

ORDINANCE NO. 2020-07-\_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 90, "STREETS AND SIDEWALKS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, BY AMENDING ARTICLE IV, "RIGHTS-OF-WAY USE AND MANAGEMENT," IN PART, BY AND THROUGH THE DELETION OF SECTIONS 90-227, "CERTIFICATED TELECOMMUNICATION PROVIDERS," AND 90-228, "NETWORK PROVIDERS," IN THEIR ENTIRETY AND BY THE ADOPTION OF A NEW ARTICLE V, ENTITLED "SMALL WIRELESS FACILITIES," TO PROVIDE REGULATIONS FOR THE USE OF THE CITY'S RIGHTS-OF WAY BY CERTIFICATED TELECOMMUNICATIONS PROVIDERS IN ACCORDANCE WITH CHAPTER 283 OF THE TEXAS LOCAL GOVERNMENT CODE; ADOPTING A SMALL WIRELESS FACILITIES DESIGN MANUAL, DATED JULY 21, 2020, TO REPLACE THE EXISTING PUBLIC RIGHT-OF-WAY WIRELESS SERVICES DESIGN MANUAL IN ITS ENTIRETY; AND AMENDING APPENDIX A – SCHEDULE OF FEES BY DELETING THE FEES ASSOCIATED WITH SECTION 90-228 AND ADOPTING NEW FEES APPLICABLE TO NETWORK PROVIDERS IN ACCORDANCE WITH ARTICLE V; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS,** the City of McKinney, Texas, (the "City") is a Home-Rule City possessing the full power of local self-governance pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

**WHEREAS,** the Texas Legislature adopted Senate Bill 1004 (SB 1004), which became effective on September 1, 2017; and

**WHEREAS,** SB 1004 takes away much of a city's power to regulate the installation of cell service and wireless internet by telecommunications providers and allows such providers to put up "small cell network nodes" within the public rights-of-ways and private property on streetlights, street signs and utility poles to the detriment of cities and private property owners and without fair and reasonable compensation for the use of their respective property rights; and

**WHEREAS,** the City Council of the City of McKinney ("City Council") has determined that the adoption of this Ordinance best serves the general welfare of the City and its residents by providing a regulatory base for the providers of telecommunications services in the City, subject to reasonable restrictions, which will preserve the public health and safety, and will protect and enhance the City's environmental and aesthetic quality to the limited extent allowed by SB 1004; and

**WHEREAS,** the City Council has further determined that the amendments provided herein will ensure the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), as applicable to the use of the City's Rights-of-Way by Certified Telecommunications Providers and Network Providers, is consistent with state law, as it has been amended by SB 1004.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:**

Section 1. **FINDINGS**

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. **CHAPTER 90, "STREETS AND SIDEWALKS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, IS HEREBY AMENDED BY DELETING SECTIONS 90-227, "CERTIFICATED TELECOMMUNICATION PROVIDERS," AND 90-228, "NETWORK PROVIDERS," IN THEIR ENTIRETY**

From and after the effective date of this Ordinance, Sections 90-227 and 90-228 are hereby deleted in their entirety.

Section 3. **CHAPTER 90, "STREETS AND SIDEWALKS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, IS HEREBY AMENDED BY THE ADOPTION OF A NEW ARTICLE V ENTITLED "SMALL WIRELESS FACILITIES" TO PROVIDE REGULATIONS FOR THE USE OF THE CITY'S RIGHTS-OF WAY BY CERTIFICATED TELECOMMUNICATIONS PROVIDERS IN ACCORDANCE WITH CHAPTER 283 OF THE TEXAS LOCAL GOVERNMENT CODE**

From and after the effective date of this Ordinance, Chapter 90 "Streets and Sidewalks," of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by the adoption of a new Article V entitled "Small Wireless Facilities" to read as follows:

**"ARTICLE V. – SMALL WIRELESS FACILITIES**

**Sec. 90-304. - TITLE.**

This article shall be known and cited as the "Small Wireless Facility Siting Ordinance for the City of McKinney, Texas."

**Sec. 90-305. - Purpose and Scope.**

The purpose and scope of this article are as follows:

- (a) The purpose of this article is to establish policies and procedures for the placement of node support poles, transport facilities, and network nodes, as they are defined by this article and Chapter 284 of the Texas Local Government Code, within the rights-of-way in the City of McKinney, which will provide public benefits and will be consistent with the preservation of the integrity, safe usage, and visual qualities of the City public right-of-way and the City as a whole. The article establishes standards for the siting and design of node support poles, transport facilities, and network nodes. As such, the provisions of this article are intended to regulate and guide the installation of network nodes on existing infrastructure and to regulate and guide the installation of new node support poles and transport facilities when needed. It is the desire of the City to encourage the development of an aesthetically pleasing local environment. It is also the intent of the City to encourage the expansion of wireless technology, as it provides a valuable service to City residents and businesses. It is not the City's goal to unreasonably discriminate among providers of functionally equivalent services nor to have the effect of prohibiting, either directly or indirectly, the provisions of small wireless

services. It is the City's goal to encourage wireless providers to construct new facilities disguised through techniques of camouflage, concealment, and stealth design, as defined in this article.

