

ORDINANCE NUMBER 2075 - 2024

AN ORDINANCE OF THE CITY OF DICKINSON, TEXAS, TO GRANT A SPECIFIC USE PERMIT (SUP) PURSUANT TO DICKINSON CODE OF ORDINANCES SECTION 18-58 SO AS TO ALLOW THE USE OF RADIO, TELEVISION, TELEPHONE OR COMMUNICATION BROADCAST TOWER OR STATION ON ± 1.03 ACRES OUT OF THE F P EPPERSON SURVEY, ABSTRACT NO. 60, MORE COMMONLY KNOWN AS 5252 E FM 517 ROAD, AND GENERALLY LOCATED SOUTH OF E FM 517 APPROXIMATELY 50-FEET WEST OF OWEN DRIVE RIGHT-OF-WAY CENTERLINE, IN THE CITY OF DICKINSON, GALVESTON COUNTY, TEXAS; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION HEREOF; AND PROVIDING A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, Mackey Mechanical Serv Inc. (the “Owner”) is the owner of ± 1.03 acres out of the F P Epperson Survey, Abstract No. 60, more commonly known as 5252 E FM 517 Road generally located on the south of E FM 517 approx. 50-foot west of Owen Drive right-of-way centerline, said ± 1.03 being acres more particularly described in Exhibit “A” attached hereto (the “Property”), in the City of Dickinson, Galveston County, Texas (the “City”); and

WHEREAS, the Property presently has a zoning classification of General Commercial ("GC") pursuant to Dickinson Code of Ordinances Section 18-58, the City's Comprehensive Zoning Ordinance; and

WHEREAS, the Owner has made application to the City for an additional Specific Use Permit (SUP) for said Property to allow Radio, television, telephone or communication broadcast tower or station of any type use in a General Commercial ("GC") zoning district as authorized by the City’s Zoning Ordinance; and

WHEREAS, the City Secretary of Dickinson, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Dickinson and laws of the State of Texas, at a meeting of the City Council, to be held on the 25th day of June, 2024, for the purpose of considering an Specific Use Permit (SUP) to allow a Radio, television, telephone or communication broadcast tower or station of any type use in a General Commercial ("GC") zoning district; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Dickinson, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of May, 2024; and

WHEREAS, the City Council is of the opinion and finds that the granting of the additional Specific Use Permit (SUP) described herein would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Dickinson, and as well, the owners and occupants thereof, and the City generally.

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. It is directed that the official zoning map of the City of Dickinson, adopted on the 24th day of June, 2001, by Ordinance No. 420-2001, shall be revised and amended to reflect the Specific Use Permit (SUP) granted by this Ordinance, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 3. All provisions of the ordinances of the City of Dickinson in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Dickinson not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section 4. The repeal of any ordinance or part of ordinances affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section 5. Any person who shall intentionally, knowingly, recklessly or with criminal negligence violate any provision contained in this Ordinance, or who shall commit or perform any act declared herein to be unlawful, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not less than one dollar (\$1.00) and not more than two thousand dollars (\$2,000.00). Each day a violation continues shall constitute a separate offense.

Section 6. 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 shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Dickinson, 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.

APPROVED on first reading on 25th day of June, 2024.

PASSED, APPROVED, AND ADOPTED on second reading on 23rd day of July, 2024.

FOR THE CITY OF DICKINSON:



SEAN SKIPWORTH, MAYOR

ATTEST:

Claude Allen Oliver

Claude Oliver, City Secretary

APPROVED AS TO FORM:



Nghiem V. Doan, City Attorney

EXHIBIT “A” – Application, Location, Commission Report

PROJECT OVERVIEW

Project Type: Specific Use Permit | **Project Title:** Specific Use Permit

ID # 24-000427 | **Started** 04/23/2024 at 3:30 PM



Address

5252 E Fm 517, Dickinson, TX USA 77539

Legal

S60
Mackey Mechanical Dickinson Texas (2004) Abst 60,
Res A, Acres 0.998

Description

Cell Tower on private property within city limits. Per pre determination meeting, we were able to lower the height from 150' to 114' to work within city ordinance.

PROPERTY DETAILS

Property ID R417407

CONTACTS	CONTACT INFO	ADDRESS	CREDENTIALS	ROLE
Katie Harms	kharms@atlastowers.com 3039319117	3002 Bluff Street Suite 300 Boulder, CO 80301	-	APPLICANT
Mackey Mechanical Serv - Inc		Mike Mackey PO Box 1710 Dickinson, TX 77539	-	Property Owner

INFORMATION FIELDS

GCAD Property ID
380675

Address
-

GCAD Legal Description
ABST 60 F P EPPERSON SUR PT OF RESERVE B (0-6) PLANTATION ESTATES

Property Acres
1.03

Property Owner
MACKEY MECHANICAL SERV INC

Property Owner Address
P.O. Box 1710

Owner Phone Number
713-254-0587

Owner Email
dianemikemackey@gmail.com

Proof of Ownership

Dickinson High_Legals_09-15-23.pdf

Signatory Authorization

AgentAuthoTower.pdf

Agent Authorization

AgentAuthoTower.pdf

Zoning Designation

General Commercial District

Existing Use Type

Industrial

Existing Use

Vacant

Proposed Use Type

Industrial

Proposed Use

Cell Tower

Description of Specific Use Requested

114' monopole cell tower on private property within city jurisdiction. Height was reduced to fit within spacing and safety requirements per the city ordinance.

Applicant Statement - Zoning

Applicant Statement.pdf

Additional Supporting Documents

-

Technical Studies

Dickinson High_NEPA_RG106_ECA_23-003635.pdf

Floor Plan

Dickinson High_20240412_Zoning_Rev1.pdf

Planning & Zoning Commission Public Hearing

-

City Council Public Hearing

-

City Council Meeting

-

Request To

-

LEGEND

- PARENT PROPERTY LINE
- - - ADJACENT PROPERTY LINE
- EASEMENT/LEASE CORNER
- Ⓜ EXIST. METER
- Ⓣ EXIST. TRANSFORMER
- Ⓜ EXIST. UTILITY POLE
- Ⓜ EXIST. TELCO PEDESTAL
- ⊙ PROPERTY CORNER
- - 4650 - - EXIST. CONTOUR LINE
- /// EDGE OF PAVEMENT
- - - OHW - - OVERHEAD WIRE
- - - F - - BURIED FIBER
- - - G - - GAS LINE
- - - R/W - - RIGHT-OF-WAY
- X - FENCE
- ~ EXISTING TREE LINE

TOWER COORDINATES

LATITUDE: N 29° 27' 54.94" (NAD '83)
 LONGITUDE: W 95° 01' 46.02" (NAD '83)
 GROUND ELEVATION: 10.9'± (AMSL NAVD '88)

TOWER SETBACKS

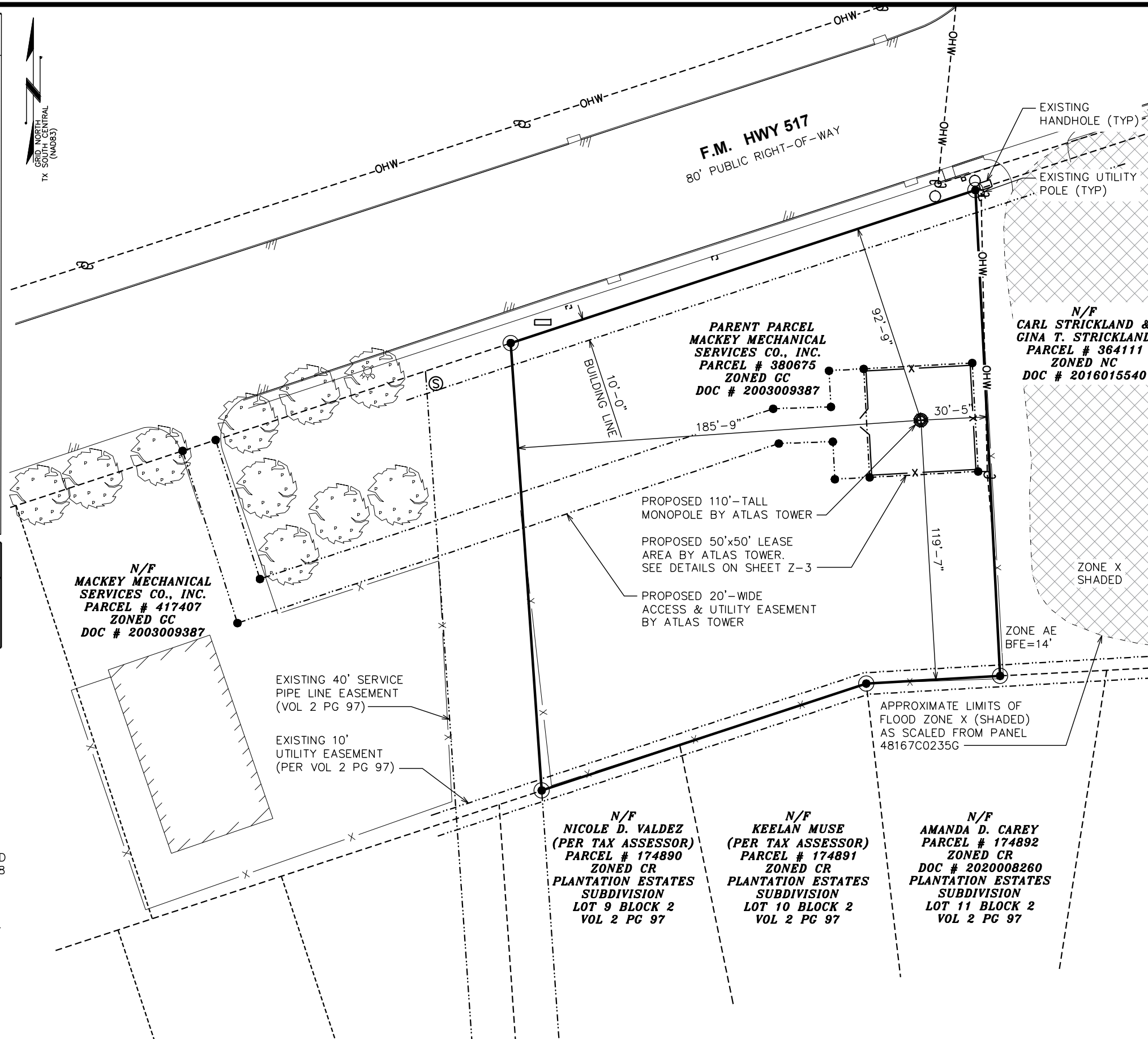
PROPERTY LINE	DISTANCE
NORTH	92'-9"±
EAST	30'-5"±
SOUTH	119'-7"±
WEST	185'-9"±

NOTES:

1. ELEVATIONS SHOWN HEREON ARE REPRESENTED IN NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
2. BEARING SHOWN HEREON ARE BASED UPON TEXAS GRID NORTH (NAD 83) SOUTH CENTRAL ZONE.
3. THE TOWER IS LOCATED IN ZONE "AE" (BFE = 14'), COMMUNITY PANEL FLOODPLAIN ACCORDING TO FEMA FLOOD MAP 48167C0235G, DATED AUGUST 15, 2019.

OVERALL SITE PLAN

SCALE: 1" = 50'



PROJECT INFORMATION:

DICKINSON HIGH

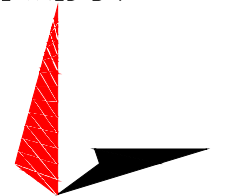
F.M. HWY 517
 DICKINSON, TX 77539
 (GALVESTON COUNTY)

PLANS PREPARED FOR:



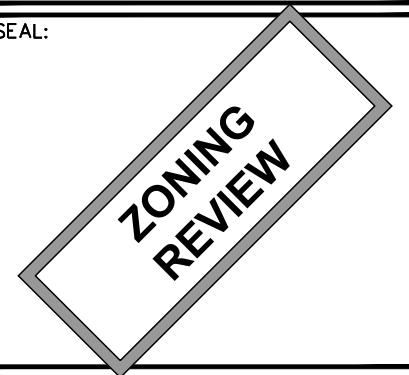
2500 30TH ST, SUITE 304
 BOULDER, CO 80301
 Office: (303) 448-8896

PLANS PREPARED BY:



TOWER ENGINEERING PROFESSIONALS
 4700 DAHLIA STREET
 DENVER, CO 80216
 OFFICE: (303) 566-9914
 www.tepgroup.net
 TX FIRM NO.: F-19415

SEAL:



REV	DATE	ISSUED FOR:
2	05-02-24	ZONING
1	04-12-24	ZONING
0	09-26-23	ZONING

DRAWN BY: SIT CHECKED BY: KES

SHEET TITLE:

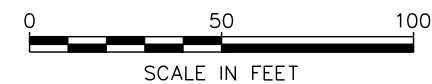
OVERALL SITE PLAN

SHEET NUMBER: REVISION:

Z-1

2

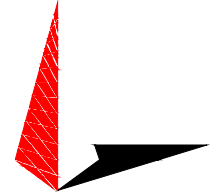
TEP#333876.883494

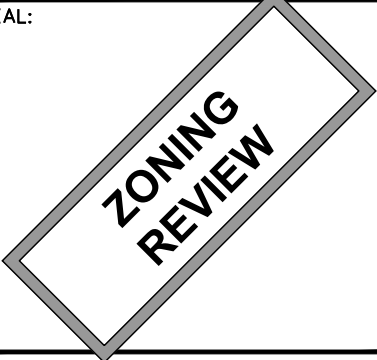




PROJECT INFORMATION:
DICKINSON HIGH
 F.M. HWY 517
 DICKINSON, TX 77539
 (GALVESTON COUNTY)

PLANS PREPARED FOR:
ATLAS TOWER
 2500 30TH ST, SUITE 304
 BOULDER, CO 80301
 Office: (303) 448-8896

PLANS PREPARED BY:

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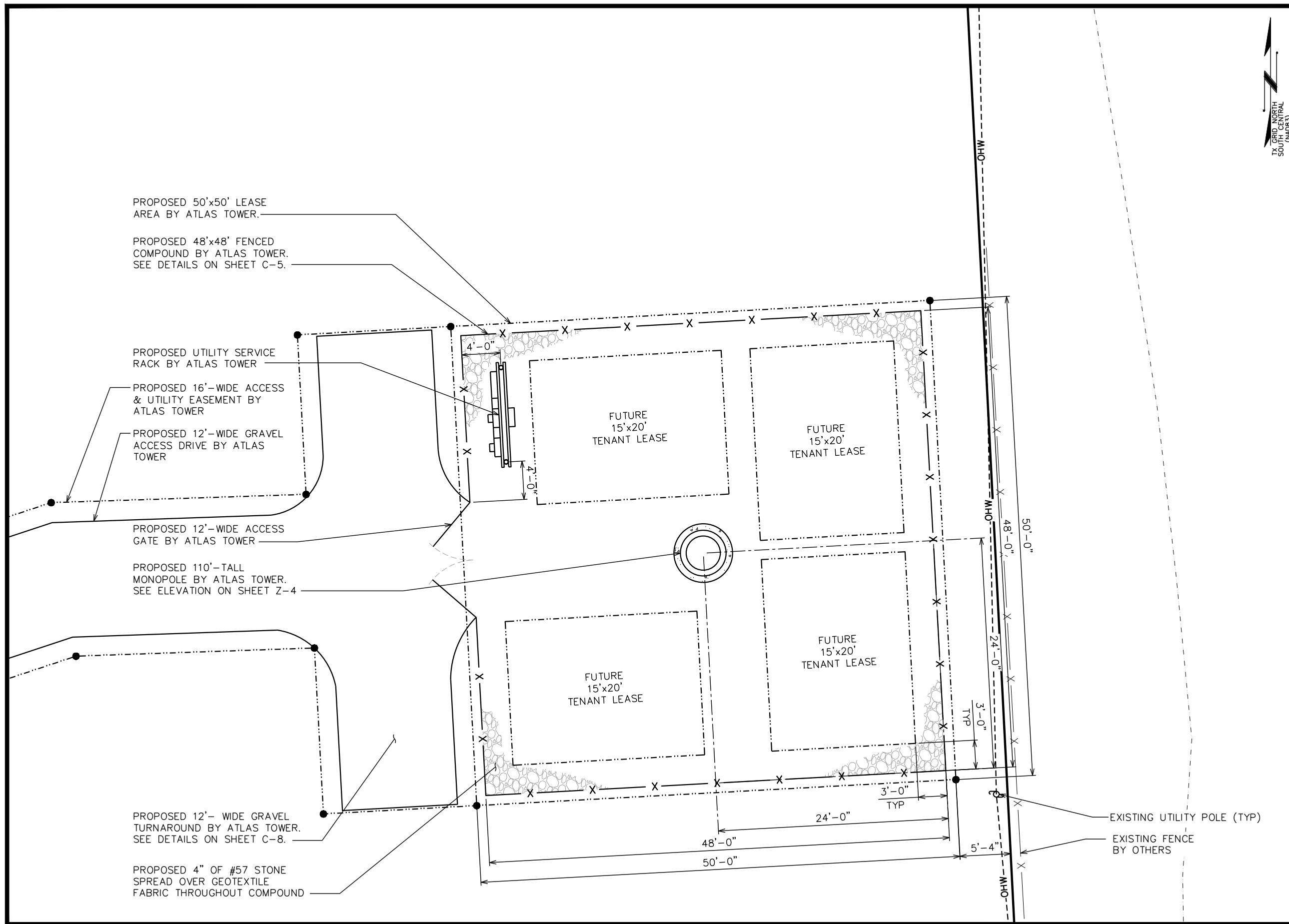
SEAL:


REV	DATE	ISSUED FOR:
2	05-02-24	ZONING
1	04-12-24	ZONING
0	09-26-23	ZONING

DRAWN BY: SIT CHECKED BY: KES

SHEET TITLE:
**COMPOUND
 DETAIL**

SHEET NUMBER: **Z-3** REVISION: **2**
 TEP#333876.883494



PROPOSED 50'x50' LEASE
 AREA BY ATLAS TOWER.

