ORDINANCE NO. 4645

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING DIVISION 3, "DESIGN MANUAL FOR THE INSTALLATION OF NETWORK NODES AND NODE SUPPORT POLES PURSUANT TO TEXAS LOCAL GOVERNMENT CODE, CHAPTER 284," OF THE MESQUITE CITY CODE, CHAPTER 15, ARTICLE III, "RIGHTS-OF-WAY RULES AND REGULATIONS; REGISTRATION, PERMIT AND LICENSE REQUIREMENTS," AS AMENDED, BY INCORPORATING THE REQUIREMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION DECLARATORY RULING AND THIRD REPORT AND ORDER FOR SMALL CELL FACILITY REGULATION, ADOPTED ON SEPTEMBER 26, 2018, AND MAKING CERTAIN ADDITIONAL AMENDMENTS TO THE CITY'S DESIGN MANUAL RELATED TO REGISTRATION, LICENSING IN RESIDENTIAL AREAS, MINIMUM HEIGHT ABOVE GRADE, POLE SPACING AND GROUND EQUIPMENT INSTALLATION BY DELETING SECTIONS 15-193(a)(1), 15-208(a)(1) THROUGH 15-208(a)(3), 15-209, 15-210(d), 15-212(b)(2), 15-213(a), THE FIRST PARAGRAPH IN 15-214(b), 15-214(c), 15-214(e)(1), 15-214(f)(2)(a), 15-214(h)(1) AND THE VERBIAGE UNDER THE SINGLE "*" UNDER 15-219(a) AND ADDING NEW SECTIONS 15-193(a)(1), 15-208(a)(1) THROUGH 15-208(a)(3), 15-209, 15-210(d), 15-212(b)(2), 15-213(a), THE FIRST PARAGRAPH IN 15-214(b), 15-214(c), 15-214(e)(1), 15-214(f)(2)(a), 15-214(f)(4), 15-214(h)(1) AND NEW VERBIAGE UNDER THE SINGLE "*" UNDER 15-219(a); PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED ($500.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That Chapter 15 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by deleting Sections 15-193(a)(1), 15-208(a)(1) through 15-208(a)(3), 15-209, 15-210(d), 15-212(b)(2), 15-213(a), the first paragraph in 15-214(b), 15-214(c), 15-214(e)(1), 15-214(f)(2)(a), 15-214(h)(1) and the verbiage under the single "*" under 15-219(a) in their entirety and adding new Sections 15-193(a)(1), 15-208(a)(1) through 15-208(a)(3), 15-209, 15-210(d), 15-212(b)(2), 15-213(a), the first paragraph in 15-214(b), 15-214(c), 15-214(e)(1), 15-214(f)(2)(a), 15-214(f)(4), 15-214(h)(1) and new verbiage under the single "*" under 15-219(a) to read as follows, in all other respects said Code, Chapter and Sections to remain in full force and effect.

(1) *Sec. 15-193(a)(1).* Amend Section 15-193(a)(1) by deleting the section in its entirety and adding a new Section 15-193(a)(1) to read as follows:

(1) Persons seeking to use or occupy the rights-of-way shall register with the City prior to initiating use or occupancy.

(2) *Sec. 15-208(a)(1) through 15-208(a)(3).* Amend Sections 15-208(a)(1) through 15-208(a)(3) by deleting the sections in their entirety and adding new Sections 15-208(a)(l) through 15-208(a)(3) to read as follows:

(1) Compliance with this Design Manual, as amended, is required for all sitings, placements, installations, collocations in, on, over or under the rights-of-way, of network nodes, node support poles, micro network nodes, distributed antenna systems, transport facilities, microwave communications, related ground equipment or other wireless facilities, by whatever nomenclature, whether installed pursuant to Chapter 284 of the Texas Local Government Code ("Chapter 284"), pursuant to an agreement with the City or installed as otherwise allowed by state or federal law. Modifications of all wireless facilities must comply with the Design Manual in effect at the time of the request for modification.

(2) Compliance is required with all placement, size, height and other provisions authorized for regulation by the City under Chapter 284, as amended, and those requirements, in their most restrictive form, are adopted by reference herein unless otherwise provided in this division. For purposes of this Design Manual, a reference to a network node or a node support pole includes small wireless facilities, as defined in 47 C.F.R. §1.6002(1).

(3) The provisions of this Design Manual are adopted to further the public health, safety and welfare of the citizens of the City by establishing aesthetic standards for the installation of facilities in the public right-of-way that are reasonable, are technically feasible and are reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments. The provisions of this Design Manual are further adopted in order to avoid congestion of the right-of-way caused by multiple pole installations, minimize the hazard of poles adjacent to roadways, minimize the effect on property values and protect, maintain and promote the appearance of natural surroundings in public parks and certain residential areas and areas designated as underground areas.

(3) *Sec. 15-209.* Amend Section 15-209 by deleting the section in its entirety and adding a new Section 15-209 to read as follows:

The definitions in Division 1 of the article, Chapter 284 of the Texas Local Government Code and 47 C.F.R. §1.6002 apply in this division.

(4) *Sec. 15-210(d).* Amend Section 15-210(d) by deleting the section in its entirety and adding a new Section 15-210(d) to read as follows:

(d) *Municipal parks.* The City is authorized, but not required, to grant a license for placement of a network node or node support pole in a municipal park on terms that are discretionary and nondiscriminatory and that have the effect of minimizing interference with the aesthetic qualities of such areas.