- (b) In enacting this article, the City is establishing uniform standards to address issues presented by network nodes, including without limitation, ensuring that network nodes, transport facilities, or node support poles do not adversely affect:
  - (1) use of streets, sidewalks, alleys, parkways, water facilities, sewer facilities, storm drain facilities and other public ways and places;
  - (2) vehicular and pedestrian traffic;
  - (3) the operation of facilities lawfully located in public right-of-way or public property;
  - (4) the ability of the City to protect the environment, including the prevention of damage to trees;
  - (5) the character of residential and historic areas, and city parks, in which network nodes may be installed; and
  - (6) the rapid deployment of network nodes to provide the benefits of wireless services.
- (c) A recent FCC Order states that all local jurisdictions must comply with various rules and recommendations on the exercise of local aesthetic, zoning, public works, and fee schedules when dealing with network node (Small Wireless Facility) installations. The FCC Order also concludes that local governments function as regulators of their rights-of-way. The FCC's Declaratory Ruling and Third Report & Order concluded that when local governments regulate, they do so as a regulatory function. This article supports this view of local governments acting as regulators. Thus, McKinney, Texas is in clear need of policies that support their role as a regulator of their rights-of-way.
- (d) The City recognizes its responsibilities under the federal Telecommunications Act of 1996 and Texas law (Chapter 284 of the Texas Local Government Code) and believes that it is acting consistent with the federal Telecommunications Act and Chapter 284 of the Texas Local Government Code in ensuring that development activity does not endanger public health, safety, or welfare. The City intends this article to ensure that the installation, augmentation and relocation of network node installations in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the federal Telecommunications Act and Chapter 284 of the Texas Local Government Code with the rights, safety, privacy, property and security of residents of the City.
- (e) This article is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any wireless telecommunications service provider's ability to provide wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service; (3)

unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify wireless telecommunications service facilities on the basis of environmental effects of radio frequency emissions so long as such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or state law; or (6) otherwise authorize the City to preempt any applicable federal or state law.

- (f) This article supersedes all articles, parts of articles or rules adopted prior hereto that are in conflict herewith, to the extent of such conflict.

**Sec. 90-306. – Definitions.**

Whenever used in this article, the following terms, as well as their singular, plural, and possessive forms, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise:

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

*Applicable codes* means:

- (1) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (2) local amendments to those codes to the extent not inconsistent with this article.

*Applicable law* means Chapter 284 of the Texas Local Government Code and federal law to the extent it preempts local control.

*Applicant* means any person who submits an application and is a network provider.

*Application* means a request submitted by an applicant (i) for a permit to collocate network nodes; or (ii) to install a transport facility; or (iii) approve the installation, replacement or modification of a pole.

*Base station* means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not include a tower or any equipment associated with a tower.

*Certificated telecommunications provider* or *CTP* means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by Texas Local Government Code Chapter 283 or "the Act."

*Chapter 284* means Texas Local Government Code; Title 9. Public Buildings and Grounds; Subtitle A. Municipal Public Buildings and Grounds; Chapter 284. Deployment of Network Nodes in Public Right-of-Way.

*City* means the City of McKinney and the city's officers and employees.

*City Code* means those ordinance provisions adopted by the City relevant to use of the public right-of-way where compliant with applicable law.

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

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

*Day* means calendar day.

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

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

*Director* means the Director of the City's Public Works Department or his or her respective designated representative.

*Duct or conduit* means a single enclosed raceway for cables, fiber optics, or other wires. "Duct" or "conduit" shall not include the maintenance duct associated with a conduit that is reserved for use in replacing damaged cable or for rerouting purposes.

*Easement* means and shall include any public easement or other compatible use created by dedication, or by other means, to the city for public utility purposes or any other purpose whatsoever provided that the use of such public easement or other compatible use is not limited or restricted in its scope and duration. "Easement" shall also include a private easement used for the provision of utilities to the extent only that the applicant acquires or obtains permission to use such private easement.

*Eligible facilities request* means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii)

Removal of transmission equipment; or (iii) Replacement of transmission equipment.

*Facilities* means the plant, equipment, and property, including, but not limited to, lines, transport service, poles, mains, pipes, conduits, ducts, cables and wires located under, on or above the surface of the ground within the public right-of-way and valves, and related facilities and equipment used or useful for the provision of utility services, wireless or network services, or communications services to the public.