PROPOSED 48'x48' FENCED
 COMPOUND BY ATLAS TOWER.
 SEE DETAILS ON SHEET C-5.

PROPOSED UTILITY SERVICE
 RACK BY ATLAS TOWER

PROPOSED 16'-WIDE ACCESS
 & UTILITY EASEMENT BY
 ATLAS TOWER

PROPOSED 12'-WIDE GRAVEL
 ACCESS DRIVE BY ATLAS
 TOWER

PROPOSED 12'-WIDE ACCESS
 GATE BY ATLAS TOWER

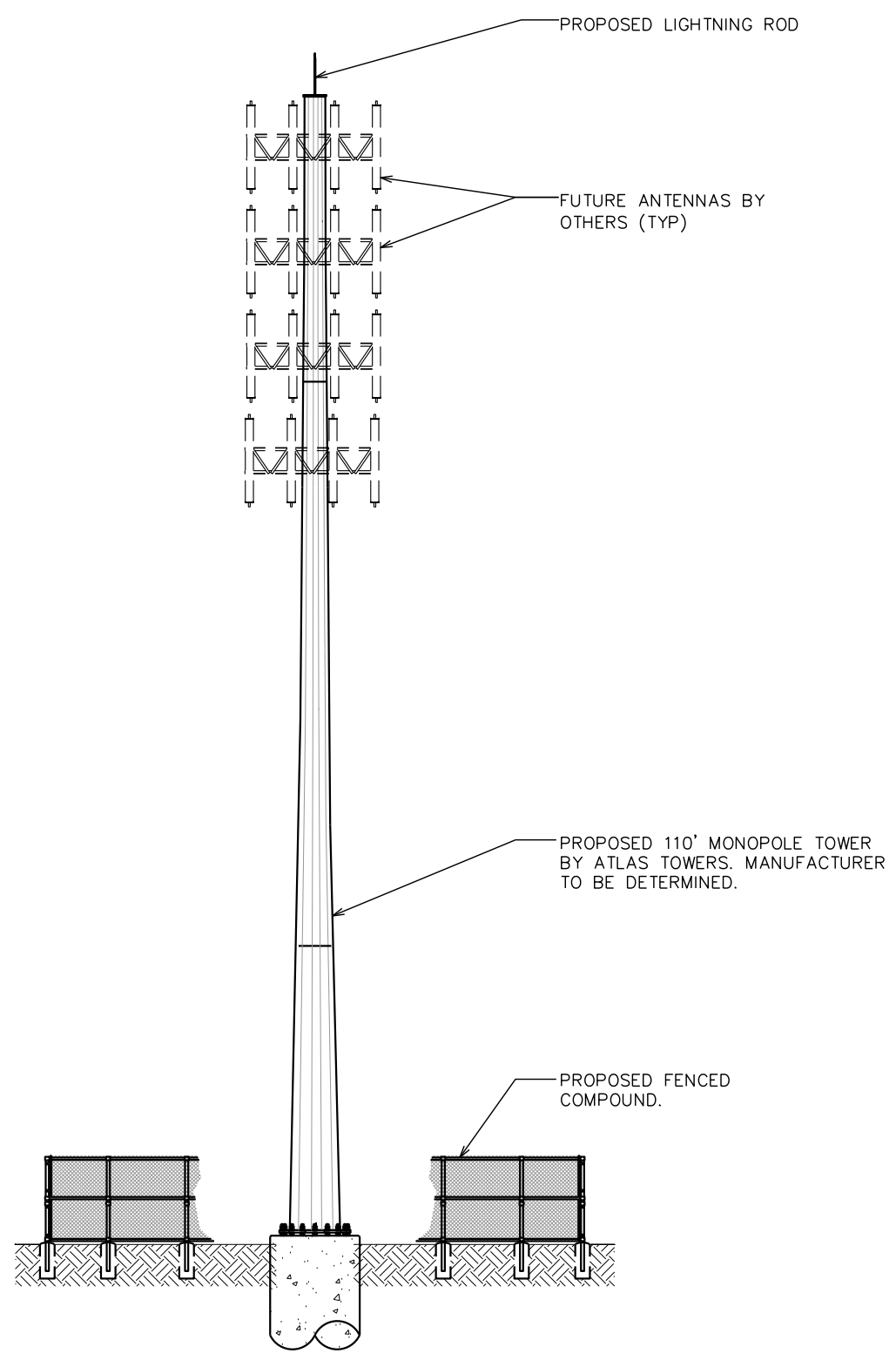
PROPOSED 110'-TALL
 MONOPOLE BY ATLAS TOWER.
 SEE ELEVATION ON SHEET Z-4

PROPOSED 12'- WIDE GRAVEL
 TURNAROUND BY ATLAS TOWER.
 SEE DETAILS ON SHEET C-8.

PROPOSED 4" OF #57 STONE
 SPREAD OVER GEOTEXTILE
 FABRIC THROUGHOUT COMPOUND

COMPOUND DETAIL
 SCALE: 1" = 10'





- NOTES:**
1. TOWER TO REMAIN GALVANIZED COLOR.
 2. TOWER SHALL BE LIT ONLY IF REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION.
 3. PROPOSED COAX ROUTED INSIDE TOWER WITH HOISTING GRIPS.
 4. TOWER TO INCLUDE SAFETY CABLE. DO NOT INCLUDE SAFETY CLIMB MECHANISM.
 5. TOWER EQUIPMENT LOADING AND CENTERLINES ARE SHOWN FOR REFERENCE ONLY AND ARE SUBJECT TO CHANGE.

PROJECT INFORMATION:

DICKINSON HIGH

F.M. HWY 517
DICKINSON, TX 77539
(GALVESTON COUNTY)

PLANS PREPARED FOR:

ATLAS TOWER

2500 30TH ST, SUITE 304
BOULDER, CO 80301
Office: (303) 448-8896

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OFFICE: (303) 566-9914
www.tepgroup.net
TX FIRM NO.: F-19415

SEAL:

ZONING REVIEW

REV	DATE	ISSUED FOR:
2	05-02-24	ZONING
1	04-12-24	ZONING
0	09-26-23	ZONING

DRAWN BY: SIT CHECKED BY: KES

SHEET TITLE:

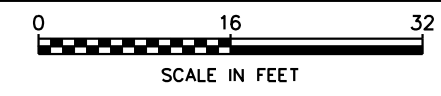
TOWER ELEVATION

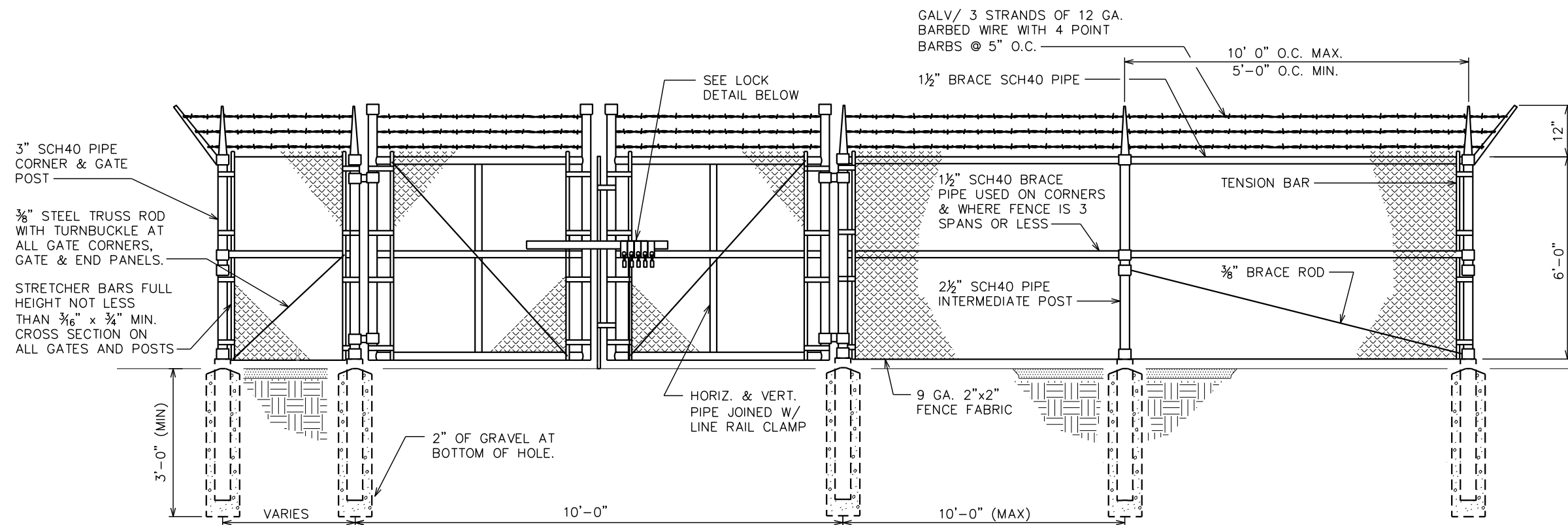
SHEET NUMBER: **Z-4** REVISION: **2**

TEP#333876.883494

TOWER ELEVATION

SCALE: 1/8" = 1'-0"



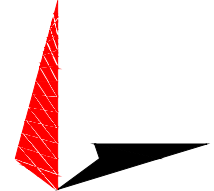


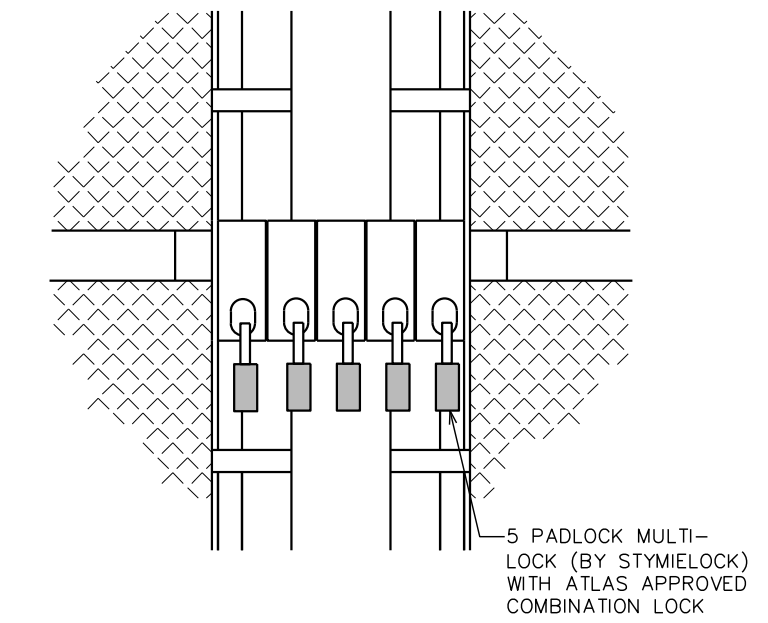
TYPICAL FENCE ELEVATION

SCALE: N.T.S.

PROJECT INFORMATION:
DICKINSON HIGH
 F.M. HWY 517
 DICKINSON, TX 77539
 (GALVESTON COUNTY)

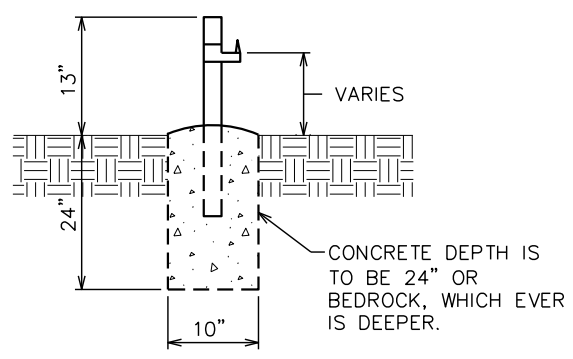
PLANS PREPARED FOR:
ATLAS TOWER
 2500 30TH ST, SUITE 304
 BOULDER, CO 80301
 Office: (303) 448-8896

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 4700 DAHLIA STREET
 DENVER, CO 80216
 OFFICE: (303) 566-9914
 www.tepgroup.net
 TX FIRM NO.: F-19415



GATE LOCK DETAIL

SCALE: N.T.S.

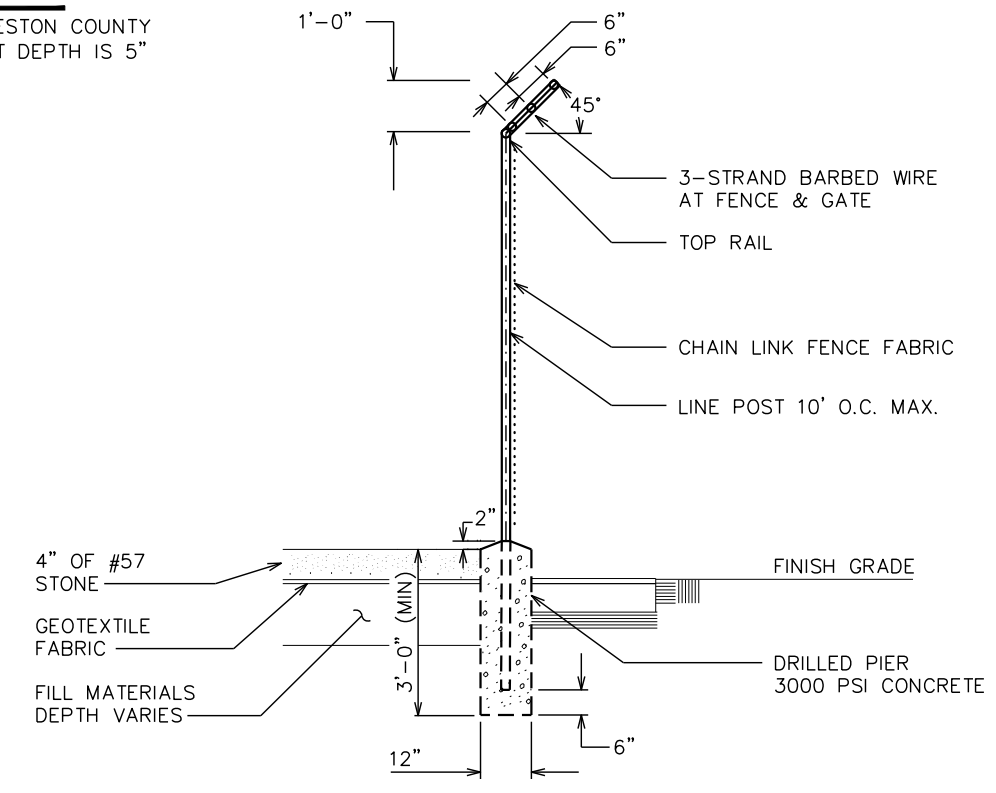


GATE STOP/KEEPER DETAIL

SCALE: N.T.S.


NOTE:

GALVESTON COUNTY
 FROST DEPTH IS 5"



FENCE / BARBED WIRE ARM DETAIL

SCALE: N.T.S.

