

[Working text of Chapters 17.01 and 17.02 provided for background information and subject to change prior to publishing on a public agenda.]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON AMENDING THE HENDERSON MUNICIPAL CODE TO ADD TITLE 17, RIGHT-OF-WAY MANAGEMENT, TELECOMMUNICATIONS FACILITIES; ESTABLISHING DEFINITIONS; PROVIDING FOR APPLICATION AND ISSUANCE OF WIRELESS USE AGREEMENTS, LICENSED LOCATION AUTHORIZATIONS, TELECOMMUNICATIONS USE AGREEMENTS AND LICENSED WIRELINE AUTHORIZATIONS; ESTABLISHING FEES FOR TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

The City Council of the City of Henderson, Nevada, does ordain:

The Henderson Municipal Code is hereby amended by adding Title 17 Right-of-Way Management, Telecommunications Facilities as follows:

Title 17 – RIGHT-OF-WAY MANAGEMENT – TELECOMMUNICATIONS FACILITIES:

Chapter 17.01 – DEFINITIONS:

17.01.010 - Definitions.

For the purpose of administering this Title, the words and terms set forth in this Title shall be defined as follows:

Applicant means the person who submits a completed Application and required supporting materials as set forth in this Chapter for a License Authorization to install and operate a Communications Facility. For convenience, the term "Applicant" will also refer to a Person submitting a request for a Master Use Agreement.

Application means all written documentation, statements, representations and warranties provided to the City, in accordance with this Title, by a prospective Licensee, which may be relied upon by the City in making its determination of whether to grant or deny a License Authorization to install and operate a Communications Facility.

Business License means the written authorization required by the City for any person who commences, carries on, engages in, or conducts a business, occupation, trade, or employment, as delineated in Title 4 of the Code, within the City of Henderson

City Manager means the City Manager of the City of Henderson and the City Manager's designee(s).

Commercial Mobile Radio Services or CMRS has the meaning given to the term "commercial mobile radio service" as defined in 47 CFR § 20.3.

Commercial Mobile Service has the meaning given to the term "commercial mobile service" as defined in 47 U.S.C § 332(d).

Communications Facilities or Facilities means Wireless Communications Facilities and Wireline Communications Facilities.

Construction Completion or Installation Completion means that time and date when all Equipment and Facilities have been installed and all public Right-of-Way and properties have been restored to their former appearance and condition in a manner acceptable to the City.

Decorative Streetlight Pole means any Streetlight Pole that: (a) is made from a material other than metal; or (b) incorporates artistic design elements not typically found in standard metal Streetlight Poles. The term Decorative Streetlight Pole includes any historically or architecturally significant or designated Streetlight Poles.

Director means the City departmental director of the department specifically named, or his/her designee.

The Federal Communications Commission or FCC means the independent agency of the United States government created by federal statute to regulate interstate communications by radio, television, wire, satellite, and cable, and its predecessors and successors.

Gross Revenue has the same meaning as that term is defined in section 4.05.020, as may be amended or renumbered.

Information Service has the same meaning as that term is defined in the 47 United States Code § 153(24).

Laws means any and all federal, state and local statutes, constitutions, ordinances, charters, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, or orders of the City or other governmental agency having joint or several jurisdiction over the parties to a Master Use Agreement, or License Authorization, including the Code of Federal Regulations (CFR), HMC, Nevada Revised Statutes (NRS) and United States Code (U.S.C.), as such laws may be amended from time to time.

License Authorization means a Licensed Location Authorization or a Licensed Wireline Authorization.

Licensed Location means a location in the Right-of-Way in which Licensee is authorized pursuant to a fully executed Wireless Use Agreement and Licensed Location Authorization to place its Wireless Communications Facilities, Licensee Pole, Wireless Communications Facilities on a Third-Party Structure, Wireless Communications Facilities on suspension cable, or Wireless Communications Facilities on a Licensee Pole.

Licensed Location Authorization or LLA means an authorization granted by the City with respect to a Licensee's construction, installation, and operation of Wireless Communications Facilities for each specific site in the City's Right-of-Way or on Municipal Facilities. All of the terms and conditions of this Title and the corresponding Wireless Use Agreement for a Licensee shall be incorporated by reference into each LLA.