*Historic district* means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law. Historic District means and includes the following currently designated areas:

- (1) Historic District Number 1 (which numeric designation is for purposes of this Ordinance) is the area referred to as the Historic Neighborhood Improvement Zone. Its boundaries are identified in Appendix A to the Design Manual and are hereby incorporated herein by reference for all purposes allowed by law.
- (2) Historic District Number 2 (which numeric designation is for purposes of this Ordinance) is the area referred to as the Historic Residential and Commercial Historic Districts. Its boundaries are identified in Appendix B to the Design Manual and are hereby incorporated herein by reference for all purposes allowed by law.
- (3) Historic District Number 3 (which numeric designation is for purposes of this Ordinance) is the area referred to as the Cotton Compress Historic District. Its boundaries are identified in Appendix C to the Design Manual and are hereby incorporated herein by reference for all purposes allowed by law.
- (4) Historic District Number 4 (which numeric designation is for purposes of this Ordinance) is the area referred to as the Cotton Mill Historic District. Its boundaries are identified in Appendix D to the Design Manual and are hereby incorporated herein by reference for all purposes allowed by law.
- (5) Historic District Number 5 (which numeric designation is for purposes of this Ordinance) is the area referred to as the Flour Mill Historic District. Its boundaries are identified in Appendix E to the Design Manual and are hereby incorporated herein by reference for all purposes allowed by law.

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

*Macro tower* means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 90-309 of this article and that supports or is capable of supporting antennas.

*McKinney Code* means the Code of Ordinances, City of McKinney, Texas.

*Micro network node* means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and

12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

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

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

- (1) includes:
  - a. equipment associated with wireless communications;
  - b. a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
  - c. coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and
- (2) does not include:
  - a. an electric generator;
  - b. a pole; or
  - c. a macro tower.

*Network provider* means:

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

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

*Order* means the FCC's Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC-18-133, released September 27, 2018.

*Park* means an area that is zoned or otherwise designated by the City's Parks Department and/or the City's Parks Master Plan as a public park, trail, or open space for the purposes of both passive and recreational activities.

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

*Person* means an individual, corporation, company, public service provider, public infrastructure contractor or its representative, permittee, governmental entity, limited liability

company, joint venture, business trust, estate, partnership, association, trust, or other legal entity or organization.

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

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

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

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

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

*Regional Employment Center* means an area that includes all the properties that extend generally from the centerline of State Highway 121 northward to FM 720 and including some properties north of FM 720. This district spans from FM 2478 (Custer Road) to U.S. Highway 75. Its boundaries are identified in Appendix F attached to the Design Manual and incorporated herein by reference for all purposes allowed by law.

*Rights-of-way use and management ordinance* means the City ordinance that establishes the rules and regulations regarding the orderly use of the public right-of-way within the geographical limits of the city, which is found in Chapter 90, Article IV (Rights-of-Way Use and Management) of the McKinney Code, as amended, and is incorporated herein by this reference.

*Routine Maintenance* means:

- (1) work in the public right-of-way that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
- (2) replacing or upgrading a network node or pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or
- (3) the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles, in the public right-of-way and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way.

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

- (1) a pole that supports traffic control functions;

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

*Small cell or small wireless facility* means a facility meeting all of the following criteria:

- (1) facilities mounted on structures 55 feet or less in height including their antennas, or on structures no more than 10 percent taller than other immediately adjacent structures, or that do not extend existing structures where they are located to a height of more than 55 feet or by more than 10 percent, whichever height is greater;
- (2) each antenna is no more than 3 cubic feet in volume;
- (3) all other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associate equipment on the structure is no more than a cumulative amount of 28 cubic feet in volume; and
- (4) facilities do not result in human exposure to radio frequency radiation in excess of applicable safety standards specified in 47 CFR Rule 1.1307(b).

Unless specifically provided for herein, provisions addressed to network nodes herein shall also apply to small cells and small wireless facilities.

- (5) It is not the intent of this definition to violate any section of Chapter 284 or the FCC Order.

*Stealth* shall mean a method that hides or conceals an antenna, supporting electrical or mechanical equipment or any other support structure, including network nodes.

*Technical Grounds* means, in light of prevailing industry and engineering standards, reasons of insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes consistent with applicable law and City Code.

*Toll* means to pause in the progression of the shot clock due to an incomplete application.

*Tower* means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

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

*Utility pole* means a pole that provides:

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

- (2) services of a “telecommunications provider,” as defined by [Section 51.002, Texas Utilities Code](#).

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

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

*Wireless facilities* mean “Micro Network Nodes,” “Network Nodes,” and “Node Support Poles”.

**Sec. 90-307. - Permitted Use; Application and Fees.**

- (a) Permitted Use: Collocation of network nodes, and the placement of transport facilities and node support poles, meeting the parameters set forth in Section 90-309 below and in applicable law, shall be a permitted use. No zoning or land use review shall apply, subject to the requirements in Section 90-309.
- (b) Permit Required. No person shall place a network node, transport facility, or node support pole in the public right-of-way, without first filing a permit application and obtaining a permit therefore, except as otherwise provided in this article.
- (c) Permit Application. All permit applications filed pursuant to this article shall be on a form, paper or electronic, provided by the City. The Applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.
- (d) Application Requirements. The permit application shall be made by the network provider or its duly authorized representative and shall contain the following:
- (1) The Applicant’s name, address, telephone number, e-mail address, and signatures.
  - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application.
  - (3) The applicant shall disclose if the applicant proposes that the facilities will be located in: a historic district; within three-hundred feet (300’) of public art; near a historic site, or a structure or landmark recognized as historic by the city, state or federal government; within a municipal park; within a residential district; or in an area that has undergrounding requirements.
  - (4) The applicant shall provide detailed drawings in an electronic form and format acceptable to the City, with calculations and dimensions that show strict conformity to the size, distance and spacing limitations in this article.
  - (5) The applicant requesting a permit shall provide the City with documentation in the format specified by the City.