SEAL:


REV	DATE	ISSUED FOR:
2	05-02-24	ZONING
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0	09-26-23	ZONING

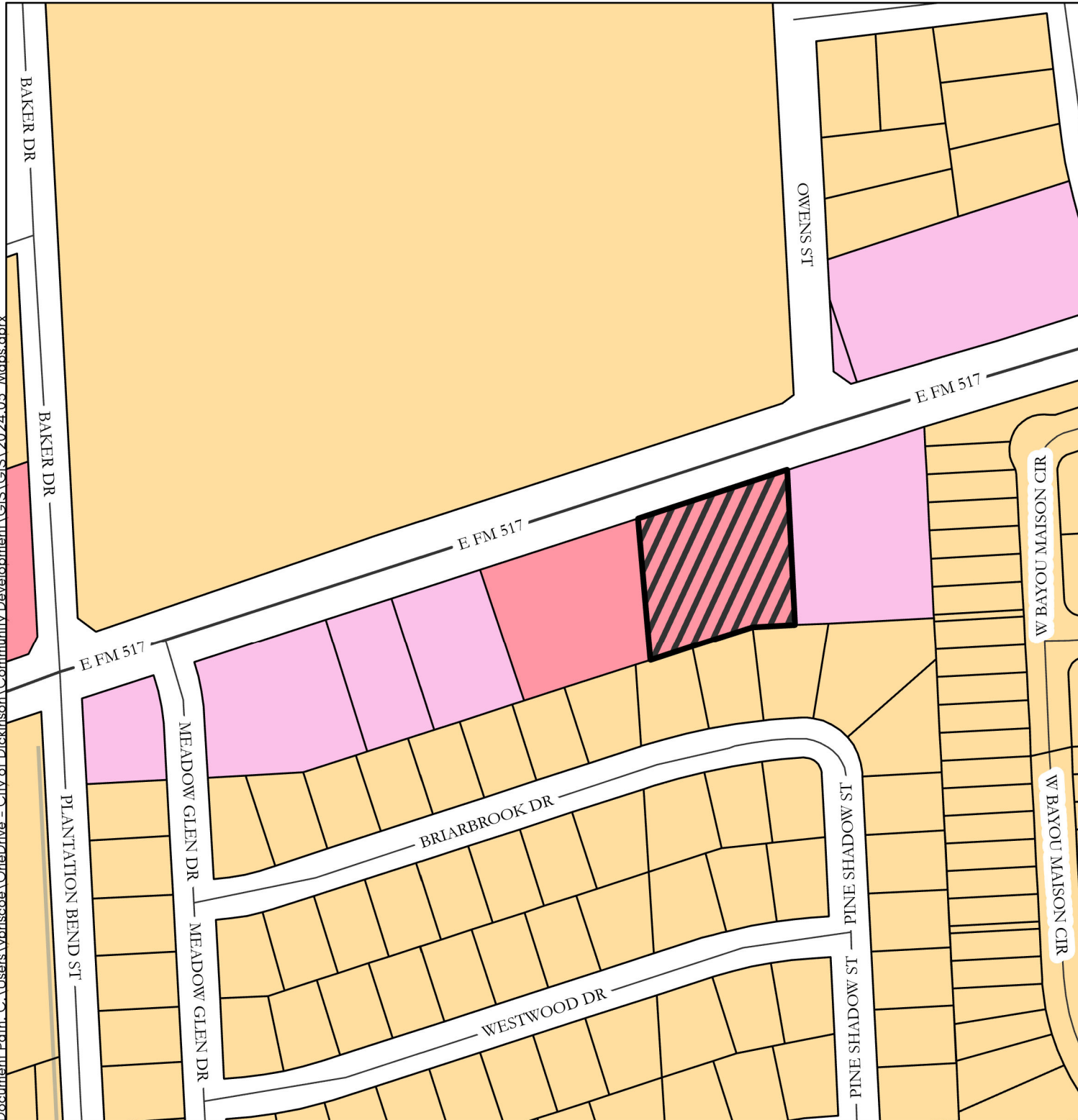
DRAWN BY: SIT CHECKED BY: KES

SHEET TITLE:
FENCE DETAILS

SHEET NUMBER:
Z-5

REVISION:
2


TEP#:333876.883494

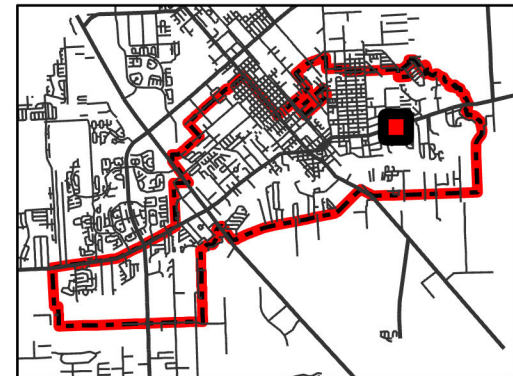


Specific Use Permit

- Vicinity Map -

GCAD #380675
 approx. 1.03. acres, legally described as
 ABST 60 F P EPPERSON SUR
 PT OF RESERVE B (0-6) PLANTATION ESTATES

-  Subject Property
- Zoning Districts
-  Conventional
-  Residential (CR)
-  General Commercial (GC)
-  Neighborhood Commercial (NC)



The City of Dickinson Texas makes no warranty, representation, or guarantee regarding the accuracy of this map. This map is intended for display purposes only and does not replace official recorded documents.

1 inch = 200 feet

Date: 4/29/2024

Chapter 16.5 TELECOMMUNICATION TOWERS

ARTICLE I. IN GENERAL

Sec. 16.5-1. Definitions.

For the purposes of this chapter, the following words and terms shall have the meanings ascribed thereto:

Alteration shall mean any modification, replacement, or reconstruction which increases the height or adds additional antennas, transmission lines, cables or wires, or appendages to a tower.

Antenna shall mean any system of poles, panels, rods, reflecting disks, or similar devices used for the transmission or reception of electromagnetic radiation, including radio, radar, telecommunications, infrared, ultraviolet, or other operating spectrums.

Building official shall mean the person appointed by competent authority of the city to administer the building codes and this chapter.

Co-location shall mean the attachment and operation of antennas, wires, cables, or appendages owned or leased by separate entities on a single tower.

Grade shall mean the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the building, site, or structure, and a line fifteen (15) feet in all directions from the center point of the tower.

Height of building shall mean the vertical distance above a reference datum measured to the highest point of the coping of a flat roof, or to the top line of a mansard roof, or to the highest point of a gabled, pitched or hip roof. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

- (1) The elevation of the highest adjoining sidewalk or ground surface within a 15-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten (10) feet above the lowest grade; or
- (2) An elevation ten (10) feet higher than the lowest grade when the sidewalk or ground surface described in subsection (1) above is more than ten (10) feet above the lowest grade.

The height of a stepped or terraced building is the maximum height of the highest segment of the building.

Height of tower shall mean the vertical distance between the finished grade at the base of the tower or the lowest point of contact with the building, and the highest point of the tower structure, excluding the antenna;

High mast light shall mean a monopole structure commonly installed to provide area wide lighting on, or along, freeways and expressways that commonly exceed one hundred (100) feet in height. Examples include area lighting along Interstate 45 installed and maintained by the Texas Department of Transportation.

Historic resource shall mean any building, site, structure, or district which has been listed or determined to be eligible by the appropriate governmental entity for listing on the federal, state, county, or city registry of historic places or structures.

Landscaping shall mean the provision of plants, turf, trees, berms, and structures, including retaining walls and fences, to screen a property or structure from view. Landscaping is intended to block the view of all

equipment associated with a tower (building, cabinet, or structure) except the tower itself from every point that is visible by the public from any adjoining public street, park, school, or place of public assembly.

Lattice tower shall mean a structure composed of two (2) or more vertical members strengthened by cross members and braces that relies upon its design of interconnected members to provide structural integrity. As used herein such structures are intended to support antennas, lights, wires, cables, or other fixtures above ground. Such towers may also be supported by guy wires and referred to as lattice, freestanding, or self support towers.

Monopole tower shall mean a single structural metal pole designed to accommodate antennas, appendages, wires, cables, and the like without the need for supporting guy wires.

Public utility shall mean any person, company, corporation, cooperative corporation, partnership, or any combination thereof that is subject to both a municipal franchise agreement and the comprehensive regulatory system established by and defined in the Texas Utility Regulatory Act, that owns, or operates for compensation, equipment or facilities for:

- (1) Producing, generating, transmitting, distributing, selling, or furnishing electricity, or
- (2) The conveyance, transmission, or reception of communications over a telephone system as a dominant carrier.

The term "public utility" shall not include, as is defined in the Public Utility Regulatory Act, telegraph services, television stations, radio stations, community antenna television services, general radio-telephone services, or radio-telephone, cellular and PCS services authorized under the statutes and regulations of the Federal Communications Commission.

Residence shall mean any permanent building or structure containing habitable rooms for nontransient occupancy, designed and used primarily for living, sleeping, cooking, and eating, which is intended to be used or occupied as a dwelling place for residential purposes, whether or not detached, including homes, townhouses, patio homes, and multifamily projects.

Residential shall mean pertaining to the use of land for a residence as defined in this section.

Residential lot shall mean:

- (1) A lot which is included within a recorded subdivision, subject to any enforceable, valid, and unexpired residential deed restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable deed restrictions, or
- (2) An unrestricted lot upon which a residence exists.

Residential neighborhood shall mean:

- (1) Any subdivision wherein the majority of the total number of lots, tracts, parcels or sites are occupied by residences and from such living units commercial activities are not generally carried out; or
- (2) Any subdivision which is burdened by restrictions which limit the lots, tracts, parcels, and sites within the subdivision so that a majority of such lots, tracts, parcels, or sites may be occupied by only residential uses.

Residential restrictions shall mean one (1) or more restrictive covenants contained or incorporated by reference in a property recorded map, plat, replat, declaration, deed, judgment, or other instrument filed in the county real property records, map records, or deed records. Residential restrictions as used herein include single-family, duplex, triplex, residential condominiums, apartments, and multifamily residences.

Subdivision shall mean all land encompassed within one (1) or more maps or plats of land within the city, that is divided into two (2) or more parts and which has been approved and recorded in accordance with the subdivision ordinance of the city and the provisions of state law.

Tower or tower structure shall mean a fixed, freestanding or guyed, uninhabitable structure fabricated of metal, which has been coated to protect it from corrosion, not designed as a shelter or to be used for any use other than to support appendages, such as antennas, dishes, microwave transmission and reception horns, fixed or movable arrays, wires, flags, or other displays. Towers as defined herein and by the Standard Building Code, include all such structures regardless of height.

(Ord. No. 341-98, § 2, 3-10-98)

Sec. 16.5-2. Purpose.

[This section has been included per city's request.]

(Ord. No. 341-98, § 2, 3-10-98)

Secs. 16.5-3—16.5-25. Reserved.

ARTICLE II. PERMITS

Sec. 16.5-26. Permit required.

No tower structure, as herein defined, shall be constructed within the city without first obtaining a tower permit or exemption certificate in accordance with the provisions of this chapter.

(Ord. No. 341-98, § 2, 3-10-98)

Sec. 16.5-27. Tower permit requirements.

- (a) An application for a tower permit shall be submitted to the department of building and inspections and approved in accordance with the provisions of this chapter prior to the construction, placement, or alteration of any tower or tower structure as defined in this chapter, and not specifically excluded herein, that is located within the boundaries of the city.
- (b) A tower permit shall not be required for any tower repaired, replaced, or modified with no resulting increase in height or dimension, or any tower repaired, replaced, or modified in order to comply with the requirements of any statute, regulation, order, or rule of any governmental agency.

(Ord. No. 341-98, § 2, 3-10-98)

Sec. 16.5-28. Exemptions.

A tower permit shall not be required for the following:

- (1) Church bell towers and religious symbols associated with a place of worship that otherwise complies with all other regulations and restrictions applicable to their use (provided they are not used as "stealth" towers for communications or other nonreligious purposes);
- (2) Tower structures less than or equal to the average height of structures within five hundred (500) feet of the proposed tower, or forty-five (45) feet, whichever is less;

-
- (3) Tower structures associated with private, noncommercial operation of amateur, citizens' band radio systems, or CATV reception systems that otherwise comply with all other regulations and restrictions applicable to their use;
 - (4) Tower structures on real property owned, leased, held or used, or dedicated for use by a governmental agency for communications, emergency warning systems, or navigation aids;
 - (5) Tower structures on real property owned, leased, held or used, or dedicated for use by a public utility solely for rendering its service. When other private communications systems are attached to the utility structure under a lease or other agreement, and such use is secondary to the use of the tower for utility services, the secondary use shall be exempt from a tower permit. Such exemption is contingent upon a demonstration by the owner of the tower that all providers of communications services, as defined by the Federal Communications Commission, shall have a fair and reasonable opportunity to place their equipment and facilities on the utility tower structures under nondiscriminatory conditions of lease and operations. Any utility which does not provide the fair and reasonable opportunity stated above or which discriminates among communications providers shall be subject to all the requirements of the tower permit herein provided; or
 - (6) High mast monopole structures built on land on, along, or adjacent to streets, roads, highways, and bridges maintained by the Texas Department of Transportation, Galveston County, or the City.

(Ord. No. 341-98, § 2, 3-10-98)

Sec. 16.5-29. Fees.

The city council shall, from time to time, adopt reasonable fees to be charged for tower permits. All fees referred to in this chapter shall be paid to the city secretary of her designated agent.

(Ord. No. 341-98, § 2, 3-10-98)

Sec. 16.5-30. Performance standards.

(a) *Location of towers.*

- (1) No tower permit shall be approved or a building permit issued unless the proposed tower is in compliance with the following:

The distance between the base of a single monopole tower, constructed without guy wire attachments, and all residential lots within a residential neighborhood must not be less than:

- a. One and one-half (1½) times the height of the tower structure if the height of that tower structure is between forty-five (45) feet and ninety (90) feet;
 - b. Two (2) times the height of the tower structure if the height of that tower structure is greater than ninety (90) feet, but does not exceed one hundred five (105) feet;
 - c. Two and one-half (2½) times the height of the tower structure if the height of that tower structure is greater than one hundred five (105) feet, but does not exceed one hundred twenty (120) feet; or
 - d. Three (3) times the height of the tower structure if the height of that tower structure is greater than one hundred twenty (120) feet.
- (2) The distance between the base of a tower, a guyed monopole, or any other tower structure and all residential lots within a residential neighborhood must not be less than:

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- a. Five (5) times the height of the tower structure if the height of that tower structure is between forty-five (45) feet and ninety (90) feet;
 - b. Seven (7) times the height of the tower structure if the height of that tower structure is greater than ninety (90) feet, but does not exceed one hundred five (105) feet;
 - c. Ten (10) times the height of the tower structure if the height of that tower structure is greater than one hundred five (105) feet, but does not exceed one hundred twenty (120) feet; or
 - d. Two thousand (2,000) feet from the base of the tower structure if that tower structure is greater than one hundred twenty (120) feet.
- (3) Tower structures which are located under terms of lease or other agreement in public or private parks or detention ponds a minimum of ten (10) acres in size, and are at least three (3) times the height of a monopole or ten (10) times the height of a guyed monopole, self support or lattice tower, from the nearest adjoining private property line may be issued a tower permit by the building official upon presentation of a notarized affidavit from a responsible official of the entity stating that a lease or other agreement has been executed, together with all required plans and specifications required for a building permit.
- (4) Methods of measurement. For the purpose of establishing compliance with the setback distances herein, a line from the base of the outside tower structure to the nearest residential lot may be determined as follows:
- a. For a monopole without guy wires, the measurement is from the center of the base of the tower to the nearest lot line of a residential lot or subdivision; or
 - b. For a lattice or guyed tower, the distance shall be measured from the closest support member or guy wire attachment point to the ground to the nearest lot line of a residential lot or subdivision.
- (5) Attachment or mounting on buildings and other structures. Attachment of antennas and antenna arrays or dishes to buildings and other structures shall be permitted only if said antennas are painted, concealed, or otherwise disguised to mask them from obvious recognition when viewed from street level. The standard for approval is that attachments to buildings or other structures must be done so as to blend the equipment into the overall appearance of the supporting structure. The applicant shall submit photographs and drawings to demonstrate the efforts to mask the equipment from obvious recognition.
- (6) Location of towers on the roofs of buildings shall be permitted provided the structure is a monopole without guy wires and is no more than one-third ($\frac{1}{3}$) the height of the building on which it is located.
- (b) *Equipment.* Equipment may be mounted on sign structures provided the applicant makes a reasonable effort to disguise the appearance and provides a notarized affidavit from the sign owner and land owner that the equipment will be removed without compensation when or if the sign ceases to be used as a sign, or the sign is acquired or terminated under any applicable law, regulation or procedure.
- (c) *Landscaping, screening, and other requirements.* All towers shall provide landscaping and screening in accordance with the following standards:
- (1) The perimeter of the tower base site, which shall include all equipment associated with the tower shall be enclosed by a solid wood or masonry fence or wall at least six (6) feet in height;
 - (2) All tower sites shall provide for a minimum setback of forty (40) feet from the front or side property line abutting any street or highway, unless located on a building;
 - (3) Tower sites shall install and maintain the following landscaping:

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- a. On-sites used exclusively for a tower, turf and shrubs shall be provided in the front twenty-five (25) feet of the front yard and fifteen (15) feet in any side yard abutting a street or highway;
 - b. On buildings or behind improvements that block the view from any street where the principal lot is being used for another purpose, no landscaping is required;
 - c. On-sites where the tower is located with another use, and such tower equipment or base is visible from any street, there shall be a minimum width of eight (8) feet of permanently landscaped area provided;
 - d. All landscaping shall be irrigated with an approved underground system and shall be maintained for the life of the use. Plant materials which die shall be replaced promptly;
 - e. Electrical and telephone service to tower sites shall be placed underground; and
 - f. Towers situated on-sites adjacent to any public street or highway shall provide six-foot wide sidewalks of a design prescribed by the ordinances of the city along each street frontage.
- (4) Any trees which are removed from a tower site shall be replaced. Replacement trees shall be planted on the property to act as partial screens to adjoining properties and to interrupt view of the tower from nearby residential areas.
- (d) *Masking or stealth technology.* To the maximum extent possible, it shall be the objective of the city to encourage the use of structures which appear to be something other than antenna towers. Within that objective, the following provisions may, at the discretion of the city council, justify the issuance of a tower permit in areas where the distance requirement in section 16.5-30(c) hereof cannot be met. The conditions necessary to justify the issuance of such a permit shall include all of the following:
- (1) The structure of the tower shall meet the requirements of all applicable codes and shall substantially appear to be something other than a telecommunications tower as herein defined. Examples of such structures include, but are not limited to, clock towers, religious symbols, trees (particularly palm trees), flag poles, light standards; and
 - (2) The antenna or array shall be fully concealed within the structure so as to be invisible (except dual use of high mast light standards); and
 - (3) Associated equipment at the ground shall either be totally enclosed within the structure or be located remotely such that the base of the structure provides no appearance of use as a communications or utility tower; and
 - (4) The grounds of the site surrounding the tower shall be designed and landscaped to complement the apparent use of the structure. Such treatment would include, but not be limited to, the following:
 - a. If the structure appears to be a tree, the area shall be grassed and landscaped to give a natural park-like setting.
 - b. If a clock tower or other such structure is designed, the area can be a park-like setting or a more formal plaza, court, or waterscape pavilion.
 - c. If the structure appears to be a religious symbol located at a place of worship, it should be visually coordinated with the surrounding landscaping and buildings. Structures of a religious nature not located on the same property as the place of worship are classified as commercial signs for the purpose of this chapter and are not exempt from the provisions of this chapter.
 - d. If the structure appears to be a high mast light standard, it must be of a height, location, and scale of other high mast light standards. In the area of Interstate Highway 45, the city would encourage applicants to seek agreement with the Texas Department of Transportation to replace an existing light pole with a structure that serves both the tower and lighting needs.