Licensed Wireline Authorization or LWA means an authorization granted by the City with respect to a Licensee's construction, installation, and operation of Wireline Communications Facilities for each specific location in the City's Right-of-Way or on Municipal Facilities. All of the terms and conditions of this Title and the corresponding Telecommunications Use Agreements for a Licensee shall be incorporated by reference into each LWA.

Licensee means a Person who has obtained a fully executed Master Use Agreement with the City and is eligible to apply for a Licensed Location Authorization.

Licensee Pole means pole(s) or similar vertical structure(s) approved by City to be installed and used by Licensee in the Right-of-Way in accordance with this Title and owned and installed by Licensee for the primary purpose of physically supporting Communications Facilities.

Master Use Agreement means a Telecommunications Use Agreement or Wireless Use Agreement.

Marker means a device that physically designates the location of a subsurface facility at intermittent locations along, within, or immediately above the subsurface facility and includes, without limitation, a device containing a passive antenna that can be identified with detection equipment and does not require an internal power source.

Municipal Facilities means City-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, or electroliers owned by the City that are located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used. Municipal Facilities do not include traffic signal poles, school zone flashers or any related appurtenances.

Network means all facilities and equipment, and all features, functions and capabilities provided by means of such facilities or equipment, used in the transmission, routing, or other provision of, or in connection with, a Telecommunications Service and/or Information Service in or through the City.

Person means a natural person, any form of business or social organization and any other nongovernmental legal entity, including, but not limited to, the estate of a natural person, a corporation, partnership, association, trust, or unincorporated organization. The term "person" does not include a government, governmental agency, or political subdivision of a government.

Public Utilities Commission of Nevada or PUCN means the Public Utilities Commission of the State of Nevada, and its predecessors and successors.

Qualified Service Provider means a person that has received from the PUCN a certificate of public convenience and necessity to provide Commercial Mobile Service or Commercial Mobile Radio Service using Communications Facilities.

Right-of-Way or ROW means the surface of, and the space above and below, any and all public highways, streets, roads, alleys, and avenues, as the same now or may hereafter exist within the City, excluding (as now or hereafter established within the City) (a) State highways; (b) public streets, roads, alleys, and avenues predominantly used for public freeway or expressway purposes or a City park; (c) public streets, roads, alleys, and avenues where a Licensee's use is not expressly permitted by the granting instrument; and (d) City streets, roads, alleys, and avenues that are not typically open to the general public.

Standards Manual or standards means any requirements for the design, construction, installation, operation, maintenance, condition, modification, repair, relocation or removal of Communications Facilities and supplements to the provisions of this Title that are prepared and made public by the Department of Public Works as revised from time to time at the discretion of the Director of Public Works.

Street means the surface, the air space above the surface and the area below the surface of the full width of the Right-of-Way, including sidewalks.

Streetlight Pole shall mean any standard-design metal pole that has a mast arm for the support of a light fixture, is owned by the City, and is used for street lighting purposes. Standard-design is defined as a pole in conformance with streetlights approved for use in the City of Henderson as shown in the Uniform Standard Drawings, Clark County Area, latest edition, or as authorized by City in a written agreement. Streetlight Pole does not include traffic signal poles, school zone flashers, or any related appurtenances, nor any pole supporting a streetlight that is made from any material other than metal or any pole located in the parking lot of any City facility, park or other non-roadway facility.

Telecommunications Service or Services has the meaning given to the term "telecommunications service" in 47 U.S.C. § 153(53).

Telecommunications Use Agreement or TUA means an agreement between a Person and the City that generally defines the terms and conditions which govern their relationship with respect to a Licensee's Wireline Communications Facilities in the City's Right-of-Way or on Municipal Facilities.

Third-Party Structures means poles or other structures in the ROW lawfully owned and operated by a third party(ies) and lawfully located in the ROW.

Tracer Wire means a locating wire that is installed inside or immediately adjacent to a subsurface facility and is connected to a transmitter that carries a signal that can be read by a receiver above the surface of the ground for the detection of the location of the subsurface facility.

Traffic Signal Pole means any standard-design pole that is owned by City that is located in the ROW and is used for traffic signal or traffic control purposes, including the controller cabinet and all appurtenances related to the operation of the traffic signal system.