- (6) The applicant shall provide analysis indicating that the proposed facilities will not cause any interference with City public safety radio system, traffic signal light system, or other City safety communications components, and City SCADA systems.
- (7) The applicant must provide the specific address for all facilities that will be located on a pole. Addresses are determined by the City. The applicant shall provide a dated aerial photograph of the overall site depicting the site's relation to major streets and highways and poles. For any application requesting a new pole, photos are required showing the before and after conditions.
- (8) The applicant must ascertain, in consultation with the City, whether any other authorizations from the City will be required in order for the proposed installation to be made and completed. For all applications for the installation or construction of wireless facilities, including network nodes and node support poles, if any such additional authorizations are required, the applicant is responsible for providing all of the information necessary for the City to review and act on the additional authorizations. Such additional authorizations that must be included with the application shall include, but not be limited to, executed agreement(s) with the City for attachment to service poles.
- (9) A site specific non-ionizing electromagnetic radiation (NIER) report for the network node equipment type and model being installed at the site that is endorsed by a radiofrequency engineer licensed in the State of Texas, including a certification that the network node complies with all radiation and electromagnetic standards shall be submitted to the City within ninety (90) days after installation of the facilities. The report shall specify approach distances to the general public and occupational workers at the ground and antenna centerline levels. The report shall include instructions regarding powering off the equipment or contact information for a person who can power off the equipment. No significant changes to the power, location, RF emission patterns and/or emitting frequencies may be made without prior notification and approval by the City. However, non-substantive changes, for example, in-kind replacements of transmitters of the same frequency, radiation patterns and power are permitted. The City retains the right to independently verify the RF patterns as installed.
- (10) Completeness. The application is not complete unless it contains all information required by this Section, requested on the application form, and required by any supplemental list of

required documentation provided by the City with the application form.

(e) Exceptions.

- (1) No application, permit or fee is required of network providers for:
  - a. routine maintenance that does not require excavation or the closing of all or part of any sidewalks or vehicular lanes in a public right-of-way;
  - b. replacing or upgrading facilities that are substantially similar in size or smaller; and that do not require excavation or the closing of all or part of any sidewalks or vehicular lanes in a public right-of-way; or
  - c. the installation, placement, maintenance, operation, or replacement of micro network nodes or similar structures that are strung on cables between existing poles or node support poles, in compliance with the National Electric Safety Code. If, however, traffic will be affected by the installation, placement, maintenance or replacement of a micro network node or similar structure, a traffic control plan is required.
- (2) Substantially similar shall mean all of the following, collectively:
  - a. the new or upgraded facility, including the antenna or other equipment element, will not be more than ten (10) percent larger than the existing facility and does not result in the node exceeding the size limitations in Section 90-309; or the extension of facilities less than six feet from a tower; or the new or upgraded pole will not be more than ten (10) percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by this article and Local Government Code Chapter 284, as may be further amended; or, increasing the size of ground equipment cabinets by ten percent in height or volume; and
  - b. the replacement or upgrade does not include replacement of an existing pole; and
  - c. the replacement or upgrade does not defeat existing concealment elements of a pole; and
  - d. the determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the facilities as approved by the City.

- (3) Although no application, permit or fee is required, the City requires advance notice of the work described above and approval of the pole's owner for that specific address. Work under this Section must still meet all other requirements in this article.
- (f) Information Updates. Any amendment to information contained in a permit application shall be submitted in writing to the City within 30 days after the change necessitating the amendment.
- (g) Application Fees.
- (1) Network Node. Payment: (i) of not less than the one-time fee as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance, for a single up-front application that includes up to, but not more than, five network nodes, with an additional fee as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance, for each additional network node beyond five; or (ii) a fee established by the City based on the City's actual, direct and reasonable costs incurred in granting or processing an application as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance; or (iii) a fee agreed upon by the City and a permittee in a master agreement.
- (2) Node Support Pole. Payment: (i) of not less than a one-time fee as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance, for each node support pole addressed in an application that includes a new Pole; or (ii) a fee established by the City based on the City's actual, direct and reasonable costs incurred in granting or processing an application as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance; or (iii) a fee agreed upon by the City and a permittee in a master agreement.
- (3) The City of McKinney reserves the right to require an applicant to pay the fees and costs of any consultant retained by the City to assist in the review of plans, applications, reports, inspections, and/or testing.
- (h) Design Manual. In addition to the application requirements above, the application must conform with the design guideline requirements as specified in the City's *Small Wireless Facilities Design Manual*, as amended, and are incorporated herein by this reference.