Sec. 16.5-31. Application procedures.

All applications for a tower permit or exemption certificate shall include and be subject to the following:

- (1) A completed application signed by the owner or agent of the entity seeking the permit or certificate;
- (2) The prescribed fee;
- (3) A site plan showing the following:
 - a. Boundary of the site to include the entire lot, parcel, or tract, and the portion to be leased;
 - b. All existing improvements on the lot, parcel, or tract;
 - c. Location of all sidewalks, driveways, curb cuts, and utilities along the site;
 - d. All easements, pipelines, and floodplains;
 - e. Drawing in ink on paper of the site plan to a scale of 1;inch; = 50;ft; or larger;
 - f. Location of proposed tower structure, associated equipment, fencing, utilities, and landscaping as required herein;
 - g. Structural screening details and calculations signed and sealed by a registered professional engineer certifying that the proposed tower complies with all applicable codes;
 - h. Insurance binders or certificates providing for general liability insurance on the tower structure in an amount not less than one million dollars (\$1,000,000.00);
 - i. A notarized affidavit signed by the applicant that any non-stealth tower structure shall be removed within sixty (60) days of the date it ceases to used for its intended purpose;
 - j. A drainage plan signed and sealed by a registered professional engineer that meets the requirements of the city; and
 - k. Pictures, renderings, profile drawings, or other documents to accurately depict the appearance of the structure when completed and in operation.
- (4) Upon receipt of a properly completed application, the building official shall forward it to the city council, together with his evaluation and any recommendations, within fifteen (15) working days.
- (5) The city council shall provide an opportunity for the applicant and the building official to present pertinent information on the application and may thereafter, at the same or some future meeting of the city council, by a simple majority vote, approve, deny, or call a public hearing on the application. The city council may call a public hearing if the report from the building official recommends denial of the tower permit. If a public hearing is called, notice of such hearing shall be given in accordance with the following:
 - a. A notice shall be published in a newspaper in general circulation in the city not less than ten (10) nor more than fifteen (15) days prior to the date of such hearing, setting out the purpose, place, and time of the hearing;
 - b. Written notice shall be sent by United States first class mail to the owners of all property within the setback distances provided in section 16.5-30(c) hereof, as listed in the most recent tax roll, therein setting out the purpose, place, and time of the hearing;
 - c. Within five (5) days of the date of application, a sign conforming to the requirements of the city shall be placed on the property where the proposed tower is to be located, identifying the height,

type, and use of the tower, and listing the application number and telephone number of the building official where the public may obtain information. The cost of the sign, its installation, and removal shall be borne by the applicant; and

- d. Upon completion of the public hearing, the city council may grant or deny the tower permit, or attach such conditions to the granting of the permit, as it deems appropriate to protect the health, safety, and welfare of the community.

(Ord. No. 341-98, § 2, 3-10-98)

Sec. 16.5-32. Miscellaneous provisions.

- (a) Applicants for tower permits who are purchasing property rather than leasing property shall cause a subdivision plat to be prepared and approved in accordance with the subdivision ordinance of the city.
- (b) Evaluation and recommendations of applications prepared by the building official, or under his direction, shall be provided to the applicant at least seventy-two (72) hours prior to the meeting of the city council.
- (c) In the event a public hearing is called, such evaluations and recommendations shall also be made available to any interested citizen, subject to a nominal charge for processing and reproduction, at least seven (7) days prior to any public hearing called by the city council.
- (d) In the event the holder of an approved tower permit desires to sublease or co-locate additional antennas or arrays on an existing tower structure, no additional approvals shall be necessary, provided that the base site and area screened by fencing and landscaping is not enlarged.
- (e) Enlargement or addition of equipment or antennas on stealth tower structures shall not require additional tower permits so long as all additions are invisible and within the existing structure. Any changes to the external dimensions or appearance of the structure shall require a new permit.
- (f) Variances to the terms of this chapter are not authorized and shall not be granted.

(Ord. No. 341-98, § 2, 3-10-98)

Secs. 16.5-33—16.5-50. Reserved.

ARTICLE III. USE OF PUBLIC RIGHTS-OF-WAY.

Sec. 16.5-51. Purpose.

- (a) *Protection of rights-of-way; neutrality.* The purpose of this article is to establish a competitively neutral policy for the use, by telecommunications providers, of the city's public rights-of-way, and to enable the city to:
- (1) Minimize congestion, inconvenience, visual impact, costs, and other adverse effects which would likely result from the unregulated placement of telecommunications facilities within public rights-of-way;
 - (2) Require, to the extent permitted by law, that telecommunications providers pay fair and reasonable compensation for the use of public rights-of-way;
 - (3) Promote competition among telecommunications providers and encourage the universal availability of telecommunications services to all residents and businesses of the city;
 - (4) Conserve the limited physical capacity of such public rights-of-way held in public trust by the city;

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- (5) Assure that telecommunications providers having facilities within the city comply with applicable ordinances, rules, and regulations of the city; and
 - (6) Assure that the city fairly and responsibly preserves and protects public health, safety, and general welfare.
- (b) *Services not regulated.* It is not the policy or intention of this article to prohibit, regulate, license, or franchise the provision of any service within the city, and no provision of this article shall be so construed; any term or condition contained herein, or in any license ordinance adopted pursuant hereto, shall relate to the rights of a person to make use of the public rights-of-way, not in limitation of any right granted by the Texas Public Utility Commission, the Federal Communications Commission, or their successors.
- (c) *Existing franchise rights preserved.* This article shall not apply to a telecommunications provider operating within the city on the effective date hereof pursuant to a valid existing franchise ordinance; provided, however, upon the termination of any such franchise the telecommunications provider to which it applies shall be subject to the provisions hereof in the same manner as any other telecommunications provider. Notwithstanding the foregoing, any telecommunications provider operating within the city on the effective date hereof pursuant to a valid franchise ordinance may, at such provider's option, apply for the issuance of a license hereunder and the early termination of such franchise. Such franchise shall be deemed terminated upon the effective date of such license. Nothing in this article shall be construed to diminish the right or ability of the city to require any other user of public rights-of-way to secure appropriate city authorization, including, without limitation, cable service providers.

(Ord. No. 381-99, § 2, 10-12-99)

Sec. 16.5-52. Definitions.

For the purposes of this article the following words, terms, and phrases shall have the meanings ascribed thereto, unless the context of their usage clearly indicates otherwise:

Access Line shall mean a unit of measurement representing (1) each switched transmission path of the transmission media that is physically within the public right-of-way extended to the end-user customer's premises within the city that allows delivery of local exchange telephone services within the city that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale; (2) each termination point or points of a non-switched telephone or other circuit consisting of transmission media located within the public right-of-way connecting specific locations identified by, and provided to, the end-user for delivery of nonswitched telecommunications services within the city; or (3) each switched transmission path within the public right-of-way used to provide central office based PBS-type services for systems of any number of stations within the city, and in such instance, one such path shall be counted for every ten (10) stations served. The term access line shall not be construed to include interoffice transport or other transmission media that do not terminate at an end-user customer's premises, or to permit duplicate or multiple assessment of access line rates upon the provision of a single service.

Applicant shall mean a person who files an application with the city, pursuant to section 5 hereof, to obtain a license to use or place network facilities within the city's public rights-of-way, whether by means of the person's own facilities or by purchase or lease of one (1) or more network facilities from another provider of telecommunications services.

Cable act shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 532, et seq., as amended.

Cable operator' shall mean a person providing or offering to provide "cable service" within the city as that term is defined in the cable act.

Cable service shall have the same meaning provided by the cable act.

City shall mean the City of Dickinson, Texas, a home rule municipal corporation.

City council shall mean the governing body of the city.

City property shall mean all real property owned by the city, other than public rights-of-way, as that term is defined herein, and all other properties held in a proprietary capacity by the city, which are not subject to right-of-way licensing as provided in this article.

Federal Communication Commission or *FCC* shall mean the federal agency or its successor agency that is the regulatory authority over telecommunications providers.

Licensee shall mean a telecommunications provider that has been issued a license pursuant to a license ordinance.

License fee shall mean the compensation payable to the city by a licensee for the use and occupancy of public rights-of-way.

License ordinance shall mean an ordinance adopted pursuant to this article which grants to a telecommunications provider the authority and license to place, operate, and utilize its network facilities within the public rights-of-way of the city for the purpose of providing telecommunications services.

Network facilities shall mean conduits, ducts, manholes, vaults, tanks, towers, wave guides, optic fiber, microwave dishes, transmitters, antennas and antenna structures, radio equipment, and any associated converters, electrical lines, communications lines, transmission lines, cables, wires, amplifiers, switches, utility equipment, or other such object, device, facility, or appurtenance, including attachments and encasements therefor, whether underground or overhead, which are designed, installed and constructed within the public rights-of-way for the purpose of producing, receiving, amplifying, switching, transmitting, or distributing communication signals, whether analog or digital, whether for voice, data, or other purposes, and whether by or through "wired" or "wireless" systems, to or from customers, subscribers or locations within the corporate limits of the city. Network facilities shall not include airwaves above a right-of-way. Network facilities shall not include such facilities to the extent that they are solely used to provide cable services.

Person shall mean an individual, corporation, association, partnership, joint venture, firm, limited liability partnership, joint venture, joint stock company or association, or other entity.

Public rights-of-way shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement, or similar property in which the city holds a property interest (fee title, easement or otherwise) or over which the city exercises any rights of management or control, and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of network facilities. The term shall not include the airwaves above a public right-of-way with regard to wireless telecommunications services.

Public Utility Commission of Texas or *PUC* shall mean the Texas state agency having jurisdiction over telecommunications providers.

Telecommunications shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received.

Telecommunications provider or *provider* shall mean a person who offers telecommunications services to customers through network facilities located in the public rights-of-way.

Telecommunications services shall mean the provision of telecommunications provided through network facilities, excluding cable services, but which include, without limitation, (1) access lines provided to end users or to other telecommunications companies for the purpose of voice, data, or non-cable video transmission; (2) non-switched telephone circuits consisting of transmission media connecting specific locations identified by, and provided to, the end-user for delivery of non-switched services within the city; (3) switched access lines for the

distribution of voice, data, and non-cable video transmission; and (4) any other telecommunication services authorized by state or federal law.

Wired telecommunications service shall mean telecommunications services provided through network facilities which transmit and receive sounds, pictures, or signals of any kind by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, and includes both one-way and two-way services.

Wireless telecommunications service shall mean telecommunications services provided through network facilities which transmit and receive sounds, pictures, or signals of any kind by radio or microwave signals between the points of origin and reception of such transmission, and includes both one-way and two-way services.

(Ord. No. 381-99, § 3, 10-12-99)

Sec. 16.5-53. Unauthorized use of public rights-of-way.

- (a) *Authorization to use public rights-of-way required.* It shall be unlawful for any person to lay, construct, operate, offer for lease, or make available for any use whatsoever, any network facility across, along, over, above, or under any public right-of-way within the limits of the city, for any private or commercial purpose, unless the right to do so has been granted to such person pursuant to a license ordinance adopted by city council in accordance herewith.
- (b) *Liability for fees.* Without limitation of other remedies available to the city, persons making use of the public rights-of-way of the city in violation of this article, or otherwise without valid consent of the city, shall be liable for all fees authorized by this article effective as of the date of inception of such use.

(Ord. No. 381-99, § 4, 10-12-99)

Sec. 16.5-54. Public rights-of-way use license.

- (a) *Application required; contents.* Any person proposing to place network facilities within public rights-of-way shall submit an application to the city. Applications may be filed in the office of the city secretary. An application shall describe in general terms all services the applicant will offer or provide, and shall outline the applicant's proposed network facilities, including a description of the physical characteristics of the network facilities proposed to be installed in the public rights-of-way. The city council may require the following information:
 - (1) The identity of the applicant and all affiliates of the applicant which may use in any manner the network facilities to provide telecommunications services within the city;
 - (2) A general description of the principal transmission medium that will be used by the applicant to offer or provide such telecommunications services;
 - (3) Preliminary engineering plans, specifications, and a network map of planned or projected new network facilities to be located within the city, all in sufficient detail to identify:
 - a. The location and route requested for the applicant's proposed network facilities;
 - b. The location of all known overhead and underground public utility, telecommunications, cable, water, sewer, drainage and other facilities in the public rights-of-way along the proposed route; and
 - c. The specific trees, structures, improvements, facilities, or obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate;

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- (4) If the applicant is proposing to install overhead facilities, evidence that surplus space is available, and, if existing utility poles are to be utilized, evidence that their use is authorized;
 - (5) If the applicant is proposing to install underground network facilities, evidence of whether surplus duct or conduit space is available, and, if existing ducts or conduits are to be utilized, evidence that their use is authorized;
 - (6) A preliminary construction schedule and completion dates;
 - (7) A preliminary traffic control plan;
 - (8) Information to establish that the applicant will obtain all other governmental approvals and permits prior to construction and operation of the network facilities and prior to offering or providing the telecommunications services;
 - (9) Whether the applicant intends to provide cable service or other video programming service, such as an open video system, as defined in the cable act, together with sufficient information to determine whether such service is subject to cable franchising under the cable act;
 - (10) A narrative description of applicant's existing network facilities in the city that the applicant intends to use or lease;
 - (11) The area or areas of the city the applicant desires to serve and a schedule for build-out to the entire city, if any; and
 - (12) Such other and further information relating to the use of the public rights-of-way that may be reasonably requested by the city council.
- (b) *Standards for approval.* In making its determinations regarding adoption of license ordinances, the city council shall consider the legal authority of the subject applicant to provide telecommunications services within the city, with due regard for applicable federal and state telecommunications laws, regulations, and policies.
- (c) *License ordinance.* License ordinances adopted by city council shall be deemed to incorporate all provisions of this article. A license ordinance shall be deemed as authorization for the applicable licensee to use the public rights-of-way for the provision of telecommunications services. No network facility shall be located, or made use of, in any public right-of-way in a manner inconsistent with the provisions of this ordinance and/or the license ordinance. No license ordinance shall be construed to grant access to "city property," as defined herein, unless specifically included therein. No licensee shall use a public right-of-way or allow any other person to use licensee's network facilities in a public right-of-way, except as provided in the applicable license ordinance. Notwithstanding the foregoing, a license ordinance shall not be required for a person engaging solely in the resale of a licensee's services or the provision of services by unbundled network elements obtained from a licensee, provided that the applicable license ordinance authorizes the network facilities involved and the person does not own or operate any network facilities in the public rights-of-way.
- (d) *Conditions of license.* The issuance of any license pursuant to this section shall be subject to the following additional standards:
- (1) Interference with public use prohibited. All licensees shall lay, construct, erect, operate, lease, maintain, repair, and replace their network facilities in such a manner as to not unreasonably interfere with the use of public rights-of-way, public streets and sidewalks, or other public or private ways.
 - (2) Compliance with law. Licensees are explicitly subject to the police powers of the city and the city's rights as a property owner under state and federal laws. All work done by licensees in connection with the construction, expansion, reconstruction, maintenance, or repair of its network facilities in public rights-of-way shall be subject to and governed by all applicable federal, state, and city rules, regulations, laws, and ordinances. The provisions of this subsection shall apply to all licensees and to

any other person owning, operating, or in control of network facilities located within public rights-of-way.

(3) Construction regulations.

- a. *Excavations.* All excavations and other construction in the public rights-of-way shall be performed in accordance with all applicable state, federal, and city regulations.
- b. *Interference with use of property.* All construction within public rights-of-ways shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any lawful direction given by the city under the police and regulatory powers of the city.
- c. *Construction permits.* Before commencing any work which involves the construction, installation, expansion, repair, removal, or maintenance of network facilities within a public right-of-way, a licensee shall apply for and obtain a construction permit therefor. Provided, however, acquisition of construction permits shall not be required for any such work which does not involve the alteration or disturbance of the surface of the right-of-way. Each permit application shall include a written work description, including construction drawings, showing the network facilities' location (or proposed location) and the estimated depth of the network facilities (existing and proposed) in the immediate area of the proposed new construction. Such drawings shall be reviewed by the city engineer and, if disapproved, returned with comments setting forth the reasons for such disapproval. Approvals shall not be unreasonably withheld or delayed. Except as otherwise specifically provided herein, licensees shall not commence any such work until applicable construction permits have been approved therefor. Upon completion of any such work, the licensee shall promptly restore the surface of the affected public right-of-way to a condition which equals or exceeds its condition prior to such construction. To such end, the licensee shall replace excavated areas with the same type of materials as those removed, unless alternate equivalent materials are approved by the city. Any excavated areas showing depressions within one (1) year following such work shall be restored by the licensee. Licensees may excavate public rights-of-way only for the purpose of, and to the extent reasonably required for, the construction, installation, expansion, repair, removal, or maintenance of its network facilities. Review and approval by the city of construction permits as provided herein shall not constitute any representation or warranty regarding the sufficiency of design or construction of the network facilities.
- d. *Emergency repairs; restoration of service.* Notwithstanding the foregoing paragraph c., during emergency situations where, in the good faith judgment of a licensee, failure to act immediately could jeopardize public health, safety, or general welfare, or in situations where a repair is necessary to restore service to a customer, licensees may perform repairs to facilities within public rights-of-way which involve the alteration or disturbance of the surface of such public right-of-way, without prior notification to the city. In such cases, the licensee shall notify the director of public works for the city by the close of business on the next business day, stating the nature of such repairs and, if not completed, the length of time estimated to complete same. The licensee shall apply for the required approvals as soon as reasonably practicable, and any work performed that is not consistent with then applicable city standards shall be corrected upon notice thereof from the city.
- e. *Routine maintenance.* Routine maintenance on network facilities located within public rights-of-way shall be conducted in a manner that is consistent with then-applicable city regulations governing such work, if any.
- f. *Obstructions of traffic.* Any obstruction of vehicular or pedestrian traffic resulting from construction or repair activities of a licensee, other than for emergency repairs, shall require

prior notification to the director of public works of the city. Any such work shall be performed in a manner calculated to cause the least inconvenience to the city and the public as is reasonably possible under the circumstances. When a licensee performs or causes to be performed any work over or across a public street or sidewalk, or so closely adjacent thereto as to create hazards for the public or itself, the licensee shall provide construction and maintenance signs and sufficient barricades and flag men at such sites as are reasonably necessary to protect the public and the licensee's equipment and workers. The application of such traffic control devices shall be consistent with the standards and provisions of the latest addition of the Texas Manual on Uniform Traffic Control Devices. Appropriate warning lights shall be used at all construction and maintenance zones where one or more traffic lanes are being obstructed during nighttime conditions.