Wireless Communications Facilities means optical repeaters, wave division multiplexers, antennas, coaxial or fiber-optic cables, regular and backup power supplies, wires, radios, modems, and comparable equipment, including any appurtenant or supporting poles, structures or devices, that may be used for transmitting, processing, and receiving wireless voice and data by means of an antenna array through which a Person provides Commercial Mobile Service, Commercial Mobile Radio Service and/or other wireless Telecommunications Service.

Wireline Communications Facilities means (a) fiber-optic cables, connectors, amplifiers, transmitters, wires, instruments, and associated equipment, each of which is compliant with all applicable FCC regulations and is used to transmit, route, or provide a wireline Telecommunications Service; (b) Markers; (c) Tracer Wires; and (d) conduit, handholes, manholes, pedestals, cabinets, poles and similar structures commonly associated with the construction of wireline fiber-optic communications networks.

Wireless Use Agreement or WUA means an agreement between a Person and the City that generally defines the terms and conditions which govern their relationship with respect to a Licensee's Wireless Communications Facilities in the City's Right-of-Way or on Municipal Facilities.

17.02 GENERAL PROVISIONS

17.02.010 - Purpose.

The purpose of this Chapter of the HMC is to:

- (A) Establish a local policy concerning Right-of-Way management for Communications Facilities.
- (B) Permit and manage reasonable access, in a nondiscriminatory manner, to Right-of-Way in the City of Henderson for Communications Facilities.
- (C) Manage physical capacity of the Right-of-Way held in public trust by the City.
- (D) Recover public costs of permitting private use of City Right-of-Way.
- (E) Ensure all providers of Communications Facilities within the City comply with all ordinances, standards, rules and regulations of the City.

17.02.020 - Business License Required.

No Master Use Agreement will be approved until an Applicant has first obtained a Business License issued by the City. The business license fee, if any, shall be due and payable in accordance with applicable provisions of HMC Title 4.

17.02.030 – Master Use Agreement Required.

No person shall be eligible to apply for a License Authorization to construct, install, operate, or maintain Communications Facilities in, over, or under any Right-of-Way or on municipal property without obtaining a Master Use Agreement granted by the City.

17.02.040 - Request for a Master Use Agreement.

The following procedures will apply to all requests for new Master Use Agreement or renewals thereof:

- (A) An Applicant shall make a written request to the City Manager for a Master Use Agreement on a form, which may be updated from time to time, that is available at the City of Henderson, Department of Public Works.
- (B) An Applicant shall pay to the City the applicable Master Use Agreement fee listed in Chapter 17.03. Failure to pay the fee will cause the request to be deemed incomplete, and the City will not process such request until the fees are paid.
- (C) In addition to other information required by the request for a Master Use Agreement, an Applicant will provide:
 - (1) A copy of all certificates or letters of registration issued by the PUCN pertaining to Applicant's activity in the Right-of-Way.
 - (2) A copy of all City business licenses pertaining to Applicant's activity in the Right-of-Way.
 - (3) A list of persons known at the time of request that will be using an Applicant's Facilities in Right-of-Way to provide Services.

- (D) When a request is certified as complete by the Department of Public Works, and a Master Use Agreement has been executed and delivered by Applicant, the Master Use Agreement shall be presented to the City Manager for approval or denial. If the request is approved, the Department of Public Works shall issue a Master Use Agreement. If the request is denied, the Department of Public Works shall notify a Licensee in writing. Delivery of either the License Authorization or a denial notification as provided for in this section may be made to a Licensee by electronic methods such as e-mail.
- (E) The City Council authorizes the City Manager to approve and deny requests under this Chapter and to execute Master Use Agreements on behalf of the City. Upon full execution of a Master Use Agreement, an Applicant is deemed to be a Licensee and is then eligible to apply for a License Authorization.

17.02.050 – License Authorization Required.

No person shall construct, install, operate, or maintain Communications Facilities in, over, or under any Right-of-Way or on Municipal Facilities without obtaining a License Authorization executed by the City. A License Authorization is required for each Communications Facility. License Authorizations authorize a Licensee's installation of a Communications Facility in the Public Right-of-Way and are non-exclusive.

17.02.060 - Application for a License Authorization.