**Sec. 90-308. - Action on Permit Applications.**

- (a) Review of Applications. The City shall review applications for network nodes, node support poles and transport facilities in light of their conformity with

applicable law and the McKinney Code and shall issue such permits on nondiscriminatory terms and conditions subject to the following requirements:

- (1) Within 10 days of receiving an application for a network node, node support pole, or a transport facility, the City shall determine and notify the Applicant whether the application is complete; or if incomplete, the City must specifically identify the missing information in such notification. There shall be no fee charged for completion and resubmittal of an application.
- (2) The City shall make its final decision to approve or deny a complete application no later than (i) 21 days after receipt of a complete application for a transport facility, (ii) 60 days after receipt of a complete application for a network node; and (iii) 90 days after receipt of a completed application for a new node support pole.
- (3) Unless otherwise agreed upon in writing by the applicant and City, for an initial application to install one or more network nodes, node support poles, or transport facilities, if the City notifies the applicant on or before the tenth (10th) day after submission that the application is materially incomplete, and identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the time for the City to act on the application is tolled, and the shot clock date calculation shall restart at zero (0) on the date on which the applicant submits all the documents and information identified by the City as being required to render the application complete.
- (4) For any resubmitted application following the City's notice of deficiency, the time for the City to act on the application shall be tolled for the number of days from:
  - a. The day after the date when the City notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and identifies the missing documents or information that need to be submitted based on the City's original request, until the date when the applicant submits all the documents and information identified by the City as being required to render the application complete, provided that notice to the applicant is served on or before the tenth (10th) day after the date when the applicant makes a supplemental submission in response to the City's request.
- (5) The "shot clock date" or starting date for a network node, node support pole, or transport facility application is determined by counting forward, beginning on the day after the date when the application was submitted, by the

number of calendar days of the shot clock period, provided, that if the date calculated in this manner is a local, State, or federal holiday within the City or State (“legal holiday”), the shot clock date is the next “business day” after such date. The term “business day” means any day that is not a Saturday, Sunday, or legal holiday of the City or State or United States.

- (6) The City shall advise the Applicant in writing of its final decision, and, if denied, the basis for that denial, including the specific provisions of City Code or applicable law on which the denial was based, and send the documentation to the Applicant on or before the day the City denies the application. The Applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 90 days of receipt of the amended application. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.
  - (7) An applicant seeking to collocate network nodes may, at the Applicant’s discretion, file a consolidated application and receive permits for up to 30 network nodes. Provided however, the City’s denial of any node within a single application shall not affect other nodes submitted in the same application. The City shall grant permits for any and all nodes in a single application that it does not deny, subject to the requirements of this Section.
- (b) Review of Eligible Facilities Requests. Notwithstanding any other provision of this article, the City shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR § 1.6100.

**Sec. 90-309. - Network Nodes in the Public right-of-way; Maximum Height; Other Requirements.**

- (a) Maximum Size of Permitted Use. Permitted use network nodes, including without limitation, network nodes, transport facilities, or node support poles in the public right-of-way shall be subject to the following size limitations:
  - (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 (6) cubic feet in volume;
    - b. may not exceed a height of three feet (3’) 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’);

- (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 (6) cubic feet;
  - b. may not exceed a height of three feet (3') 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');
  - d. must be mounted flush with the pole near the top;
- (3) The cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:
  - a. be more than 28 cubic feet in volume; or
  - b. protrude from the outer circumference of the existing structure or pole by more than two feet (2');
  - c. attachments on all poles shall be at least 12 feet above grade, and if a Network Node attachment is projecting toward the street, the attachment shall be installed no less than 16 feet above the ground.
- (4) Ground-based enclosures, separate from the pole, may not be higher than three feet six inches (3'-6") from grade, wider than three feet six inches, or deeper than three feet six inches (3'-6");
- (5) Pole-mounted enclosures may not be taller than five feet (5'); and
- (6) The following types of associated ancillary equipment are not included in the calculation of equipment volume:
  - a. electric meters;
  - b. concealment elements;
  - c. telecommunications demarcation boxes;
  - d. grounding equipment;
  - e. power transfer switches;
  - f. cut-off switches; and
  - g. vertical cable runs for the connection of power and other services.
- (7) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet (2').
- (8) 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.
- (9) 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 does not exceed the lesser of:

- a. 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or
  - b. 55 feet above ground level.
- (10) A network provider shall comply with all applicable FCC, state, and local codes, provisions, or regulations that concern public safety. Network node facilities must not result in human exposure to radio frequency radiation in excess of applicable safety standards specified in 47 CFR § 1.1307(b), or as specifically amended by the FCC. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the wireless provider or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit. The wireless provider or its representative shall submit documentation of this testing to the City within ninety (90) days after installation of the facility. The wireless provider or its representative shall also conduct RF emissions testing annually and submit documentation of this testing to the City. In addition, the City retains the right to independently verify the RF emissions testing.
- (11) **EXCEPTIONS.** A network provider may construct, modify, or maintain in a public right-of-way a network node or node support pole that exceeds the height or distance limitations prescribed by this article only if the City approves the construction, modification, or maintenance of such network node or node support pole subject to all applicable zoning or land use regulations and applicable codes.
- (b) Undergrounding Provisions. A network provider shall comply with nondiscriminatory undergrounding requirements, 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. This requirement or restriction shall not be interpreted to prohibit a network provider from replacing an existing structure.
- (c) Concealment. Facilities shall be concealed or enclosed as much as reasonably possible in an equipment box, cabinet, or other unit that may include ventilation

openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and are either not visible or visually minimized. Guy wires, anchors, pedestals, boxes, and other above grade facilities shall not fully or partially encroach within, over or above a sidewalk area.