- g. *Closing of streets.* If a licensee's work requires the obstruction of any street for a period longer than thirty (30) minutes, the closure shall be performed in a manner approved by the director of public works. The licensee shall not wholly close any public street, but shall at all times maintain a route of travel along and within any roadway that is within a public right-of-way; provided that, in cases of an emergency, the director of public works may authorize the temporary closing of a public street or sidewalk to allow the licensee to complete such emergency repairs if, in the opinion of the director of public works, such closing is necessary to protect the safety of the general public.
 - h. *Construction drawings.* Within one hundred twenty (120) days following completion of each segment of its network facilities, or within one hundred twenty (120) days following any material alteration or modification thereto, each licensee shall supply the city with a complete set of construction drawings for that segment, or for the material alteration or modification thereof, unless the licensee certifies to the city, in writing, that such construction was completed in accordance with the construction plans filed pursuant to § 16.5-54(d)(3)c. above, in which case such construction plans shall be marked accordingly by the city and filed as the "permanent construction drawings." For the purposes hereof, a material alteration or modification of a network facility shall be deemed to have occurred if such alteration or modification would render the existing construction drawings inaccurate and/or misleading regarding the location of a structural component thereof. Such drawings shall be of sufficient detail to allow the city to determine the location of the licensee's network facilities with reasonable accuracy. In lieu of print documents, a licensee may, upon advance reasonable request, provide such drawings and maps by other mediums, including electronic mediums, provided the city has the capability to access such information.
- (4) Conservation of public rights-of-way. To the extent the city may be authorized by state or federal law to do so, and to the extent reasonable under the circumstances then existing, the city may require a licensee to attach portions of their facilities to other facilities within the public rights-of-way owned and maintained by other persons. A licensee shall not be required to attach its facilities to the facilities of such other persons if it is shown that such licensee would be subjected thereby to increased risks of interruption to its service, to increased liability for accidents, or to unreasonable delays in construction or availability of service, or if the facilities of such other person are not of the character, design, or construction required by, or are not being maintained in accordance with, current practice, or are not available to the licensee on reasonable terms, including, without limitation, reasonable fees.

Insofar as is practical to do so, licensees shall use existing network facilities in the provision of their services; provided, however, nothing contained herein shall be construed as limiting a telecommunications provider from expanding its facilities to accommodate future growth and development. Licensees shall provide information to the city relating to the location and/or operation of their network facilities or services as may be reasonably necessary for municipal planning purposes.

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- (5) Relocation or removal of facilities. A licensee may be required to lower, place underground, relocate, or remove any network facility within any public right-of-way, without cost to the city, if reasonably necessary, as determined by the city council, to abate a condition actually or potentially dangerous to public health or safety, or as may be reasonably necessary to accommodate the construction, repair, maintenance, removal, or installation of any city or other governmental entity's publicly funded project within the city in, upon, or under public rights-of-way, including, without limitation, street construction and widening, water, sanitary sewer, storm drains, street lights, and traffic signal conduits, or any other public facilities in, upon, or under the public rights-of-way. In the alternative, where the city council determines it to be feasible, a licensee may be allowed to pay the additional costs incurred for the design and/or construction of any such public works project in a manner that would avoid the necessity of relocation or removal of the network facilities. A licensee shall be provided the opportunity to collaborate in advance with the city and/or propose alternatives in order to minimize cost, better schedule the work, and accommodate suitable refinements and/or joint work with others.

In the event of any such requirement for lowering, placing underground, relocating, or removing network facilities as herein provided, the licensee shall complete same as soon as is reasonably practicable following written notice thereof by the city.

- (6) Timely completion. If a licensee fails to either (i) commence or thereafter diligently prosecute any repair, refilling, lowering, relocation, removal, or other work required by the city, or (ii) diligently complete any work that disturbs a public right-of-way, the city may cause the work to be done or completed at the expense of the licensee and may recover all such expense from the licensee, together with all costs and reasonable attorneys fees. Notwithstanding the foregoing, a licensee shall be entitled to notice and opportunity to cure during the cure period described and set forth in § 16.5-57(b) hereunder, and shall not be liable for any costs under this section unless such licensee fails to timely complete during such cure period.
- (7) Abandonment of obsolete network facilities. Licensees shall remove network facilities when such network facilities are obsolete, are no longer in service, and either create visual blight or create a nuisance to the public; provided however, a licensee shall not be required to remove any network facility for which renovation or restoration is planned by a licensee, and which renovation or restoration is completed within a reasonable period of time following abandonment. Provided further, no network facility, or any material portion thereof, which is being utilized for telecommunications services shall be deemed to be abandoned. When permanent structures in public rights-of-way are removed or abandoned, the city shall be notified in writing of such removal or abandonment. The director of public works may direct such remedial measures as the director may determine are necessary for public safety and the integrity of public rights-of-way.
- (8) Bonding. A licensee shall comply with all applicable regulations of the city relating to the provision of bonds or other security which may be required in connection with work in public rights-of-way.
- (9) Temporary rearrangement of aerial wires and cables. Upon request, a licensee shall remove or raise or lower its aerial network facilities 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 same, excluding requests by the city. The licensee may require payment in advance. The licensee shall be given a reasonable amount of advance notice to provide for such rearrangement, but in no event shall such notice be required to exceed thirty (30) days.
- (10) Tree trimming. A licensee is authorized to trim trees upon and overhanging public rights-of-way to the extent reasonably necessary to prevent the branches thereof from coming in contact with the licensee's network facilities. At the option of the city, a licensee may be required to conduct tree trimming under the supervision and direction of the city through the city official to whom such duty has been or may be delegated.

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- (11) Term. The term of each license granted pursuant hereto shall be as set forth in the license ordinance, but shall not exceed ten (10) years.

(Ord. No. 381-99, § 5, 10-12-99)

Sec. 16.5-55. Compensation; books and records.

- (a) *Licensee fees for providers of wired telecommunications services.* Licensees using public rights-of-way for the provision of wired telecommunications services shall pay to the city a license fee that is calculated by applying a monthly charge for each access line owned, placed, operated, controlled or maintained by the licensee, during the month to which the licensee fee applies, for use by an end-user or for another provider that uses the licensee's services or network facilities for the provision of telecommunications services within the city. With regard to persons leasing, reselling, or otherwise using licensee's access lines, if the licensee does not have sufficient information to determine the appropriate access line type, and, thus, the appropriate fee rate to apply, then the higher line fee shall apply until such time as the person using the access lines provides to the licensee sufficient written information to determine the correct line fee. Notwithstanding the foregoing, a licensee shall not be liable for underpayment of license fees resulting from the licensee's reliance upon the written information provided by any such person using licensee's service or facilities for the provision of telecommunications services to end-user customers. The license fee payable to the city shall be the sum total of the monthly charges to be applied to access lines, on a calendar month basis, as follows:

Monthly charge (per Access Line) \$.66

- (1) Payment due dates; calculation report; access lines. License fees shall be paid quarterly, with such payments due and payable on or before the forty-fifth (45th) day following the end of the calendar quarter for which such payments apply. With every quarterly remittance, each licensee shall file a written report showing the number and type of access lines owned or placed and maintained by the licensee within the city that are activated for end-user customers and other telecommunications providers at month's end, for each of the three (3) calendar months to which such remittance applies. Such report shall specifically identify access lines owned, placed, operated, controlled, or maintained by the licensee that are leased and/or used by persons who are not end-user customers. Such report shall show the number of access lines by category, to the extent known. The report shall be used solely for the purpose of verifying the number of the licensee's access lines serving premises within the city.
 - (2) Exclusions for certain economically disadvantaged customers. Lines terminating at customers' premises that are billed as "Lifeline," "Tel-Assistance," or other services similarly discounted for the purpose of advancing universal service to the economically disadvantaged, shall not be included in the count of access lines for which the license fee is calculated.
 - (3) Leased network facilities. Notwithstanding any other provision contained in this article to the contrary, a licensee shall not be required to include in its monthly count of, and shall not be required to remit a license fee to the city based on, access lines that are resold, leased, or otherwise provided to another person if the other person has furnished licensee with adequate proof that the person will remit directly to the city a license fee based on those leased access lines.
- (b) *License fees for providers of wireless telecommunications services.* Licensees using public rights-of-way for the provision of wireless telecommunications services shall pay to the city a license fee that is calculated by applying a monthly charge calculated in accordance with one of the following methods described in this section.
- (1) Per subscriber/customer method. Licensees may elect to pay a license fee that is calculated by applying a monthly charge for each subscriber/customer within the city that use the licensee's services or

network facilities for the provision of telecommunications services. A monthly charge shall be applied for each end-user subscriber/customer having a billing address within the city. The license fee payable to the city shall be the sum total of the monthly charges to be applied to each subscriber/customer, on a calendar month basis, as follows:

Monthly fee (per subscriber/customer) \$.66

- (2) Gross revenue method. If the license fee provided for in § 16.5-55(b)(2) above would result in a fee which exceeds four (4) percent of the applicable licensee's gross revenues from subscribers/customers within the city, such licensee may pay a license fee which equals four (4) percent of the gross revenues received by such licensee from subscribers/customers within the city. For the purposes hereof, the term "gross revenues" shall mean the gross dollar amounts received by the licensee for wireless telecommunications services provided to subscribers/customers with billing addresses in the city, but excluding (i) the monthly charges collected pursuant to this section, (ii) local, state, or federal taxes collected by the licensee that have been billed to subscribers/customers and separately stated on bills therefor, and (iii) uncollectible revenues.
 - (3) Facilities charge method. A licensee providing wireless telecommunications services within the city which does not occupy more than five hundred (500) linear feet, two hundred (200) square feet, or one hundred (100) cubic feet of the public rights-of-way for the location of its network facilities, may pay an annual license fee based on the actual network facilities located within such public rights-of-way. Such license fees shall be calculated in accordance with public right-of-way use fee schedules as may be adopted by the city council from time to time and in effect at the time the applicable license ordinance is adopted.
 - (4) Payment due dates; calculation report. License fees shall be paid quarterly, with such payments due and payable on or before the forty-fifth (45th) day following the end of the calendar quarter for which such payments apply. With every quarterly remittance, each licensee shall file a written report showing the number of subscribers within the city that are served by the licensee, the gross revenues received by the licensee, or an inventory of network facilities in the city's public right-of-way, as applicable, for each of the three (3) calendar months to which such remittance applies. Such report shall specifically identify any network facilities owned, operated, or maintained by the licensee that are leased and/or used by persons who are not end-users. Such report shall show the number of subscribers of such persons leasing or using such facilities, if any, to the extent known. The report shall be used solely for the purpose of verifying the license fee payable to the city, as herein provided.
 - (5) Exclusions for certain economically disadvantaged customers. Subscribers that are billed as "Lifeline," "Tel-Assistance," or for other services similarly discounted for the purpose of advancing universal service to the economically disadvantaged, shall not be included in the count of subscribers for which the license fee is calculated.
 - (6) Leased network facilities. Notwithstanding any other provision contained in this article to the contrary, a licensee shall not be required to include in its monthly count of subscribers, and shall not be required to remit a license fee to the city based on, subscribers that are served by network facilities resold, leased, or otherwise provided to another person for consideration if (i) the other person is operating pursuant to a valid license under this article, and (ii) the other person has furnished licensee with adequate proof that the person intends to include its subscribers in its monthly count to the city, the person intends to remit to the city a license fee based on those subscribers, and the city has approved the arrangement.
- (c) *License fees for providers not serving customers within the city.* Providers using network facilities within public rights-of-way, but which serve no customers within the city, other than itself, shall pay an annual license fee based on the facilities located within such public rights-of-way, which fees shall be commensurate with the fees paid by providers serving customers within the city. Such license fees shall be calculated in

accordance with public right-of-way use fee schedules as may be adopted by the city council from time to time and in effect at the time the applicable license ordinance is adopted. This fee shall be due on or before July 15 of every year during the term of the license, prorated as applicable. A report shall be submitted with each annual payment showing the calculation of the payment, including necessary descriptions of the network facilities, as applicable.

- (d) *Reporting requirements.* The forms required to be filed pursuant to subsections 16.5-55(a)(1), (b)(1) and (d) above shall be accompanied by a written statement, executed by a duly authorized officer or representative of the licensee, certifying that the information contained in such report is true and correct, to the best of the officer or representative's knowledge and belief, after due inquiry. A copy of the completed forms and the accompanying certified statements shall be filed with the city secretary of the city. Such forms shall be deemed confidential to the extent permitted by law. Upon written request, licensees shall verify the information contained in such forms and, upon reasonable advance notice, all non-customer specific records and other documents required for verification shall be subject to inspection by the city, expressly excluding any records, documents, or other writings the disclosure of which is prohibited by state or federal law.
- (e) *Late payments; default.* Payments received after their due date shall incur interest at the rate of ten (10) percent per annum, compounded daily. Notwithstanding the foregoing, failure of a licensee to make a full payment within thirty (30) days following the due date shall constitute an event of default.
- (f) *Circumvention of license fees prohibited.* Licensees shall not circumvent payment of license fees by bartering, by transferring rights, or by other means that result in undercounting the number of access lines, or subscribers, as applicable, as required herein. Capacity or services may be bartered if the imputed access lines, or subscribers, are reported in accordance with this article.
- (g) *Uncollectibles.* A licensee shall not be obligated to pay the city for any access lines or subscribers for which revenues remain uncollectible.
- (h) *No release.* No acceptance by the city of any payment by a licensee shall be construed as a release of, or an accord or satisfaction of, any claim that the city might have for further or additional sums payable under the terms of this article or a license ordinance, or for any other performance or obligation of the licensee.
- (i) *No other fees.* License fees paid hereunder shall be in lieu of any permit, license, approval, inspection, or other similar fee or charge, including, but not limited to, all general business license fees customarily assessed by the city for the use of the public rights-of-way against persons operating businesses similar to that of licensees. Further, such license fees shall constitute full compensation to the city for all of a licensee's network facilities located within the public rights-of-way, including interoffice transport and other transmission media that do not terminate at an end-user customer's network interface device, even though those types of network facilities are not used in the calculation of a license fee.
- (j) *Records.* Licensees shall retain and maintain all records, accounts, and financial and operating reports necessary to establish compliance with the terms of this article, for a period of not less than five (5) years.

(Ord. No. 381-99, § 6, 10-12-99)

Sec. 16.5-56. Indemnification and insurance.

- (a) *Indemnity.* To the extent permitted by law, each licensee shall indemnify and hold the city harmless as follows:

The licensee shall promptly defend, indemnify, and hold the city harmless from and against all damages, costs, losses, or expenses (i) for the repair, replacement, or restoration of city's property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective solely as a result of the licensee's acts or omissions; and (ii) from and against any and all claims, demands, suits, causes of action, and judgments for

(a) damage to or loss of the property of any person (including, but not limited to, the licensee, its agents, officers, employees, and subcontractors, city, its agents, officers, and employees, and third parties); and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person (including, but not limited to, the agents, officers, and employees of the licensee, licensee's subcontractors, city's officers, agents, and employees, and third parties), arising out of, incident to, concerning, or resulting from the negligent or willful acts or omissions of the licensee, its agents, employees, and/or subcontractors, in the performance of activities pursuant to this article.

This indemnity provision is intended to include liability arising from the city's alleged negligence, but only to the extent such liability arises out of a claim or claims that the city was negligent in granting this license, in regulating the conduct of licensee under this license, or in failing to prevent licensee from acting in a negligent or wrongful manner.

The indemnity provision set forth above is:

- (1) Solely for the benefit of the city and the licensee and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity;
- (2) To the extent permitted by law, any payments made to, or on behalf of, the city under the provisions of this section are subject to the rights granted to licensees under Sections 54.204-54.206 of the Texas Utilities Code; and
- (3) Subject to the continued applicability of the provisions of Sections 54.204-54.206 of the Texas Utilities Code, as set forth in (2) above, the provisions of the indemnity shall survive the expiration of this article.