The following procedures will apply to all applications for new License Authorization or renewals thereof:

- (A) Application. The Department of Public Works shall prepare and make publicly available an application form requesting information necessary for the City to consider an application for installation of a Communications Facility on Municipal Facilities or in Right-of Way. The application form may be revised at the discretion of the Director of Public Works.
- (B) License Authorization Application Fee. Licensee shall pay to the City the License Authorization Application Fee listed in Chapter 17.03. Failure to pay the application fees will cause the Application(s) to be deemed incomplete, and the City will not process such Application(s) until the application fees are paid.
- (C) License Authorization Application Requirements. In addition to other information required by the application for a Master Use Agreement, an Applicant shall:
- (1) Have obtained a Business License issued by the City.
 - (2) Have obtained a Master Use Agreement granted by the City Council.
 - (3) If the Application is for Wireless Communications Facilities, identify in decibels the minimum and maximum intensity of noise generated by the Communications Facilities.
 - (3) Include the proposed design showing the proposed Communications Facilities or Third-Party Pole, including the configuration of any proposed installation of Communications Facilities, the proposed location of the Communications Facilities or Licensee Pole, the structure Licensee proposes to install the Communications Facilities on (specifically, a Municipal Facility, City-owned building, third-party structure, or Licensee Pole), and any other documents necessary for City to review

the application or requested by City, such as a noise study for Wireless Communication Facilities.

(4) Clearly depict power, backhaul, and cable routes and connections, any proposed pavement trenching or cuts in all application materials and the method of detecting underground Communication Facilities.

(5) If any Licensee Pole or Communications Facilities is or is proposed to be located in, on, above, or under real property not owned by City in fee, Licensee (a) shall obtain and maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to Licensee per HMC and an executed Master Use Agreement; and (b) by using such real property for the installation, operation, maintenance, management, and removal of Communications Facilities or a Licensee Pole, represents to City that Licensee has obtained and shall maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to Licensee per HMC and an executed Master Use Agreement. If Licensee believes such other consents, permits, licenses, easements or grants are not necessary, Licensee shall represent to City in connection with Licensee's application for a Licensed Location(s) that Licensee's use of such real property not owned by City in fee for a Licensee Pole and/or Master Communications Facilities is allowed by, is consistent with, does not violate, and does not overburden City's easement for, prescriptive right for, or other right to use such real property.

(6) Except as otherwise provided under this Title or the HMC, to the fullest extent permitted by Law, requests for the installation of Licensee Poles or the installation of Communications Facilities on Licensee Poles will be granted only if the denial of such request would prohibit or have the effect of prohibiting Telecommunications Service. In the event that no Municipal Facilities or Third-Party Structure is functionally suitable, City determines a City-owned building is not available or suitable for use, installation on Licensee-owned suspension cable is not functionally suitable, or City does not approve such an installation(s), Licensee may request the installation of a Licensee Pole at its sole cost and expense by following the applicable procedures set forth under the HMC, this Title, the Master Use Agreement and the Standards Manual. If Licensee proposes to install a Licensee Pole in the ROW and/or proposes to install any Communications Facility in or on a Licensee Pole, Licensee (a) shall obtain and maintain all consents, permits, licenses, easements or grants that are necessary for the lawful exercise of the authorization(s) granted by City to Licensee per the HMC, this Title, the Master Use Agreement and the Standards Manual; and (b) represents to City in writing and provides clear and convincing technical evidence to City that the failure to approve the Licensee Pole in the ROW would prohibit or have the effect of prohibiting the provision of Commercial Mobile Service, Commercial Mobile Radio Service, and/or Telecommunications Service to at least a substantial portion of the area intended to be served by the new Communications Facilities that Licensee proposes to install on the Licensee Pole. Written approval of the Director of Public Works is required for installation of any Licensee Poles.

(D) Minimize Pavement Cuts. Licensee is hereby notified of City's desire to minimize any pavement cuts that, as determined by City in its sole discretion, significantly reduce the longevity of the public's investment in the roadway network. Any Communications Facilities, pole design, or installation configuration not contained within the Master Use Agreement must receive additional written approval by the City Manager before it may

be placed within the ROW. This process is separate and apart from any application Licensee must submit to City in accordance with HMC Title 11 or 19.

(E) City Decision. If the Application is approved, the Department of Public Works shall issue a License Authorization. If the Application is denied, the Department of Public Works shall notify a Licensee in writing. Delivery of either the License Authorization or a denial notification as provided for in this section may be made to a Licensee by electronic methods such as e-mail.

(F) Execution by the City. The City Council authorizes the Director of Public Works and the Director of Community Development and Services to sign and execute License Authorizations on behalf of the City.