- (d) Historic Areas and Historic Districts. Stealth or concealment of facilities and poles shall be required by the City in historic districts, and within three-hundred (300) feet of a historic site or structure or historic landmark recognized by the city, state or federal government. Subject to the permit application approval time frames in Section 90-308, a network provider must obtain advance approval from the City before collocating new network nodes or installing new node support poles in any areas zoned or designated as a historic district. Such installations shall be subject to the design and aesthetic standards of such areas.
- (e) Design Districts, and Regional Employment Centers. Stealth or concealment of facilities and poles shall be required by the City in design districts and regional employment centers. Subject to the permit application approval time frames in Section 90-308, a network provider must obtain advance approval from the City before collocating new network nodes or installing new node support poles in any areas zoned or designated as a design district or regional employment center. Such installations shall be subject to the design and aesthetic standards of such areas.
- (f) Installation in Parks and Residential Areas. A network provider may not install a new node support pole in a public right-of-way without the City's discretionary, nondiscriminatory, written consent of the Director of the City Department of Public Works or his or her respective designated representative, if the public right-of-way is located in a park or is adjacent to a street or thoroughfare that is 1) not more than 50 feet wide; and 2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions. A network provider shall comply with private deed restrictions and other private restrictions when installing network nodes in parks and residential areas. It is specifically understood and agreed that a network provider generally is not allowed or authorized to install network nodes in public parks.

In addition, a Network Provider is prohibited from installing a Network Node on an existing pole in a public right-of-way without written consent from the City Council if the public right-of-way is located in or adjacent to a street or thoroughfare that is adjacent to a public park or single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions. A Network Provider installing a Network Node or a Node Support Pole in a public right-of-way shall also comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

- (g) Zoning. A network provider seeking to construct, replace or modify a pole or node in the public right-of-way that exceeds the height or size limits contained in this Section, shall be subject to applicable zoning requirements.

**Sec. 90-310. - Effect of Permit.**

- (a) Authority Granted. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this article, and does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the public right-of-way or any private easement.
- (b) Time of Installation. A network provider shall begin the installation for which a permit is granted not later than six months after final approval and shall diligently pursue the installation to completion. Provided, however, the City may place a longer time limit on completion or grant reasonable extensions of time as requested by the network provider.
- (c) Right to Occupy. Once a network provider has collocated a network node or placed a node support pole pursuant to a permit, the provider shall be permitted to continue to maintain such collocation or such pole unless required to remove or relocate under the terms of this article.
- (d) Interference with network nodes. City will not grant a permit to any person to install any network node or other wireless facility if the City knows or has reason to know that such person's use of such network node or other wireless facility may in any way adversely affect or interfere with the use and operation of an existing and operational network node for which the City has previously issued a permit. Notwithstanding the foregoing, the City does not ensure or guarantee that any network node or other wireless facility will be free of interference. In addition, any disputes regarding interference between persons or network providers are beyond the City's regulatory control and are subject to resolution through the courts and/or the Federal Communications Commission.

**Sec. 90-311. - Removal, Relocation or Modification of Network Nodes in the ROW.**

- (a) Notice. Within 90 days following written notice from the City, a network provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any network node or node support pole within the public right-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the public right-of-way.
- (b) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to disconnect or move any network node located within the public right-

of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the network provider and allow the network provider an opportunity to move its own facilities, within ten (10) days of such notice, prior to the City disconnecting or removing a facility and shall notify the network provider after disconnecting or removing a network node or node support pole.

- (c) Abandonment of Facilities. Upon abandonment of a network node or node support pole within the public right-of-way, the network provider shall notify the City within 90 days. Following receipt of such notice, the City may direct the network provider to remove all or any portion of a network node or node support pole if the City, or any of its departments, determines, subject to City Code, that such removal is necessary to protect the public health, safety and welfare.

**Sec. 90-312. - Public Right-of-Way Rate.**

- (a) Annual Rate. Once a network provider has installed and made operational a network node in the public right-of-way, the network provider shall pay to the City compensation for use of the public right-of-way in an amount (i) per node in the City public right-of-way per year as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance; or (ii) a fee established by the City as a reasonable approximation of the City's actual, direct and reasonable costs incurred in granting or processing an application as set out in appendix A of the Code of Ordinances which may be amended from time to time by ordinance; or (iii) agreed upon by the City and a permittee in a master agreement.
- (b) At the City's discretion, the City may charge a network provider a lower rate or fee if the lower rate or fee is:
  - (1) nondiscriminatory;
  - (2) related to the use of the public right-of-way; and
  - (3) not a prohibited gift of public property.
- (c) Cease Payment. A network provider is authorized to remove its facilities at any time from the public right-of-way and cease paying the City compensation for use of the public right-of-way following the network provider's removal of its facilities and notification to the City of such removal.