If the authority granted by this article is terminated or is not renewed, and the licensee does not remove its network facilities from the public rights-of-way, the licensee shall continue to indemnify and hold harmless the city pursuant to this section as long as its facilities are located in the public rights-of-way, and for said purpose, this section shall survive this license ordinance.

(b) *Insurance.* Licensees shall procure and maintain, during the term of their licenses, the following insurance coverage, and the respective policies thereof shall cover all risks related to the licensee's use and occupancy of the public rights-of-way and all other risks associated with their license.

(1) Description of Insurance Coverage and Limits

Coverage	Limits of Liability
Workers' Compensation	Minimum Statutory Limits
Employer's Liability	Bodily Injury by Accident \$1,000,000 (each accident)
	Bodily Injury by Disease \$1,000,000 (policy limit)
	Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Combined single limits of \$1,000,000 per occurrence and \$1,000,000 aggregate
Products and Completed Operations	\$1,000,000 aggregate
Automobile Liability Insurance for Automobiles used by the Licensee in the Course of its Performance under the License Ordinance, including Employer's Non-Ownership and Hired Auto Coverage	\$1,000,000 combined single limit per occurrence

Excess Coverage	\$1,000,000 per occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability
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Note(s)—Aggregate limits are for a 12-month policy period, unless otherwise indicated.

- (2) Other insurance related requirements.
 - a. The city shall be named as an additional insured, by endorsement, on all applicable insurance policies;
 - b. Applicable insurance policies shall each be endorsed with a waiver of subrogation in favor of the city;
 - c. Insurers shall have a rating of B + or better and a financial size of Class VI or better, according to the current year's Best's rating. Each insurer shall be responsible and reputable, must have financial capability consistent with the risks covered, and shall be subject to approval by the city council with regard to conformance with these requirements, which approval shall not be unreasonably withheld;
 - d. Deductible limits on insurance policies and/or self-insured retention exceeding fifty thousand dollars (\$50,000.00) shall require approval by the city council;
 - e. Certificates of insurance shall state that the city shall be notified a minimum of thirty (30) days prior to the insurers' action, in the event of cancellation, non-renewal, or reduction in policy limits, regarding any policy required hereby;
 - f. Full limits of insurance required in § 16.5-56(b)(1) above shall be available for claims arising out of a licensee's applicable license ordinance;
 - g. Certificates of insurance shall be provided by a licensee to the city prior to the installation, construction, or operation of any network facilities within public rights-of-way; provided, however, any licensee lawfully operating network facilities within public rights-of-way at the time of adoption of such licensee's applicable license ordinance shall provide such certificates of insurance within thirty (30) days following the effective date of such license ordinance. Any failure of the city to request such documentation shall not be construed as a waiver of the insurance requirements specified herein;
 - h. The city shall be entitled, upon request and without incurring expense, to review the insurance policies (or certified copies thereof), including endorsements thereto, which relate to the insurance requirements specified herein, and, at its discretion, to require proof of payment for policy premiums;
 - i. The city shall not be responsible for paying the cost of insurance coverage required herein;
 - j. Notice of any actual or potential claim and/or litigation that would affect insurance coverage required herein shall be provided to the city in a timely manner. In the alternative, a policy may, by endorsement, establish a policy aggregate to establish compliance with the requirements set forth herein;
 - k. Each insurance policy required herein shall be primary insurance to any other insurance available to the city with respect to any claims arising hereunder;

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- l. A licensee shall either require its contractors to maintain the same insurance coverage and limits thereof as specified herein or such coverage on the licensee's contractors shall be provided by the licensee; and
 - m. A licensee may elect to self-insure to provide the insurance coverage required hereunder, subject to the restrictions set forth in this subsection, provided that the licensee submits to the city copies of its certificates of self-insurance from the Texas Department of Insurance and of its most recent audited financial statements, showing self-insurance reserves or other assets sufficient to pay judgments equal to the limits set forth above. A licensee shall also provide to the city documentation evidencing its process for reviewing and paying claims. The city shall be protected by a licensee's self insurance to the same extent as an additional insured on a policy issued by an insurance company. If, during the term of a license granted hereunder, a licensee's self-insurance program ceases, or a licensee's assets or reserves are no longer sufficient to comply with the above coverage requirements, the licensee shall immediately notify the city of such lapse of coverage, and the licensee shall obtain commercial insurance in accordance with the above requirements within thirty (30) days following such notice.
- (3) No right of recovery. Insurers shall have no right of recovery against the city, it being the intention hereby that the insurance policies required herein shall protect licensees and the city, and shall be primary coverage for all losses covered by such policies. Such policies shall provide that the issuing company waives all right of recovery by way of subrogation or assignment against the city in connection with any damage covered thereby. Companies issuing such policies shall have no recourse against the city for payment of any premiums or assessments, same being at the sole risk of the licensees.
 - (4) Lapse of coverage an event of default. A licensee shall continuously and without interruption maintain in full force and effect the required insurance coverage and limits set forth in this section. Failure to maintain such insurance shall constitute an event of default and the city, at its option, may terminate any license granted pursuant hereto, in accordance with the provisions of § 16.5-57 below.

(Ord. No. 381-99, § 7, 10-12-99)

Sec. 16.5-57. Default and termination.

- (a) *Events of default.* The occurrence of any of the following shall constitute an event of default by a licensee.
 - (1) Failure of a licensee to comply with any material term, condition, or provision of this article or the license ordinance applicable to such licensee;
 - (2) Any intentional false statement or misrepresentation as to a material fact by an applicant;
 - (3) A licensee's loss of or failure to obtain licenses, permits, and certifications lawfully required by any statute, ordinance, rule, or regulation of any regulatory body having jurisdiction over the licensee's operations and to pay all fees associated therewith;
 - (4) An act or omission of a licensee constituting a knowing or intentional evasion of payment of any fee payable hereunder.
- (b) *Cure period.* If a licensee continues to violate or fail to comply with a material term or provision of this article for a period of thirty (30) days following notification in writing by the city to cure such specific alleged violation or failure to comply, then the city may follow the procedures set forth herein to declare that the licensee has terminated all rights and privileges consented to pursuant to this article and the licensee's license ordinance; provided, however, if a licensee is alleged to be in violation of any material provision of this article, other than the payment of a fee due hereunder, and if the licensee commences efforts to cure

such alleged violation within thirty (30) days following receipt of written notice thereof and shall thereafter prosecute such curative efforts with reasonable diligence until such curative efforts are completed, then such alleged violation shall cease to exist and no further action shall be taken at that time.

(Ord. No. 381-99, § 8, 10-12-99)

Sec. 16.5-58. Transfer of authority.

- (a) *Prohibition.* Any right, privilege, and license granted pursuant hereto may not be assigned, in whole or in part, without the prior consent of the city expressed by resolution or ordinance, and then only under such conditions as may therein be prescribed, except as otherwise provided in subsection (d) below. No such consent by the city shall be unreasonably withheld, conditioned, or delayed. No assignment in law or otherwise shall be effective until the assignee has filed with the city an instrument, duly executed, reciting the fact of such assignment, accepting the terms hereof and of the license ordinance, and agreeing to comply with all the provisions thereof. A mortgage or other pledge of assets in a bona fide lending transaction shall not be considered an assignment of a license for the purposes of this article.
- (b) *Process.* Upon receipt of a request for consent to an assignment, the city shall diligently investigate the request in a timely manner and place the request on the city council agenda at the earliest practicable time. The city council shall proceed to act on the request within a reasonable period of time.
- (c) *Scope of review.* In reviewing a request for assignment, the city may, to the extent permitted by law, inquire into the legal, technical, and financial qualifications of the prospective assignee, and the licensee shall assist the city in so inquiring. The city may condition said assignment upon such terms and conditions as it deems reasonably necessary, provided its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective assignee, as well as the licensee's compliance with the terms hereof.
- (d) *Assignments not requiring approval.* Notwithstanding any other provision contained in this article to the contrary, the prior approval of the city shall not be required for any transfer of ownership or control of a provider's business, except that the provider shall maintain with the city current point of contact information. Provided, however, no such assignment shall be effective until the licensee shall have given written notice thereof to the city.
- (e) *Release.* Upon receiving the city's consent to an assignment, or, in the event of an assignment qualifying under subsection (d) above, upon giving notice under subsection (d), a licensee shall be relieved of all conditions, obligations, and liabilities arising or which might arise hereunder that are assumed by the assignee.

(Ord. No. 381-99, § 9, 10-12-99)

Sec. 16.5-59. Miscellaneous provisions.

- (a) *Work by others, construction by abutting owners, and alterations to conform with public improvements.*
 - (1) The city reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work, and any attachment, restructuring, or changes in aerial facilities that may be deemed necessary or proper by the city in, across, along, over, or under any public right-of-way occupied by providers, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the city shall not be liable to providers for any damages not directly caused by the misconduct or gross negligence of the city; provided, however, nothing herein shall relieve any other person or entity, including any contractor, subcontractor, or agent from liability for damage to a licensee's facilities.

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- (2) If during a license term the city authorizes abutting landowners to occupy space over, under, or across the surface of any public right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to a licensee. In the event that the city shall close or abandon any public right-of-way, which contains any portion of a licensee's network facilities, any conveyance of land contained in such closed or abandoned public right-of-way shall be subject to the rights of a licensee hereunder and under the licensee's license ordinance.
- (3) Providers shall be liable for the acts or omissions of any person used by such providers when such person is involved directly or indirectly in the construction and installation of such providers' network facilities to the same extent as if the acts or omissions of such person were the acts or omissions of the provider.
- (b) *Annexation and disannexation.* Within thirty (30) days following the date of passage of any action effecting the annexation of any property to, or the disannexation of any property from, the city's corporate boundaries, the city shall furnish licensees written notice of the action and an accurate map of the city's corporate boundaries showing, if available, street names and number details. For the purpose of compensating the city under this article, a licensee shall start including or excluding access lines or subscribers, as applicable, within the affected area in the licensee's count of access lines or subscribers, as applicable, on the effective date designated by the comptroller of public accounts of the State of Texas for the imposition of state local sales and use taxes; but in no case less than thirty (30) days following the date the licensee is notified by the city of the annexation or disannexation.
- (c) *Confidential records.* Upon the notification by a licensee to the city of the confidential nature of any information, report, document, or writing, the city shall maintain the confidentiality of such information, report, document, or writing to the extent permitted by law. Upon receipt by the city of requests for the licensee's confidential information, report, document, or writing, the city shall notify the licensee of the request, in writing. Unless otherwise approved in writing by the applicable licensee, the city shall request an attorney general's opinion before disclosing any confidential information, report, document, or writing, and will furnish the licensee with copies of such requests.
- (d) *Abandonment of public rights-of-way.* If the city conveys, closes, abandons, or releases its interest in or authority over any public right-of-way containing network facilities installed or operated pursuant to a license ordinance, any such conveyance, closure, abandonment, or release shall be subject to the rights of the licensee under the license ordinance.
- (e) *Right to audit.* The city reserves the right to inspect a provider's business records to the extent necessary to ensure compliance with the access line and/or subscriber reporting requirements of this article. Any such review shall be commenced within ninety (90) days following the filing of a certified report of access lines and/or subscribers. If any such inspection discovers an underpayment due to the city that exceeds five (5) percent of the total amount paid for any quarterly reporting period, then the licensee shall promptly reimburse the city for the actual and reasonable cost of such audit. Provider shall also pay the city all actual amounts of the underpayments as determined by the audit, plus interest as hereinabove provided.
- (f) *Force majeure.* Other than for the failure to pay amounts due and payable under this article, a licensee shall not be in default or be subject to sanction under any provision of this article when its performance is prevented by force majeure. Force majeure shall mean an event caused by strike or other labor problem; embargo; epidemic; act of God; fire; flood; adverse weather conditions, or other major environmental disturbance; act of military authority; or war or civil disorder, provided that such causes are beyond the reasonable control and without the willful act, fault, failure, or negligence of the licensee. Performance is not excused under this section following the end of the applicable event of force majeure.
- (g) *Controlling law.* This article, and any license issued hereunder, shall be governed by the laws of the State of Texas and the United States, and venue for any action hereunder shall be in Harris County, Texas.

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- (h) *Effective date of license.* Any license granted hereunder shall be effective upon the adoption of the applicable license ordinance and the filing of necessary certificates of insurance as otherwise required herein.

(Ord. No. 381-99, § 10, 10-12-99)

Sec. 16.5-60. Penalty.

Any person who shall use or occupy the public rights-of-way for the provision of telecommunications services without having been issued a license therefor pursuant to this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed two thousand dollars (\$2,000.00). Each day of violation of this article shall constitute a separate offense.

(Ord. No. 381-99, § 11, 10-12-99)

Sec. 18-55. General commercial "GC" district.

The zoning of property as "GC" general commercial is intended to provide for a variety of commercial uses including wholesale sales and services, general retail and service businesses, and office uses. This district is primarily intended for use in high traffic areas adjacent to arterial streets and highways and is appropriate for high volume commercial centers.

The zoning of property as "GC" general commercial is intended to provide for a variety of commercial uses including wholesale sales and services, general retail and service businesses, and office uses. This district is primarily intended for use in high traffic areas adjacent to arterial streets and highways and is appropriate for high volume commercial centers.

- (a) *Permitted uses.* No building, structure, or land shall be used, and no building or structure shall be erected, constructed, reconstructed, moved or altered except for one (1) or more of the uses identified below, subject to all applicable provisions of these zoning regulations.
- (1) All uses permitted in the "NC" district.
 - (2) Appliance and home furnishing stores.
 - (3) Parts supply stores.
 - (4) Banks, credit unions, and other depository institutions.
 - (5) Bowling alleys and other entertainment centers.
 - (6) Reserved.
 - (7) Cemeteries, funeral homes, mortuaries, and crematories.
 - (8) Day care services.
 - (9) Commercial printing shops.
 - (10) Computer stores and related services.
 - (11) Convenience stores (with or without gasoline sales).
 - (12) Dry cleaning services.
 - (13) Reserved.
 - (14) Food stores, all types.

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- (15) Gasoline service stations, including mechanical repair.
 - (16) General merchandise stores, including department and variety stores.
 - (17) Golf courses, including miniature courses and golf driving ranges.
 - (18) Hardware stores.
 - (19) Hospitals, clinics, or sanitariums.
 - (20) Reserved.
 - (21) Liquor stores.
 - (22) Lumber and building material dealers-retail.
 - (23) Office buildings, all types.
 - (24) Commercial and nonprofit recreation facilities, including assembly facilities and sports and recreation clubs.
 - (25) Radio and television broadcasting stations or studios.
 - (26) Repair shops, miscellaneous.
 - (27) Restaurants, including drive-through or drive-in service and the sale of alcoholic beverages for consumption on the premises.
 - (28) Retail nurseries.
 - (29) Retail stores, not elsewhere classified.
 - (30) Reserved.
 - (31) Taxidermies.
 - (32) Theaters.
 - (33) Upholstery shops, not including furniture manufacturing facilities.
 - (34) Veterinary clinics and kennels, excluding outdoor runs and provided that no building or kennel shall be closer than fifty (50) feet to any residential district.
 - (35) Wholesaling and warehousing establishments, limited to uses that are similar and no more objectionable than the uses enumerated in this district.
 - (36) The above uses are not intended to be all-inclusive. Additional commercial and noncommercial uses may be permitted, which are similar, have comparable impact on adjacent property, and correspond with the purpose and restrictions of this district.
 - (37) Specific uses permitted pursuant to article V hereof.
- (b) *Height and area regulations.* The maximum height of buildings and structures, the minimum dimensions of lots, setbacks for yards and parking lots shall be as follows, except as otherwise provided in article VI, supplemental regulations:
- (1) Minimum lot area. Nine thousand (9,000) square feet.
 - (2) Maximum height of structures. Three (3) stories, maximum forty-five (45) feet from finished grade, subject to development and performance standards.
 - (3) Minimum yards:
 - a. *Front:* Twenty-five (25) feet.

Fifty (50) feet from I.H. 45 right-of-way.

- b. *Side:* Ten (10) feet or ten (10) percent of the lot width, whichever is greater, "but not more than twenty five (25) feet."

Twenty (20) feet when adjacent to a residential district. Buildings over twenty (20) feet in height shall set back an additional one (1) foot for each additional two (2) feet in height.

- c. *Corner:* Twenty-five (25) feet.

Fifty (50) feet from I.H. 45 right-of-way.

- d. *Rear:* Ten (10) feet.

Twenty-five (25) feet when adjacent to a residential district. Buildings over twenty (20) feet in height shall set back an additional one (1) foot for each additional two (2) feet in height.

- (4) Lot coverage: Forty (40) percent of lot area, including principal and accessory buildings.

- (5) Minimum lot width: Seventy-five (75) feet.

Eighty-five (85) feet corner lot.

- (6) Minimum lot depth: One hundred (100) feet.

- (7) Minimum parking lot setback: Fifteen (15) feet from street right-of-way.

Ten (10) feet from property lines of districts zoned "NC" through "GI", inclusive.

Twenty (20) feet when adjacent to a residential district.