17.02.070 – Master Use Agreement Conditions.

A Master Use Agreement shall incorporate all provisions of the HMC, this Chapter and the following conditions:

(A) Any Master Use Agreement granted pursuant to this Chapter shall be nonexclusive.

(B) All provisions of the HMC, this Chapter, the Standards Manual, and a Master Use Agreement shall be binding upon the Licensee, its successors, or assignees.

(C) A Master Use Agreement shall be construed in favor of the City and no privilege or exemption shall be inferred from the granting of any Master Use Agreement unless it is specifically mentioned in this Chapter or in the Master Use Agreement.

(D) The granting of any Master Use Agreement pursuant to this Chapter shall be a privilege and shall not impart to a Licensee any right of property in any Right-of-Way. Master Use Agreements shall be construed to have granted the nonexclusive permission and authority to use specific Right-of-Way as identified in a License Authorization. In no event shall this Chapter or any Master Use Agreement or any License Authorization be construed to have granted permission or authority to use any facilities outside of Right-of-Way.

(E) A Licensee shall at all times during the term of the Master Use Agreement be subject to all lawful exercise of the police power by the City. This includes any and all ordinances, rules or regulations which the City has adopted or may adopt. Any conflict between the provisions of this Chapter and any other present or future lawful exercise of City police powers shall be resolved in favor of the City police powers.

(F) Any privilege claimed under this Chapter, any Master Use Agreement shall be equal to the privilege claimed under any other wireline license or wireless license under this chapter or Nevada Revised Statutes Chapters 709 and 711 and shall be subordinate to any other prior lawful occupancy of the Right-of-Way.

(G) Any right or power in, or duty assigned to any officer or employee of the City by virtue of this chapter shall be subject to transfer by the City Council to any other officer or employee of the City.

(H) A Master Use Agreement shall be subject to all requirements of City ordinances, rules, regulations, standards and specifications heretofore or hereafter enacted or established to the maximum extent allowed by Law.

(I) A Licensee shall not construct, install, operate, or maintain any Communications Facility in, over, or under any City Right-of-Way or on Municipal Facilities without obtaining any and all necessary federal, state, and City licenses or permits.

(J) A Licensee shall maintain records and allow for audits as provided in HMC Title 4.

(K) Licensee shall be solely responsible for obtaining all additional necessary Right-of-Way and easements, leases, licenses or approvals, either public or private, which may be necessary prior to the beginning of construction of a Communications Facility.

- (L) In the City's sole discretion, specific units of the City's Municipal Facilities and Right-of-Way may be determined by the City to be necessary for the City's exclusive existing or future use and will be unavailable for use by others.
- (M) Such other conditions as may be required by the City to the fullest extent permitted by Law.

17.02.080 – License Authorization Conditions.

Any License Authorization executed pursuant to a valid Master Use Agreement, shall incorporate all provisions of the HMC, this Chapter, all provisions and conditions of the Master Use Agreement, and the following conditions:

- (A) Any License Authorization executed pursuant to a valid Master Use Agreement, shall be nonexclusive.
- (B) All provisions of any License Authorization executed pursuant to a valid Master Use Agreement shall be binding upon the Licensee, its successors, or assignees.
- (C) Any License Authorization executed pursuant to a valid Master Use Agreement shall be construed in favor of the City and no privilege or exemption shall be inferred from the granting of any License Authorization unless it is specifically mentioned in this Chapter or in the License Authorization.
- (D) The granting of any License Authorization executed pursuant to a valid Master Use Agreement shall be a privilege and shall not impart to a Licensee any right of property in any Right-of-Way. License Authorizations shall be construed to have granted the nonexclusive permission and authority to use specific Right-of-Way as identified in an License Authorization. In no event shall any License Authorization be construed to have granted permission or authority to use any facilities outside of Right-of-Way.
- (E) A Licensee shall at all times during the term of any License Authorization executed pursuant to a valid Master Use Agreement be subject to all lawful exercise of the police power by the City. This includes any and all ordinances, rules or regulations which the City has adopted or may adopt. Any conflict between the provisions of this Chapter and any other present or future lawful exercise of City police powers shall be resolved in favor of the City police powers.
- (F) Any privilege claimed under a License Authorization executed pursuant to a valid Master Use Agreement shall be equal to the privilege claimed under any other License Authorization under this Chapter or Nevada Revised Statutes Chapters 709 and 711 and shall be subordinate to any other prior lawful occupancy of the Right-of-Way.
- (G) Any License Authorization executed pursuant to a valid Master Use Agreement shall be subject to all requirements of City ordinances, rules, regulations, standards and specifications heretofore or hereafter enacted or established to the maximum extent allowed by law.
- (H) In the event of the early termination of any License Authorization by the City, the City will reimburse Licensee the unused portion of the applicable License Authorization Fee after proration based on the number of whole months remaining until the beginning of the next quarter for which payment was made in advance by the Licensee.
- (I) Licensee shall have the right to terminate any License Authorization upon ninety (90) days prior written notice to the City. In the event of early termination by the Licensee, the Licensee shall not be entitled to any reimbursement of the applicable License Authorization Fee. The Department of Public Works may condition the effectiveness of any such termination upon Licensee's removal of the applicable Facilities and an inspection by the City.
- (J) Such other conditions as may be required by the City acting through the Department of Public Works to the fullest extent permitted by Law.