**Sec. 90-313. - Attachment to Service Poles in the Public Right-of-Way.**

A network provider shall be permitted to attach network nodes to city-owned service poles, consistent with applicable law and City Code and subject to the requirements specified herein.

- (a) Permits. A network provider shall obtain a permit, pursuant to the terms of this article, prior to collocating network nodes on service poles.

- (b) Make Ready. A network provider shall be responsible for costs for make ready work on City service poles to which a provider seeks to place a network node.
- (c) Technical Limitations. In the event the City determines, based upon technical grounds, that inadequate space exists on a service pole to accommodate the proposed network node, such pole may be replaced by a network provider, at the network provider's sole expense, with a service pole approved by the City with adequate space to accommodate the proposed network node together with all other equipment and facilities previously situated on said pole.
- (d) Facilities Rearrangements. If another provider would have to rearrange or adjust any of its facilities to accommodate a new network node, the City shall use reasonable efforts to work with the affected providers to coordinate such activity. All make ready work shall comply with NESC, and other applicable codes. An Applicant shall not be responsible for any third-party costs, including those of other network providers, to adjust existing attachments that are non-compliant with the NESC and other applicable codes at the time of the application.
- (e) Service Pole Attachment Fee. The rate to collocate a network node on a service pole in the public right-of-way shall be a cost per pole per year as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance. Subject to the provisions of Section 90-314, such compensation together with the application fee and the public right-of-way rate specified in Section 90-312 shall be the sole compensation that the network provider shall be required to pay to the City.
- (f) Cease Payment. A network provider is authorized to remove its facilities at any time from a service pole in the public right-of-way and cease paying the attachment fee to the City upon notification to the City that the facilities have been removed.

**Sec. 90-314. - Transport Facilities.**

Installation of transport facilities, including applicable compensation to the City for such facilities, shall be governed by this Section.

- (a) A network provider that wants to connect a network node to the network using the public right-of-way may:
  - (1) install its own transport facilities subject to compliance with Subsection (b) of this Section; or
  - (2) obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than the amount specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance, per node per month.
- (b) A network provider may not install its own transport facilities unless the provider:

- (1) has a permit to use the public right-of-way; and
  - (2) pays to the municipality a monthly public right-of-way rate for transport facilities in an amount as specified in appendix A of the Code of Ordinances, which amount may be amended from time to time by ordinance, multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the network provider's payment of municipal fees to the municipality exceeds its monthly aggregate per-node compensation to the municipality.
- (c) A public right-of-way rate required by Subsection (b) is in addition to any public right-of-way rate required by Section 90-312.

**Sec. 90-315. - Design Manual.**

A network provider shall comply with the City's *Small Wireless Facilities Design Manual*, dated July 21, 2020, and as it may hereafter be amended, in place on the date a permit application is filed in relation to work for which the City has approved a permit application. The City's *Small Wireless Facilities Design Manual* may not conflict with applicable law and must be competitively neutral.

**Sec. 90-316. - Location of A Wireless Facility.**

The location of a wireless facility must receive written consent from the City prior to installation. If a provider fails to remove any unauthorized wireless facility or any wireless facility that is located in an improper location within the earlier of thirty (30) days after receiving written notice from the City or the date required by the City, the Provider shall be subject to a penalty of \$500.00 per day until the wireless facility is removed or relocated to the correct area within the permitted location, regardless of whether the Provider's contractor, subcontractor, or vendor installed the wireless facility in strict conformity with Chapter 90, Article V (Small Wireless Facility) of the McKinney Code or other applicable Laws concerning improperly located facilities in the public right-of-way.

Section 4. **ADOPTING A SMALL WIRELESS FACILITIES DESIGN MANUAL TO REPLACE THE EXISTING PUBLIC RIGHT-OF-WAY WIRELESS SERVICES DESIGN MANUAL IN ITS ENTIRETY**

From and after the effective date of this Ordinance, the City of McKinney's *Small Wireless Facilities Design Manual*, Dated July 21, 2020, ("Manual") attached to this Ordinance is hereby adopted and becomes effective immediately. The Manual hereby replaces and supersedes the previously approved Wireless Services (Small Cells) Design Manual, Dated September 19, 2017, in its entirety.

Section 5. **AMENDMENT OF APPENDIX A – SCHEDULE OF FEES BY DELETING THE FEES ASSOCIATED WITH SECTION 90-228 AND ADOPTING NEW FEES APPLICABLE TO NETWORK PROVIDERS IN ACCORDANCE WITH ARTICLE V**

A. From and after the effective date of this Ordinance, Appendix A – Schedule of Fees of the McKinney Code is hereby amended by deleting the fees associated with Section 90-228.