(c) *Development and performance standards:*

- (1) Hotels and motels shall not contain less than two hundred (200) square feet of floor area in each living unit and shall have at least one (1) complete bathroom for each room or suite of rooms.
- (2) Except as authorized by sections 18-76 through 18-78, no merchandise shall be stored or displayed outside a building, and no equipment or vehicles, other than passenger vehicles, shall be stored outside a building.
- (3) Artificial lighting used to illuminate the premises and/or signage shall be directed away from adjacent residential properties.
- (4) Customary passenger vehicles, trailers, recreational vehicles, motor vehicles and other motorized machinery and equipment for sale or lease may be displayed on an unlimited basis outside a building on a paved display area or lot, provided that the display area shall not be placed within a required parking/paving setback area and shall not reduce the capacity of a parking lot below that required by this chapter for the use.
- (5) A development allowable in this district shall provide and maintain perpetually a vegetative buffer meeting the provisions of section 18-69 along all rear and side property lines that are common to property zoned "RR," "CR," "SR," "HR," and "MH". Off-street parking areas shall be screened in accordance with chapter 16.10, tree preservation and landscaping, of this Code.
- (6) Order boxes for drive-up and drive-through service associated with a restaurant shall be located a minimum of thirty (30) feet from property zoned "RR", "CR", "SR" and "MH".
- (7) All buildings shall be designed and constructed in accordance with the building design standards provided for in article VI, supplemental regulations.
- (8) Sidewalks, located in the platted street right-of-way, shall be provided adjacent to all public and private streets and service roads. Sidewalks shall be no less than four (4) feet in width, shall

comply with the specifications of the city, and shall comply with the requirements and specifications of the American's with Disabilities Act (ADA).

(Ord. No. 420-2001, § 1, 7-24-01; Ord. No. 508-2003, § 7, 1-13-04; Ord. No. 557-2005, §§ 6, 9, 8-9-05; Ord. No. 747-2012, § 3, 9-11-12; Ord. No. 849-2016, § 2, 7-12-16; Ord. No. 868-2017, § 2, 1-10-17; Ord. No. 946-2020, § 2, 1-14-20)

ARTICLE IX. PARKING REGULATIONS

Sec. 18-92. General requirements.

At the time any building, use, or structure is erected, enlarged, structurally altered, or converted from one use to another which requires an increase in the number of parking space, off-street parking spaces shall be provided in accordance with these regulations for the use of occupants, employees, visitors and patrons. Where off-street parking facilities are provided in excess of the minimum amounts specified by this article, or when off-street parking facilities are provided but not required, said off-street parking facilities shall comply with the minimum requirements for parking and maneuvering space as specified in this article.

Off-street parking facilities shall be maintained and continued as long as the building, use or structure is continued. No person shall utilize such building, use or structure without providing the required off-street parking facilities. In addition, it shall be unlawful to discontinue or dispense with, or cause the discontinuance or reduction of, the required parking facilities apart from the discontinuance of the building, use or structure, without establishing alternative off-street parking facilities, which meet these requirements.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-93. Construction standards.

The provisions of this section, in addition to the applicable sections of the city's building code shall govern the design and construction of driveways, parking areas, and sidewalks. Driveways, parking areas, vehicle access and maneuvering areas, and sidewalks shall be designed and constructed in accordance with the following minimum requirements.

- (1) Residential driveways shall be constructed of concrete or mortarless brick paving. Concrete shall be a minimum strength of three thousand (3,000) psi, with a four (4) inch minimum thickness, with six-inch by six-inch by six-inch welded wire mesh reinforcement, supported by chairs, and shall be tied into existing concrete street pavement with one-half (½) steel dowel bars at twenty-four (24) inches c.c., with dowel bar penetration into the existing concrete at a minimum of six (6) inches, and with expansion joints at intervals not to exceed twenty (20) feet. Residential drives located on a single lot one (1) acre or greater, or tract of land one (1) acre or greater, are exempt from this requirement.
- (2) Sidewalks shall be constructed of concrete or mortarless brick paving. Concrete shall be a minimum strength three thousand (3,000) psi, with a four (4) inch minimum thickness, with six inch by six-inch by six-inch welded wire mesh reinforcement, supported by chairs. Sidewalks shall be a minimum of four (4) feet wide and expansion joints should not exceed thirty-six (36) feet.
- (3) Driveway approach. That portion of any driveway within the public right-of-way shall be constructed of concrete or mortarless brick paving if the adjacent street is concrete; however, if the adjacent street is asphalt, then the driveway approach may be constructed of asphalt, concrete, or mortarless brick paving.

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- (4) No building permit shall be granted for construction of any new residential dwelling that does not provide for the construction of a driveway and a minimum of two (2) off-street parking spaces. Driveways shall not be located within two (2) feet of an adjoining property line. Off-street parking spaces shall not be located within an adjoining street right-of-way. Each off-street parking space shall be a minimum of nine (9) by twenty (20) feet in size.
 - (5) No building permit shall be granted for any enlargement, structural alteration, or remodeling of an existing residential dwelling, which results in a twenty-five (25) percent increase in the livable floor space, unless there is an existing driveway and a minimum of two (2) off-street parking spaces or such enlargement, alteration, or remodeling provides for the construction of a driveway and off-street parking spaces as required herein.
 - (6) No permit shall be granted for the placement of a manufactured home that does not provide for the construction of a driveway and a minimum of two (2) off-street parking spaces as required herein. The provisions of this paragraph shall not apply to a permit for the placement of a manufactured home within a manufactured home community, or the authorized replacement of a nonconforming manufactured home, which was lawfully existing on the date of adoption of this provision.
 - (7) Multiple family residential, commercial and industrial driveways and parking areas shall be constructed of concrete or mortarless brick paving. Concrete shall be a minimum strength of three thousand (3,000) psi, having a six-inch minimum thickness, with #4 rebar on eighteen (18) inch centers supported by chairs, and shall be tied into existing concrete street pavement with #4 steel dowel bars at twenty-four (24) inches c.c. The pavement structure shall be designed based on soil data from the site and based on the anticipated traffic volume, loading and service life of the proposed pavement structure. Sub-grade shall be stabilized with a minimum six (6) percent lime by weight, six (6) inches thick and compacted to ninety-five (95) percent standard proctor density or as specified by a licensed professional engineer. Horizontal dowels or saw cutting to expose existing steel are required to create a minimum ten (10) inch overlap of reinforcing steel when making a connection of a proposed concrete driveway or parking area to an existing street or drive. When the existing concrete street has no exposed steel, the following shall apply: (1) dowels should be number four (#4) bars, twenty-four (24) inches long, embedded twelve (12) inches and epoxied, and spaced in accordance with this section; and (2) as an alternative, saw cut to two (2) inches in depth and remove existing concrete to expose a minimum of twelve (12) inches of longitudinal steel, in good condition, with an equivalent cross section area of steel equal to the proposed pavement steel.
 - (8) Mortarless brick paving shall, at a minimum, be laid over a flexible base, constructed of compacted subgrade, a compacted aggregate base of not less than four (4) inches, and a minimum of one (1) inch of sand.
 - (9) Any off-street display area shall be constructed, at a minimum, of one and one-half (1½) inches of asphalt pavement on top of six (6) inches of limestone base or as specified by a licensed professional engineer.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-94. Parking, prohibited.

Recreational vehicles, travel trailers, boats, campers, pick up coaches, motor homes, and other mobile structures are hereby limited by the following prohibitions:

- (1) It shall be unlawful for any person to park any recreational vehicle, trailer, or combination thereof, on any street, public right-of-way, or alleyway of the city for more than seventy-two (72) hours

continuously, and such occurrence shall be limited to once every ninety (90) days. Provided, however, lawfully registered and operable passenger and light trucks are hereby excluded from this prohibition.

- (2) No person shall park, place, or locate a recreational vehicle on any public property, or during daylight hours within any area of a public park not designated for recreational vehicle usage, for a period of more than four (4) hours, except in cases of emergency.
- (3) No person shall park, place, or locate a recreational vehicle which is used for living quarters, or in which cooking is done, on any lot, tract, or parcel of land for a period of more than forty-eight (48) hours, unless within a recreational vehicle park, except:
 - a. Recreational vehicles may be parked on land owned by persons whose business is the repair of recreational vehicles; provided, however, when such vehicles are so parked, their use for living, sleeping, storing, or working quarters is prohibited.
 - b. Recreational vehicles may be parked on privately owned property, with the owner's permission, for storage purposes as long as such storage does not violate any other ordinance or regulation of the city.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-95. Design requirements.

- (a) An off-street parking space shall not be in a street or alley right-of-way. Each off-street parking space shall be permanently reserved for the temporary storage of one (1) automobile and connected with a street or alley that affords unobstructed ingress and egress to each space.
- (b) Each parking space shall be accessible from a street or alley through aisles and/or driveways, except that tandem parking arrangements are permitted for single-family, two-family and manufactured home residential uses. With the exception of the above residential uses on local and collector streets, off-street parking facilities shall be so arranged that in order to depart from the premises it shall not be necessary that any automotive vehicle be backed into any public street right-of-way.
- (c) Circulation within a parking area with more than one (1) aisle shall be such that a vehicle need not enter the street in order to reach another aisle within the same parking area. Dead-end aisles are not permitted for parking spaces with angles greater than zero (0) degrees and less than ninety (90) degrees unless adequate turnarounds are provided. All circulation and maneuvering of vehicles shall occur without encroaching any right-of-way or adjacent property, except in the case of joint parking facilities.
- (d) All parking spaces shall be clearly marked on the pavement with yellow or white traffic paint, curbs, or raised pavement markers approved by the city. Traffic control signs or other pavement markings shall be used as necessary to ensure safe and efficient traffic operation. The provisions of this paragraph shall not apply to a single-family dwelling.
- (e) Placement, signing, and markings for fire zones shall be approved by the city's fire official.
- (f) A parking lot shall be designed to physically prevent any portion of a vehicle from encroaching or overhanging any public right-of-way line or private property line through the installation of a permanent curb, wall, or other physical barrier.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-96. Location requirements.

The off-street parking facilities required by this article shall, to the greatest extent practicable, be located on the same lot or parcel of land as the building, use or structure in which they are required. In the event of difficulties in providing the off-street parking facilities on the same parcel of land, the zoning official may permit such required parking facilities on another lot or parcel, provided that the straight line distance between the two (2) parcels shall not exceed three hundred (300) feet, and provided further that provisions are made to safeguard the permanency of such facilities. However, under the following conditions, a proposed use or new tenancy of an existing structure shall only be required to provide the maximum number of off-street parking spaces that can be arranged for functional parking use on the space available on the subject lot or parcel:

- (1) The full amount of required facilities cannot be provided on the same lot or parcel of land as the structure because existing structure(s) consume space that would otherwise be available for functional parking; and,
- (2) The zoning official determines that on-street parking in the area of the proposed use will not create a hazardous condition or detrimentally affect traffic movements, based on the application of the following criteria to the adjacent street(s):
 - a. Whether the adjacent street width is adequate for parking;
 - b. Parking regulations on the adjacent street;
 - c. Speeds on the adjacent street; and,
 - d. Volume of traffic on the adjacent street.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-97. Joint parking facilities.

Required off-street parking for any number of separate uses may be combined in a joint parking facility under the conditions of this section, subject to the approval of a joint parking facility plan by the zoning official. Such joint parking facility plan shall be reviewed by the zoning official for conformance with this section.

- (1) *Joint parking facilities permitted.* Whenever two (2) or more uses are located together in a common building, shopping center, or other integrated building complex, the parking requirements may be complied with by providing a permanent, common parking facility, cooperatively established and operated, which contains the requisite number of spaces for each use. The joint parking facility shall be located within three hundred (300) feet from all uses, and shall not be separated from such uses by arterial streets. The total number of spaces provided shall not be less than the sum of the individual requirements for all uses, unless otherwise permitted in these regulations. Spaces provided for any permanent residents of dwellings shall be clearly designated and separated from spaces provided for employees, customers and service.
- (2) *Multiple ownerships and structures.* Where buildings, uses or structures participating in a joint parking facility are owned by multiple owners, each owner shall provide evidence of a permanent, legal instrument, approved by the city attorney, which guarantees such owner's rights to the use of the parking facility. Any termination of or amendment to such an agreement shall be subject to the approval of the city.
- (3) *Churches.* Churches may establish joint parking facilities with other uses that do not have a time conflict in parking demand. However, only fifty (50) percent of a church's required parking spaces may

be provided in this manner. In addition, such joint parking facilities shall be located no more than four hundred (400) feet from the church sanctuary.

- (4) *Guarantee.* Joint parking facilities shall guarantee the permanency of the joint use through an appropriate legal instrument, approved by the city attorney, and filed of record.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-98. Computation of the number of parking spaces.

In computing the number of parking spaces required, the following rules govern:

- (1) Service areas such as mechanical rooms, attics, and closets are excluded from the calculation of "floor area" for determining required parking spaces.
- (2) Where fractional spaces result in computing required parking spaces, the required number of spaces must be increased to the nearest whole number.
- (3) The parking space requirements for a use not specifically listed shall be the same as those for the most similar to the proposed use, as determined by the zoning official.
- (4) Whenever a building or use constructed or established after the effective date of this chapter is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise, to create a need for an increase of ten (10) percent or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. Whenever a building or use existing prior to the effective date of this chapter is enlarged to the extent of fifty (50) percent or more in floor area or in the area used, said building or use shall then and thereafter comply with the parking requirements set forth herein.
- (5) In the case of mixed uses, the parking spaces required shall equal the sum of the requirements of the various uses computed separately.
- (6) Where requirements are established on the basis of the number of seats, such requirements shall be based on the seating capacity permitted by the building and/or fire code and approved by the city's building and fire officials. When determining seating capacity for a building, use, or structure utilizing bench seating, each twenty-two (22) inches of bench shall be considered one (1) seat.
- (7) Where a manufacturing/industrial use has more than one working shift of employees, parking facilities shall be adequate to accommodate overlap requirements during transition periods.
- (8) When the developer of a large-scale development can demonstrate that such development will require fewer parking spaces than required by the standards of this chapter, the zoning official may permit a reduction in the number of required parking spaces for the development. Such a reduction in parking spaces shall be justified through the development of a parking study prepared by a professional traffic engineer or transportation planner and submitted to the zoning official. The balance of the land necessary to meet these requirements shall be held in reserve as an undeveloped area, to meet any future needs generated by an expansion of the business, a change in land use, or underestimated parking demand.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-99. Off-street parking schedule.

The minimum number of parking spaces required is as follows:

OFF-STREET PARKING STANDARDS

Use	Spaces	Unit
Residential Land Use		
Single- and two-family dwellings	2:1	Dwelling unit
Accessory dwelling unit	1:1	Accessory unit
Multi-family dwellings and townhouses:		
1 bedroom	1.5:1	Dwelling unit
2 or more bedrooms	2:1	Dwelling unit
3 or more bedrooms	0.5:1	Dwelling unit bedroom
Manufactured home	2:1	Dwelling unit
Group residential	1.5:1	Sleeping unit
Civic Land Use		
Churches, theaters, auditoriums, stadiums, gymnasiums, and other assembly halls	1:4 or 1:300 whichever is greater	Seats square feet (gfa)
Club or lodge	1:4 or 1:300 whichever is greater	Seatssquare feet (gfa)
Country club or golf course	6:1	Hole
Elementary and middle schools	1:20	Students
High schools	1:4	Students
Hospital	1.5:1	Bed
Library, museum	1:400	Square feet (gfa)
Commercial Land Use		
Automotive and equipment sales/leasing	1:300 showroom 1:2,500 (lot)	Square feet (gfa) Square feet (paved area)
Bank, clinic, and office	1:250	Square feet (gfa)
Convenience store	1:250	Square feet (gfa)
Day care center	1:10 plus 1.1	No. of Childrenlicensed for care Employee
Flea market	1:150	Square feet of area of merchandise display
Hotels and motels	1:1	Guest room
Mortuary or funeral home	1:4	Seats
Restaurant	1:100 plus 1:2	Square feet (gfa) Employees
Restaurant, fast food	1:100	Square feet (gfa)
Retail, general	1:250	Square feet
Service station	4:1	Bay
Shopping center	1:300	Square feet
Industrial Land Use		
Industrial, manufacturing, fabricating	1:650	Square feet (gfa)
Research laboratory	1:500	Square feet (gfa)
Warehousing, shipping, receiving	1:1,000	Square feet (gfa)
Wholesaling, storage, distribution	1:1,000	Square feet (gfa)

(Ord. No. 420-2001, § 1, 7-24-01)

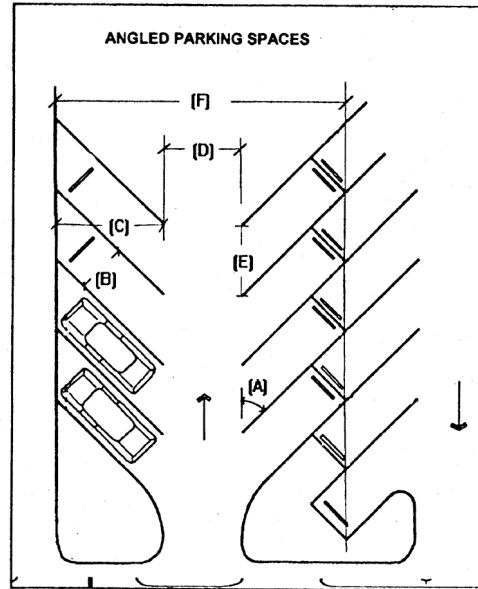
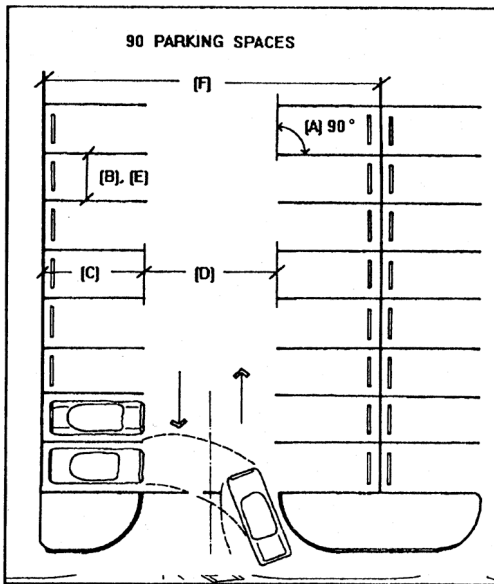
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(Supp. No. 26)

Sec. 18-100. Minimum dimensions for off-street parking.