17.02.090 - Annual Inspection.

The City will at intervals of not more often than once every year, unless there is a reasonable basis for additional inspections, perform inspections of any of Licensee's Wireless Communications Facilities licensed under a License Authorization for the purpose of verifying that Licensee's installation that is installed is the installation approved in the License Authorization. If Communications Facilities are found to be in noncompliance, Licensee shall be considered to be in material breach and such noncompliance shall constitute an event of default pursuant to Section 17.02.110.

17.02.100 - Unauthorized Communications Facilities.

If, during the term of a Licensee's Master Use Agreement, the City discovers unauthorized Communications Facilities placed on or within Municipal Facilities attributable to a Licensee, the fee listed in Chapter 17.03 may be assessed on a per unit basis and the procedures listed below will be followed.

(A) Notice. The City shall provide specific written notice of each violation discovered.

(B) Back Licensed Location Authorization Fee and Penalties. Licensee shall pay back License Authorization Fees for all unauthorized Communications Facilities for a period of one (1) year, or since the date of the last inventory of a Licensee's Communications Facilities (whichever period is shortest), at the License Authorization Fees in effect during such periods. If Licensee is found to have: (a) repeated instances of unauthorized Communications Facilities demonstrating a deliberate or consistent pattern of unauthorized Communications Facilities; or (b) a significant number of poles or amount of cable or conduit (comprising 5% or more of Licensee's total Licensed Authorizations in accordance with this Chapter) with unauthorized facilities, Licensee shall be considered to be in material breach and such unauthorized facilities shall constitute an event of default pursuant to Section 17.02.110.

(C) Application Required. Licensee shall submit a new Licensed Authorization application in accordance with this Chapter within thirty (30) days of receipt of notice from the City of any unauthorized Communications Facilities, or such longer time as mutually agreed to by the parties after an inventory. If an Application is denied, Licensee shall have thirty (30) days to remove the unauthorized Communications Facilities. In the event Licensee fails to submit an Application within thirty (30) days, or such longer time as mutually agreed to by the parties after an inspection, or fails to remove the unauthorized facilities within thirty (30) days, Licensee shall be considered to be in material breach and such unauthorized facilities shall constitute an event of default pursuant to Section 17.02.110.

(D) No Ratification of Unauthorized Use. No act or failure to act by the City with regard to any unauthorized Communications Facilities or equipment shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a License for a previously unauthorized Communications Facilities or equipment shall not constitute a waiver by the City of any of its right or privileges under the HMC or of a Master Agreement or License Authorization or otherwise, and Licensee shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

17.02.110 – Default and Cure Period

(A) Default and Notification. Except for causes beyond the reasonable control of a Licensee, if Licensee fails to comply with any of the material conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written

demand from the City to commence the correction of such noncompliance, the City shall have the right to revoke and terminate a licensee's Master Use Agreement in addition to any other right or remedies set forth in a Licensee's Master Use Agreement or provided by law.

(B) Cure Period. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under a Licensee's control, the period of time in which a Licensee must cure the violation may be extended by the City Manager in writing for such additional time reasonably necessary to complete the cure, provided that: (1) a Licensee has promptly begun to cure; and (2) a Licensee is diligently pursuing its efforts to cure in the City Manager's reasonable judgment.

