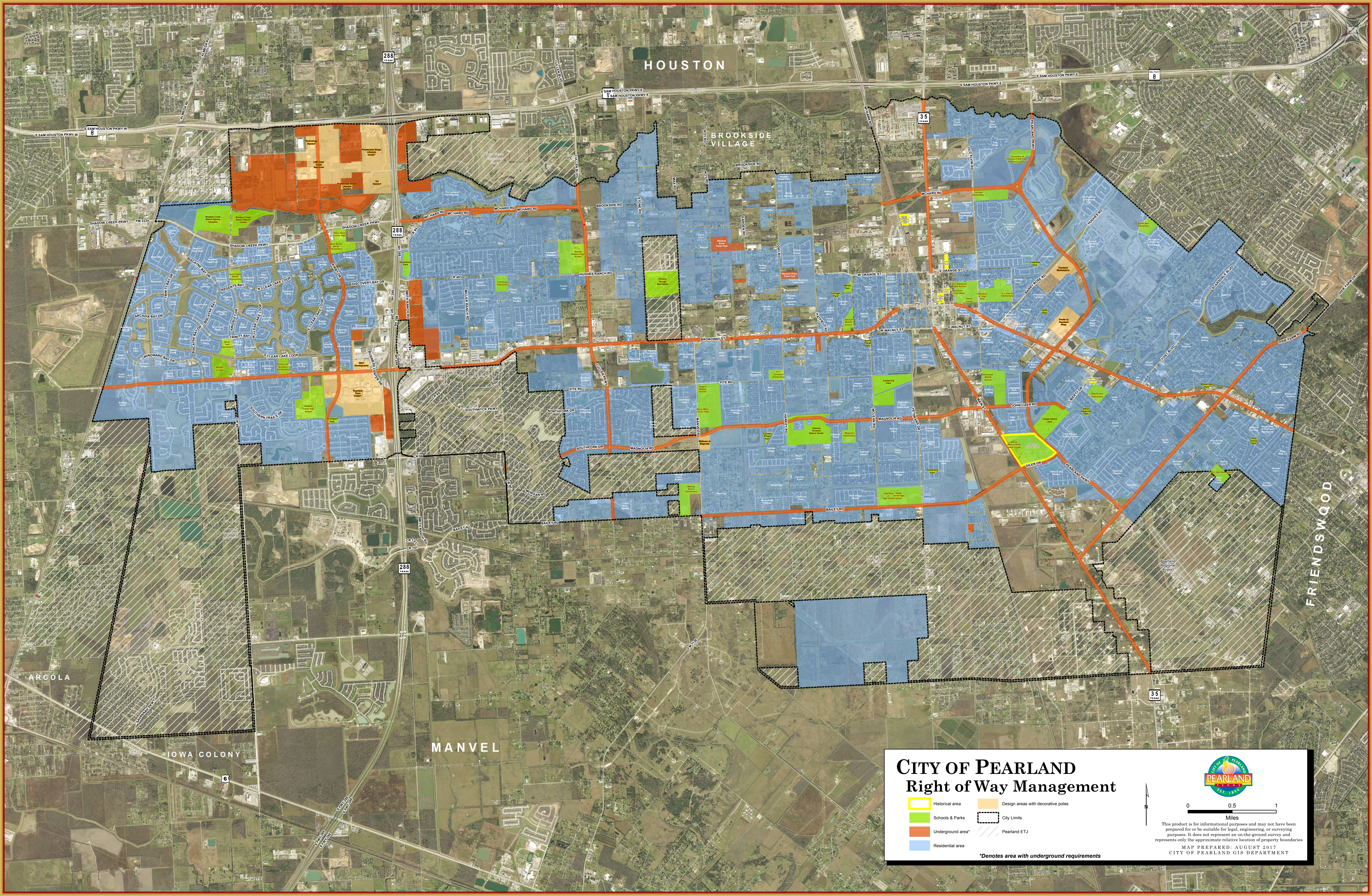
- i. not more than 50 feet wide; and
- ii. adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

VII. Administrative hearing

Should a User desire to deviate from any of the standards set forth in this Design Manual, to appeal an interpretation by City staff of the City regulations applicable to structures located in the Rights-of-way, or allege a specific provision of this Design Manual is inconsistent with State or Federal Law as applied specifically to that User, the User may request an administrative hearing before a board of appeals. The Building Board of Adjustment shall act as the board of appeals for a request for variance or appeal of administrative decision. The process before the Building Board of Adjustment for an application, hearing and vote shall follow the process set out for a zoning variance.


VIII. Unauthorized and improperly located structures

If any structures are installed in a location that has not obtained a Permit, that impedes pedestrian or vehicular traffic, or that obstructs the legal use of a Public Right-of-way by utility providers, then the User shall promptly remove the structures. After 30 days advance written notice to remove unauthorized or improperly located structures, the City may remove and dispose of structures that remain unauthorized or improperly located.



CITY OF PEARLAND Right of Way Management

- Historical area
 - Schools & Parks
 - Underground area*
 - Residential area
 - Design areas with decorative poles
 - City Limits
 - Pearland ETJ
- *Denotes area with underground requirements



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Miles

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

MAP PREPARED: AUGUST 2017
CITY OF PEARLAND GIS DEPARTMENT