B. From and after the effective date of this Ordinance, Appendix A – Schedule of Fees of the McKinney Code is hereby amended by adding a new section to Chapter 90, “Streets and Sidewalks,” of the Schedule of Fees related to Network Providers’ use of the City Rights-of-Way identified as “Section 90-307(g), Application Fees” to read in its entirety as follows:

*“Section 90-307(g). Application Fees.*

- (1) Network Node. Payment of not less than a \$500 one-time fee to the City for a single up-front application that includes up to, but not more than, five network nodes, with an additional \$100 for each additional network node beyond five or as otherwise agreed upon by the City and a permittee in a master agreement.
- (2) Node Support Pole. Payment of not less than a \$1,000 one-time fee to the City for each node support pole addressed in an application that includes a new Pole, or a fee as otherwise agreed upon by the City and a permittee in a master agreement.
- (3) The City of McKinney reserves the right to require an applicant to pay the fees and costs of any consultant retained by the City to assist in the review of plans, applications, reports, inspections, and/or testing.”

C. From and after the effective date of this Ordinance, Appendix A – Schedule of Fees of the McKinney Code is hereby amended by adding a new section to Chapter 90, “Streets and Sidewalks,” of the Schedule of Fees related to Network Providers’ use of the City Rights-of-Way identified as “Section 90-312(a), Annual Rate” to read in its entirety as follows:

*“Section 90-312(a). Annual Rate.*

Once a network provider has installed and made operational a network node in the public right-of-way, the network provider shall pay to the City compensation for use of the public right-of-way in an amount of not less than \$250 per node in the City public right-of-way per year, or as otherwise agreed upon by the City and a permittee in a master agreement.”

D. From and after the effective date of this Ordinance, Appendix A – Schedule of Fees of the McKinney Code is hereby amended by adding a new section to Chapter 90, “Streets and Sidewalks,” of the Schedule of Fees related to Network Providers’ use of the City Rights-of-Way identified as “Section 90-313(e), Service Pole Attachment Fee” to read in its entirety as follows:

*“Section 90-313(e), Service Pole Attachment Fee.*

The rate to collocate a network node on a service pole in the public right-of-way shall be \$20 per pole per year payable in advance to the City. Subject to the provisions of Section 90-314, such compensation together with the application fee and the public right-of-way rate specified in Section 90-312 shall be the sole

compensation that the network provider shall be required to pay to the City.”

E. From and after the effective date of this Ordinance, Appendix A – Schedule of Fees of the McKinney Code is hereby amended by adding a new section to Chapter 90, “Streets and Sidewalks,” of the Schedule of Fees related to Network Providers’ use of the City Rights-of-Way identified as “Section 90-314, Transport Facilities” to read in its entirety as follows:

“Section 90-314, Transport Facilities.

A network provider that wants to connect a network node to the network using the public right-of-way may:

- (a) obtain transport service from a person that is paying the City fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month; or
- (b) install its own transport facilities provided it pays a monthly public right-of-way rate for transport facilities to the City in an amount equal to \$28 multiplied by the number of the network provider’s network nodes located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the network provider’s payment of fees to the City exceeds its monthly aggregate per-node compensation to the City.

A public right-of-way rate required by Subsection (b) is in addition to any public right-of-way rate required by Section 90-312.”

Section 6. **RESERVATION OF RIGHTS REGARDING SMALL CELL NETWORK NODE INSTALLATIONS**

The City hereby places any and all small cell providers on notice that should the courts overturn SB 1004, the City specifically reserves the right to repeal this Ordinance, which is being adopted solely to conform to SB 1004, refuse to recognize any purported vested rights based on or arising out of SB 1004 and this Ordinance, and:

- (a) require small cell providers to enter into individual agreements with the City for the continued operation of small cell systems within and about the City’s rights-of-ways;
- (b) refuse to be bound by the “Network Provider Fees” mandated by SB 1004 and set out in Section 7 of this Ordinance and will instead require small cell providers to pay City fair and reasonable compensation for the use of the City’s poles, facilities and rights-of-ways;
- (c) require small cell providers to remove or alter non-conforming poles, network nodes and/or any and all equipment and facilities appurtenant to their small cell systems and reinstall the same in accordance with any and all ordinances, rules and regulations as are applicable in the absence of SB 1004 and this Ordinance.

Section 7. **REPEALER CLAUSE**

This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 8. **SEVERABILITY CLAUSE**

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 9. **IMMUNITY**

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 10. **INJUNCTIONS**

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of McKinney in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of McKinney.

Section 11. **PENALTY**

Any person, firm or corporation violating or failing to comply with any of the provisions of this ordinance and/or the City of McKinney's *Small Wireless Facilities Design Manual*, dated July 21, 2020, as it may hereafter be amended from time to time, attached to and adopted by this Ordinance, shall be subject to the penalty provisions set forth in Section 1-18 of the McKinney Code; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

Section 12. **PUBLICATION OF THE CAPTION**

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 13. **EFFECTIVE DATE**

This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

*[Remainder of page intentionally left blank.]*

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
McKINNEY, TEXAS ON THE \_\_\_\_ DAY OF JULY, 2020.

CITY OF McKINNEY, TEXAS

\_\_\_\_\_  
GEORGE C. FULLER  
Mayor

CORRECTLY ENROLLED:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

DRAFT