(C) Denial of Subsequent Permits. Whenever a Licensee is in default in any of its obligations under its Master Use Agreement or this Chapter, the City may deny further barricade, encroachment, excavation or similar permits until such time as a Licensee cures all of its defaults.

17.03 – FEES

17.03.010 - Compensation.

A Licensee shall be solely responsible for the payment to the City of all lawful fees in connection with a Licensee's performance under its WUA or LLAs, including those set forth below, except where prohibited by law. To the fullest extent permitted by Law, the City Manager may adjust the fees specified under this Title from time to time provided that the adjusted amount(s) must be made publicly available and may not exceed the amounts specified hereunder.

(A) If Licensee is a Qualified Service Provider. If Licensee is a Qualified Service Provider, Licensee shall pay a business license fee consistent with HMC Title 4 to the extent Licensee is required as a public utility (as defined in HMC Title 4) that provides a commercial mobile radio service to pay a business license fee on its total revenue.

(B) If Licensee is not a Qualified Service Provider but derives intrastate revenue from the provision of Telecommunications Service to retail customers in the City. If Licensee is not a Qualified Service Provider but derives intrastate revenue from the provision of Telecommunications Service to retail customers located within the City, Licensee shall pay a business license fee consistent with HMC Title 4 to the extent Licensee is required as a public utility (as defined in HMC Title 4) that provides a Telecommunication Service to pay a business license fee on its total revenue. If Licensee derives intrastate revenue from the provision of Telecommunications Service to retail customers within City, such business license fee is in lieu of Licensee paying the portion of the Quarterly Fee attributable to use of the ROW for Licensee-owned cable, conduit, or cable/conduit pursuant and/or Licensee Poles pursuant to Subsection 17.03.010 (E).

(C) If Licensee is not a Qualified Service Provider and does not derive intrastate revenue from providing Telecommunications Service to retail customers in the City. If Licensee is not a Qualified Service Provider, does not derive intrastate revenue from providing Telecommunications Service to retail customers in the City, but through the use of the Communications Facilities, derives revenue from providing services to other providers of Telecommunications Service, including Qualified Service Providers, using Communications Facilities located within the ROW, Licensee shall obtain and maintain at all times during the use of the right-of-way for Communications Facilities a business

license pursuant to HMC Title 4 and shall pay all business license fees in accordance with HMC Title 4.

(D) Licensed Location Authorization Fees. A quarterly fee shall be paid for each Wireless Communications Facility contained in a Licensed Location Authorization. The quarterly amount due for each Wireless Communications Facility located in ROW shall be Six Hundred Dollars (\$600.00) per location.

(E) Licensed Wireline Authorization Quarterly Fee. A quarterly fee shall be paid for each Telecommunications Facility contained in a Licensed Wireline Authorization. The quarterly amount due for each Wireline Communications Facility located in ROW shall be as follows:

(1) For each Licensed Wireline Authorization that authorizes use of a Municipal Facility, Two and 50/100 Dollars (\$2.50) per linear foot for use of a Municipal Facility that is City-owned cable.

(2) For each Licensed Wireline Authorization that authorizes use of a Municipal Facility, One and 50/100 Dollars (\$1.50) per linear foot for use of a Municipal Facility that is City-owned conduit.

(3) Unless Licensee derives intrastate revenue from the provision of Telecommunications Service to retail customers located in the City, one dollar and fifty cents (\$1.50) per linear foot of Licensee-owned cable, conduit, or cable/conduit in and for use of the ROW.

(4) Unless Licensee derives intrastate revenue from the provision of Telecommunications Service to retail customers located in the City, six hundred dollars (\$600.00) for each Licensee Pole in and for use of the ROW.

(C) Commencement of Licensed Location Authorization Fees. The Licensed Location Authorization Fee Commencement Date shall be the execution date of each Licensed Location Authorization.

(D) Commencement of Licensed Wireline Authorization Fees. The Licensed Wireline Authorization Fee Commencement Date shall be the date Licensee commences the installation of Communications Facilities in the Right-of-Way.

(E) Initial Quarterly Fee. The first quarterly Licensed Location Authorization Fee and Licensed Wireline Authorization Fee shall be the calendar quarter following the Commencement Date as determined in Section 17.03.010(B) and (C). Subsequent quarterly fees shall be due the first day of each calendar quarter.