(5) *Sec. 15-212(b)(2).* Amend Section 15-212(b)(2) by deleting the section in its entirety and adding a new Section 15-212(b)(2) to read as follows:

(2) Before submitting an application for a permit in a design district or historic district, the applicant is encouraged to meet with the Director to discuss the design proposal and shall provide elevations or other graphic documentation of the proposed design.

(6) *Sec. 15-213(a).* Amend Section 15-213(a) by deleting the section in its entirety and adding a new Section 15-213(a) to read as follows:

(a) *Compliance required.* Except for antennas, installations must be buried underground and comply with all applicable undergrounding requirements of the City in underground compliance areas, including but not limited to the following:

(1) Underground Compliance Area Number 1 is the area referred to as Rodeo Center Boulevard. Its boundaries are: One hundred fifty (150) feet from the center of the Rodeo Center Boulevard Compliance Area ROW, from Military Parkway to Sandy Lane.

(2) Underground Compliance Area Number 2 is the area referred to as Military Parkway Compliance Area. Its boundaries are: three hundred (300) feet from the center of the Military Parkway ROW, from Sam Houston Road to Belt Line Road.

(3) Utility Compliance Area Number 3 is the area referred to as Truman Heights Neighborhood District. Its boundaries are: The THN District as depicted on the official zoning map of the City of Mesquite.

(4) Utility Compliance Area Number 4 is the area referred to as North Gus Thomasson Corridor District. Its boundaries are: The NGTC District as depicted on the official zoning map of the City of Mesquite.

(5) Utility Compliance Area Number 5 is the area referred to as Kaufman Interstate 20 District. Its boundaries are: The K-20 District as depicted on the official zoning map of the City of Mesquite.

(7) *Sec. 15-214(b).* Amend Section 15-214(b) by deleting the first paragraph in the section in its entirety and adding a new first paragraph to Section 15-214(b) to read as follows:

(b) *Application requirements.* No application for a permit shall be considered complete until documents compliant with this Design Manual and other applicable codes have been submitted on a form provided by the Director,

including the following application documents, designed and sealed by a professional engineer with experience performing work for similar attachments on similar facilities. The City's acceptance of the submitted design documents does not relieve provider and its engineer of full responsibility and liability for any errors and/or omissions in the engineering analysis. The provider 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. If any such additional authorizations are required, the provider is responsible for providing, at the time an application is submitted for a network node, a node support pole and a transport facility, all of the information necessary for the City to review and act on all additional authorizations.

(8) *Sec. 15-214(c).* Amend Section 15-214(c) by deleting the section in its entirety and adding a new Section 15-214(c) to read as follows:

(c) *Application review.* Unless the time periods for City review are tolled or extended by written agreement between the City and the provider, the City shall review the permit application for completeness and notify the provider in writing if provider needs to submit additional or missing information. Such written notice will be provided within 10 days after receipt of a permit application for a network node, node support pole or transport facility. The notice shall specifically identify the missing information and identify the rule or regulation requiring such missing information. The time frame for the City's review of the application is tolled until the provider provides the required information. If the provider does not submit the missing or additional information within 180 days of the notice, the provider's permit application for the requested location shall be deemed withdrawn.

(9) *Sec. 15-214(e)(1).* Amend Section 15-214(e)(1) by deleting the section in its entirety and adding a new Section 15-214(e)(1) to read as follows:

(1) *Minimum height above grade for attachments.* Network node attachments to service poles shall be installed at least eight feet above grade. Network node attachments to utility poles shall be installed at a minimum height sufficient to provide clear visibility of street signage and sufficient clearance to ensure public safety, as determined by the City Engineer.

(10) *Sec. 15-214(f)(2)(a).* Amend Section 15-214(f)(2)(a) by deleting the section in its entirety and adding a new Section 15-214(f)(2)(a) to read as follows:

a. All new poles shall be spaced apart from existing utility poles or node support poles at the same distance as the spacing between utility poles in the immediate proximity, but no less than at a minimum 300 feet from a utility pole or another node support pole.

(11) *Sec. 15-214(f)(4).* Amend by adding a new Section 15-214(f)(4) to read as follows:

(4) *Height and size of small wireless facilities.* In order to qualify as a small wireless facility under federal regulations, the facilities:

a. Must be mounted on structures 50 feet or less in height including their antennas, or

b. Must be mounted on structures no more than 10 percent taller than other adjacent structures; or

c. May not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

For purposes of this paragraph, "structure" means a pole or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service.

(12) *Sec. 15-214(h)(1).* Amend Section 15-214(h)(1) by deleting the section in its entirety and adding a new Section 15-214(h)(1) to read as follows:

(1) Ground equipment shall provide an adequate line of sight for safe travel of vehicular and pedestrian traffic. In no event may ground equipment be installed within 250 feet of a street corner or a street intersection without approval from the City Engineer upon the determination that the equipment does not obstruct the view within the site visibility triangle.

(13) *Sec. 15-219(a).* Amend Section 15-219(a) by deleting the verbiage under the single "*" in the section in its entirety and adding new verbiage in Section 15-219(a) under the single "*" to read as follows:

* Adjusted on an annual basis, by an amount equal to one-half (1/2) of the annual change, if any, in the Consumer Price Index, provided that if the annual fees reach $270.00 for a site, the adjustment shall be the City's actual costs that exceed $270.00.

SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed Five Hundred ($500.00) Dollars for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is

greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

SECTION 5. That this ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of January 2019.

Stan Pickett
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED:

David L. Paschall
City Attorney