All parking spaces, aisles and modules shall meet the minimum requirements, as shown in the following table. Provided in the table below are the minimum standards for two (2) parking stall width options—Nine-foot wide spaces and ten-foot wide spaces.

A	B	C	D		E	F	
Angle or Parking (Degrees)	Width of Stall	Depth of Stall 90 Degrees to Aisle	Width of Aisle		Width of Stall Parallel to Aisle	Module Width	
45	9	21.1	12	20	12.7	54.2	62.2
45	10	21.1	12	20	14.1	54.2	62.2
60	9	22.3	15	—	10.4	59.6	—
60	10	22.3	14	—	11.6	58.6	—
90	9	20	—	25	9	—	65
90	10	20	—	24	10	—	64
Parallel	9	9 (width)	12	24	22	30	42



90 PARKING SPACES—ANGLED PARKING SPACES

- (1) Off-street parking spaces (ninety (90) degree only) that abut a landscape island may be reduced in length to eighteen (18) feet provided that the island is a minimum of four (4) feet in depth and protected by wheel stops or curb.
- (2) Off-street parking spaces (ninety (90) degree only) that abut a sidewalk adjacent to a building may be reduced in length to eighteen (18) feet provided that the sidewalk is a minimum of six (6) feet in width.

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- (3) The width of the alley may be assumed to be a portion of the maneuvering space requirement for off-street parking facilities located adjacent to a public alley.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-101. Accessible parking spaces for disabled persons.

Handicap parking spaces accessible to disabled persons shall be provided in accordance with this section, the American's with Disabilities Act (ADA), and any federal regulations promulgated hereafter. Parking lots must designate accessible spaces for use of persons with disabilities (handicap accessible spaces) as follows:

Total Parking Spaces	Accessible Spaces
10—50	1
51—100	2
101—300	3
301—500	5
500 +	1 percent of total

Note: A minimum of one (1) van accessible space measuring ninety-six (96) inches wide minimum is required.

Handicap accessible spaces must be marked and designated in accordance with the standards and specifications adopted by the commissioner of licensing and regulation of the Texas Department of Transportation under Section 5(c), Article 9102, Revised Statutes, relating to the identification and dimensions of parking spaces for persons with disabilities, as amended, or as otherwise required by federal or state law.

Additional handicap accessibility standards are as follows:

Parking:

- a. Accessible route(s) from the parking area to the building.
- b. Curb ramps a minimum of forty (40) inches wide with a maximum slope of 1:12 and textured surfaces.
- c. Curb cuts at each corner.

Sidewalks:

- a. Maximum level change of one-half (½) inch.
- b. Minimum width of forty-eight (48) inches.
- c. Maximum openings in surfaces of three-eighths (¾) inch.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-102. Parking lot lighting.

Illumination of parking areas shall be required for all parking areas with more than twenty (20) parking spaces. The illumination may be provided through the use of light fixtures on either a pole or on a building. Lighting used to illuminate parking areas shall be arranged, located or screened to direct light away from any adjoining or abutting residential district or use or any street right-of-way. Illumination for parking areas shall be provided as follows:

The minimum amount of maintained illuminations for open parking shall be as follows:

(Supp. No. 26)

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Uses	Foot Candles	Uniformity Ratio
Low Activity	0.5	4:1
Medium Activity	1.0	3:1
High Activity	2.0	3:1

For purposes of interpreting the table above, high activity uses include athletic fields, large shopping malls and similar uses; medium activity uses include fast food restaurants and small to medium shopping centers; and low activity uses include local merchant parking, educational parking, industrial parking, and similar uses. The light fixtures shall be arranged in order to provide uniform illumination throughout the parking lot as indicated by the uniformity ratio above of average illumination to minimum illumination. The required illumination shall be measured at the pavement.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-103. Drive-in and drive-through stacking distance requirements.

Uses that have drive-through window services, unless otherwise provided below, shall provide a minimum stacking distance of one hundred sixty (160) feet, of which eighty (80) feet shall be provided to the menu board, exclusive of any aisle or parking space. The following drive-in and drive-through facilities shall conform to the following requirements.

Type of Operation	Minimum Number of Vehicles
Financial institution with drive-up tellers	4 vehicles per window or kiosk
Financial institution with drive-up ATM	2 vehicles per window or kiosk
Car wash—Self service	4 vehicles per bay at entrance 1 vehicle per bay at exit
Car wash—Automatic, conveyor	300 feet per bay at entrance 2 vehicles per bay at exit
Fast food restaurant	4 vehicle behind menu board 4 vehicle behind first window
Photo processing	2 vehicles per window
Dry cleaning	2 vehicles per window
Gasoline stations	2 vehicles per pump
Gated parking lot entrance, unit or overhead door	1 vehicle per gate/door
Day care centers and schools	As specified in the approved site development plan

These minimum vehicle storage requirements shall remain in force, unless the applicant can present a traffic study from a professional engineer that provides verifiable evidence to allow the reduction of these minimum stacking lengths. Deviations from these requirements shall be approved by the zoning official.

Stacking for all uses shall conform to the following standards:

- (1) No stacking space may occupy any portion of a public right-of-way.
- (2) The minimum pavement lane width shall be twelve (12) feet.
- (3) Stacking spaces shall not be used to satisfy any of the off-street parking or loading requirements.
- (4) Stacking lanes shall not interfere with parking spaces, parking aisles, loading areas, internal site circulation, or driveways.

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- (5) A twelve-foot by-pass lane is required adjacent to the stacking lane to allow vehicles to circumvent the drive-through lane.

(Ord. No. 420-2001, § 1, 7-24-01)

Sec. 18-104. Off-street loading requirements.

Every building (or part thereof) erected or occupied for retail business, service, manufacturing, storage, warehousing, hotel, mortuary, or any other use similarly involving the receipt or distribution by vehicles or materials or merchandise, shall provide and maintain on the same premises loading space in accordance with the following requirements:

Gross Floor Area (GFA) in Square Feet	Number of Required Loading Spaces
Less than 10,000	0
10,000—50,000	1
50,001—100,000	2
Each additional 100,000	1

Off-street loading spaces shall meet the following design requirements:

- (1) Each off-street loading space shall be a minimum of twelve (12) feet in width and forty-five (45) feet in length, with a vertical clearance of at least fifteen (15) feet. Such spaces shall be at grade level and on the same parcel of land as the corresponding building, use or structure.
- (2) Adjacent public rights-of-way and private properties shall not be used for maneuvering. All maneuvering shall be contained on site. Maneuvering areas for loading facilities shall not conflict with parking spaces or with the maneuvering areas for parking spaces.

(Ord. No. 420-2001, § 1, 7-24-01)



Planning & Zoning Commission

Specific Use Permit

May 21, 2024

Commission Report

Plan Number: 24-000427

Request:

a request for a Specific Use Permit for a Radio, television, telephone or communication broadcast tower or station of any type in a General Commercial "GC" zoning district.

Applicant: Atlas Tower I, LLC | Katie Harms

Owner: MACKKEY MECHANICAL SERV INC

Subject Properties:

Approximately ± 1.03-acres, generally located south of E FM 517 approx. 50-feet west of Owen Drive right-of-way centerline, legally described as ABST 60 F P EPPERSON SUR PT OF RESERVE B (0-6) PLANTATION ESTATES.

Parcel Information:

<u>Current Use:</u>	vacant
<u>Proposed Use:</u>	Telecommunication tower

Surrounding Properties Information:

<u>North:</u>	Right-of-way (E FM 517) and Conventional Residential ("CR") zoning district
<u>West:</u>	General Commercial ("GC") zoning district
<u>East:</u>	Neighborhood Commercial ("NC") zoning district
<u>South:</u>	Conventional Residential ("CR") zoning district

Background:

The applicant is requesting a Specific Use Permit for a Radio, television, telephone or communication broadcast tower or station of any type in a General Commercial "GC" zoning district. The preliminary plan includes a 114-foot monopole placed in a 50x50 lease space.

The subject property is part of Reserve B Plantation Estates Subdivision. The property was previously divided without replatting. A replat is required prior to permitting. The lease space is not required to be platted separately as it would not meet zoning requirements alone.

In order to recommend approval, the Commission may give consideration to factors which may be relevant to the application in addition to the following criteria:

(1) Conformance of the proposed zoning classification with the city's land use policies.

The Future Land Use Plan (FLUP) reflects the desired pattern of growth over a given time within the City. The purpose of the plan is to ensure the orderly and efficient development of the City and will serve as a guide in evaluating development proposals. The requested zoning district aligns with the FLUP allowing for commercial zoning. Shown below in Figure A is the Dickinson Charting Our Course to 2045 Comprehensive Plan, Figure 2.6 Future Land Use Map. Shown below in Figure B is a zoomed in view of subject property shown in Figure A.

Figure A

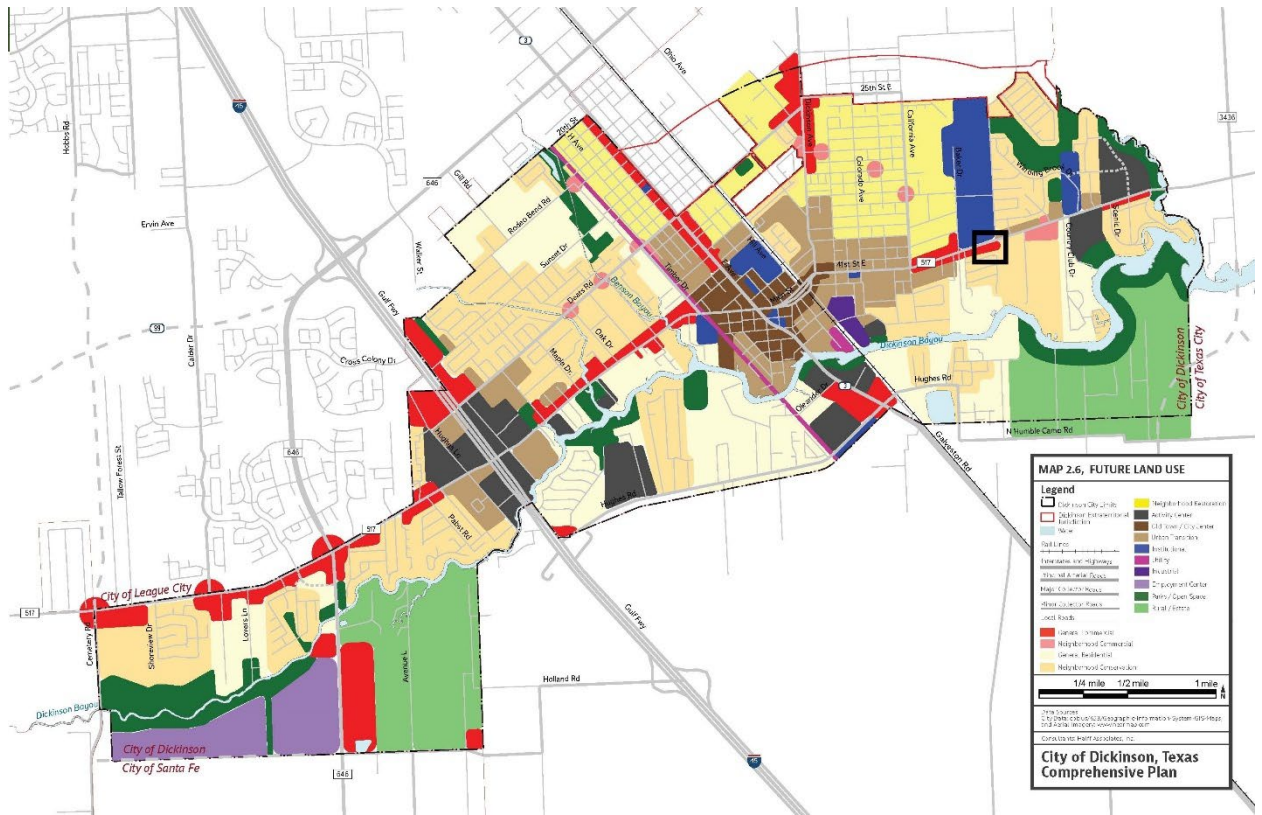


Figure B

The General Commercial land use category in the Dickinson Charting Our Course to 2045 Comprehensive Plan “is intended for business areas which will serve the local and regional community; and rely on higher traffic volumes and the visibility that is associated with being located along a major highway (i.e., I-45 frontages, SH 517, and SH 646 corridors). In these areas, the predominant character of development is auto-urban. While accommodating the automobile is, and will continue to be the predominant focus, improved streetscape and parking lot landscaping standards, buffers, appropriately designed and scaled signage, higher quality development standards, and access management techniques (e.g., limited access points and inter-parcel access easements) will enhance the overall quality and appearance of the City’s commercial corridors and reduce traffic congestion.”

While industrial uses are not appropriate in the General Commercial land use category, a telecommunication tower is a major utility that is essential in all areas of the City. The purpose of the proposed telecommunication is to provide better connectivity adjacent to Dickinson High School. Industrial uses are appropriate, with zoning allowances by-right, or on a limited or conditional basis, depending upon the protections required to decrease the amount of environmental nuisances impacting adjacent parcels/uses.

(2) The character of the neighborhood.

The subject tract is zoned General commercial. The proposed SUP would not affect the surrounding uses and would allow for continued commercial in the area.

(3) The zoning and use of nearby properties, and the extent to which the proposed zoning and use would be compatible.

The SUP will be compatible with the use and enjoyment of other property in the immediate vicinity. The proposed development is consistent with the surrounding land uses, the current zoning of the subject site.

The properties to the south of the subject property are zoned Conventional Residential. To minimize the affect the proposed Telecommunication tower must meet or exceed all the requirements of Dickinson Code of Ordinances Chapter 16.5 - TELECOMMUNICATION TOWERS (as included in the SUP Ordinance adopted by City Council), including but not limited to location of towers, landscaping, screening, and other requirements.

(4) The suitability of the property for the uses permitted by right in the proposed zoning district.

The uses permitted by right in the General Commercial zoning district are comparable to telecommunication tower use. Adjacent uses include Residential, commercial, and vacant parcels.

(5) The extent to which approval of the application would detrimentally affect nearby properties.

The specific use permit will not detrimentally affect nearby properties. All uses and activities permitted shall conform to the city's performance measures and standards as provided in the Code of Ordinances.

(6) The extent to which the proposed use would affect the capacity or safety of that portion of the street network, other public facilities or utilities, or present parking problems in the vicinity of the property.

The proposed use will meet or exceed all requirements for capacity or safety of that portion of the street network, other public facilities or utilities. The subject property will be required to obtain TxDot permits for a driveway off E FM 517. The telecommunication tower will not have regular traffic to the site but will need parking for maintenance. Parking must adhere to Dickinson Code of Ordinances Chapter 18 ARTICLE IX. - PARKING REGULATIONS.

(7) The extent to which approval of the application would harm the value of nearby properties.

Approval of the application would not harm the value of nearby properties. If the property is developed any further, the City of Dickinson Code of Ordinances will govern any adverse impacts.

STAFF RECOMMENDATION:

Staff recommends **Approval with Conditions** of the proposed Specific Use Permit for a Radio, television, telephone or communication broadcast tower or station of any type in a General Commercial "GC" zoning district.

Recommended Conditions:

Staff reviewed the submitted application and recommended changes made to the requirements prior to the public hearing and recommendation to City Council. While some of staff's comments were addressed satisfactory, staff would recommend additional requirements added to the Planned Development:

1. The subject property is part of Reserve B. Since, the property has changed configurations since platted, the property must be platted prior to permitting. The lease space may remain part of the larger tract.
2. The proposed Telecommunication tower must meet or exceed all the requirements of Dickinson Code of Ordinances Chapter 16.5 - TELECOMMUNICATION TOWERS (as included in the SUP Ordinance adopted by City Council), including but not limited to location of towers, landscaping, screening, and other requirements.
3. The proposed Telecommunication tower must meet or exceed all the requirements of Dickinson Code of Ordinances Chapter 18 ARTICLE IX. - PARKING REGULATIONS (as included in the SUP Ordinance adopted by City Council), including but not limited to construction standards, design requirements, and minimum dimensions for off-street parking.
4. The proposed Telecommunication tower must meet or exceed all the requirements of Dickinson Code of Ordinances Sec. 18-55. - General commercial "GC" district (as included in the SUP Ordinance adopted by City Council), including but not limited to Height and area regulations, and Development and performance standards.

Commission Recommendation:

Planning and Zoning Commission recommends **APPROVAL WITH CONDITIONS AS RECOMMENDED BY STAFF** of the proposed Specific Use Permit for a Radio, television, telephone or communication broadcast tower or station of any type in a General Commercial "GC" zoning district by **UNANIMOUS** vote on the 21st day of May 2024.

Deborah Fortner

DEBORAH FORTNER, Vice Chair
City of Dickinson, Texas
Planning and Zoning Commission