(F) Annual Fee Adjustment. Effective on July 1, 2019, and continuing annually thereafter, the Licensed Location Authorization Fee and Licensed Wireline Authorization Fee shall be increased by an amount equal to two and one-half percent (2.5%) of the Fee for the immediately preceding year, rounded to the nearest whole dollar.

(G) Electric Power Fee. The Licensed Location Authorization Fee is inclusive of any charges for the use of the City's electric power, up to 225 maximum watts for each equipment or device as identified by the plate rating.

(H) Wireless Use Agreement Fee. The Wireless Use Agreement Fee due shall be One Thousand Three Hundred Sixteen and 00/100 Dollars (\$1,316.00) for each application.

(I) Licensed Location Authorization Application Fee. The Licensed Location Authorization Application Fee due for each Licensed Location Authorization Application shall be Five Hundred Ninety-Nine and 00/100 Dollars (\$599.00).

(J) Telecommunications Use Agreement Fee. The Telecommunications Use Agreement Fee due shall be One Thousand Three Hundred Sixteen and 00/100 Dollars (\$1,316.00) for each application.

(K) Licensed Wireline Authorization Application Fee. The Licensed Location Authorization Application Fee due for each Licensed Wireline Authorization Application shall be Five Hundred Ninety-Nine and 00/100 Dollars (\$599.00).

(L) Work Performed by City on Behalf of a Licensee. All work performed by the City when a Licensee fails to perform said work in a timely manner, as required by the HMC or the provisions of an WUA or LLA, may be subject to an additional twenty-five percent (25%) administrative fee of the actual costs of the work performed by the City.

(N) Unauthorized Facilities Fee: Up to a Thousand Dollars (\$1,000) may be assessed per unauthorized Communications Facilities unit that was not authorized by the designated LLA.

17.03.020 - Payment.

All fees and amounts due under the provisions of this Title, a Master Use Agreement, or License Authorization shall be paid electronically or by check made payable to the City of Henderson and mailed or delivered to the Finance Department, Accounts Receivable. Each payment, either electronically or manually tendered, shall include a description of the reason for the payment. Any payment made for a specific site shall include the City's Energov (as modified or replaced from time to time) identification number for that site. The place and time of payment may be changed at any time by City upon thirty (30) days' written notice to a Licensee. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt by the City's Finance Department. A Licensee assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

17.03.030 - Delinquent Payment.

If a Licensee fails to pay any amounts due pursuant to the provisions of this Title, a Master Use Agreement, or License Authorization, within forty-five (45) days from the due date, a Licensee will pay, in addition to the unpaid fees, a sum of money equal to two percent (2%) of the amount due for each month and/or fraction thereof during which the payment is due and unpaid. The remedy provisions set forth in this Section are not exclusive, and do not preclude the City Manager from pursuing any other or additional remedy if payments become overdue by more than sixty (60) days.

17.03.040 - Indemnification.

A Licensee shall indemnify, defend and hold harmless the City, its officers, agents, volunteers, and employees, against and from any and all liability, loss, damage, claims, fines, demands, causes of action, costs, expenses, and judgments of whatsoever nature, including but not limited to reasonable costs of investigation, reasonable attorneys' fees and expenses, all

reasonable expert witness fees and expenses, and all court or arbitration or other alternative dispute resolution costs which result from injury to or death of any persons whomsoever, and/or against and from damage to or loss or destruction of property whatsoever when such injury, death, loss, destruction or damage is due to or arises in connection with or as a result of any work done by Licensee, its contractors, agents and subcontractors in connection with the design, construction installation, operation, maintenance and condition of the Network and Communications Facilities and/or arises out of or in connection with Licensee's, or its contractors' and subcontractors' performance or failure to comply with the requirements of this Title, the Standards Manual, and Licensee's Master Use Agreement and any Licensed Location Authorization executed pursuant thereto.

17.03.050 – Incentive Agreements.

The City Manager is authorized to negotiate agreements with prospective Applicants and Licensees to incentivize the development of Communications Facilities in a manner which is in the City's interest or in locations determined by the City, in the City's sole discretion, to be an area that is underserved or lacking reliable telecommunications or information services for use by public, commercial or residential customers. The agreements negotiated and executed pursuant to this Section may alter the compensation and fees contained in this Chapter.