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ORDINANCE NO. 17-49

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 70 OF THE CITY CODE REGARDING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; IMPLEMENTING THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; MAKING FACTUAL AND LEGISLATIVE FINDINGS; ADOPTING AND AMENDING CITY REGULATIONS RELATED TO, WITHOUT LIMITATION, PLACEMENT, MAINTENANCE, AND REPLACEMENT OF WIRELESS COMMUNICATIONS FACILITIES IN THE CITY'S RIGHTS-OF-WAY, COLLOCATION OF SMALL WIRELESS FACILITIES ON EXISTING UTILITY POLES, PLACEMENT OF NEW UTILITY POLES, REMOVAL AND RELOCATION OF WIRELESS FACILITIES, INSURANCE AND SURETY BOND REQUIREMENTS, INDEMNITY, PERMITTING PROCEDURES AND REQUIREMENTS, APPEALS, SAFETY REQUIREMENTS, WAIVERS, REVIEW DEADLINES, DEFINITIONS, REGISTRATION OF WIRELESS PROVIDERS; FEES; PROVIDING OBJECTIVE DESIGN STANDARDS, INCLUDING PROVIDING FOR AND INCORPORATING EXHIBITS; PROVIDING FOR CITY COMMISSION AUTHORITY, CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature adopted, and on June 23, 2017 the governor signed into law, effective July 1, 2017, the Advanced Wireless Infrastructure Deployment Act (the "Act"), codified at Fla. Stat. § 337.401, which places certain limitations on local government authority to regulate wireless communications facilities within the public rights-of-way; and

WHEREAS, passage of the Act necessitates that the City amend the City Code in order to implement the Act, ensure that the City's regulations governing wireless communications facilities in the rights-of-way are consistent therewith, and to adopt new regulations as are consistent with the Act; and

WHEREAS, Section 110-262(b) of the Winter Garden City Code states, "The City Commission may, by resolution or amendment, adopt and prescribe rules and regulations governing the installation in dedicated utility easements of all utility facilities, not inconsistent with any . . . grant, contractual or statutory, of this City or the laws of the state, and may under the

authority of this division delegate authority to the various administrative officers of the City to enforce such rules and regulations”; and

WHEREAS, the Act at Fla. Stat. § 337.401(7)(b)2. authorizes local governments to adopt various types of regulations governing wireless facilities in the rights-of-way, including but not limited to “objective design standards” that may require wireless facilities to “meet reasonable location context, color, stealth, and concealment requirements,” and “reasonable spacing and location requirements concerning the location of ground-mounted equipment”; and

WHEREAS, the Act substantially preserves local government authority to regulate the installation of new utility poles in the public rights-of-way, providing at Fla. Stat. § 337.401(7)(d)6. that, “Except as provided in subparagraphs 4 and 5, the installation of a utility pole in the public rights-of-way designed to support a small wireless facility shall be subject to authority rules or regulations governing the placement of utility poles in the public rights-of-way and shall be subject to the application review timeframes in this subsection”; and

WHEREAS, the Act at Fla. Stat. § 337.401(7)(i) further provides that, “A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of an authority that prohibit above-ground structures in public rights-of-way”; and

WHEREAS, Section 110-262(a) of the City Code states that, “The City Commission finds and determines that the public interest requires that all new utility facilities to be constructed within all new additions or subdivisions to the City shall, to the extent practicable and feasible, be placed underground within dedicated utility easements in order to promote and preserve the health, peace and safety and general welfare of the public and to ensure the orderly development of all such new additions and subdivisions to the City”; and

WHEREAS, Section 18-33 of the City Code states, “In order to improve the aesthetic appeal of the City and to reduce hazards from wind storms, all utility lines . . . shall be placed underground in conjunction with new construction, substantial renovation of buildings or when a building is undergoing an electrical service upgrade from a 200 amperage service to a greater amperage service”; and

WHEREAS, the City Code requires that new plats place utilities underground “to the extent practical and feasible” (Sec. 110-263); that in Urban Village Planned Unit Development and Planned Unit Development “all utilities...shall be installed underground unless physical and technical conditions require aboveground installation” and that any above ground utilities “shall be contained within landscaped enclosures or vaults” (Sec. 118-1087 and 118-929); and

WHEREAS, Sec. 70-209 of the City Code, pertaining to telecommunications, states, “To the maximum extent practicable, all facilities shall be constructed underground”; and

WHEREAS, the Act at Fla. Stat. § 337.401(7)(b)5. does not apply to wireless facilities on rights-of-way under the jurisdiction and control of the Florida Department of Transportation; and

WHEREAS, the Act at Fla. Stat. § 337.401(7)(k) does not authorize wireless facilities on rights-of-way in historic areas designated by the state or local government, and “does not limit a local government’s authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirement for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws”; and

WHEREAS, the Act authorizes a municipality to adopt by ordinance reasonable and non-discriminatory provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, or authority warranties; and

WHEREAS, the Florida Supreme Court held unanimously in *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006), that Article VIII, section 2(b) of the Florida Constitution and the Home Rule Powers Act, Fla. Stat. § 166.021(3)(c), grant municipalities “broad authority to enact ordinances under its municipal home rule powers” and that “[u]nder its broad home rule powers, a municipality may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State”; and

WHEREAS, the Florida Supreme Court recognized on June 22, 2017, in *D’Agastino v. City of Miami* (No. SC16-645), that “a finding of express preemption—that the Legislature has specifically expressed its intent to preempt a subject through an explicit statement—is a very high threshold to meet” and that “implied preemption involving a municipality’s home rule powers may be disfavored”; and

WHEREAS, the *D’Agastino* Court held that one “must be careful and mindful in attempting to impute intent to the Legislature to preclude a local elected governing body from exercising its home rule powers,” with Justice Pariente correctly explaining that “implied preemption should be construed narrowly to comport with the Home Rule Powers Act and the Florida Constitution”; and

WHEREAS, the Federal Telecommunications Act, 47 U.S.C. § 332(c)(7)(A) preserves local zoning authority with respect to “decisions regarding the placement, construction, and modification of wireless service facilities”; and

WHEREAS, the City finds that this Ordinance will advance the public health, safety, and welfare, and help to preserve the aesthetic qualities of the City, all within the bounds of the Act and other state and federal laws governing communications facilities.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. Amendment of City Code. Chapter 70 of the City Code is hereby amended to create a new Article IV as follows and containing the following new provisions:

ARTICLE IV. – WIRELESS FACILITIES IN THE RIGHTS-OF-WAY

Sec. 70-230. – Intent and Purpose; applicability to state-controlled rights-of-way.

(a) *Intent and purpose.* It is the intent of the City to promote the public health, safety and general welfare by: (a) providing for the placement or maintenance of wireless facilities in the public rights-of-way within the City; (b) adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401 as amended by the Advanced Wireless Deployment Act, the City's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; (c) establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications services providers; (d) protecting the City's aesthetic qualities; and (e) minimizing disruption to the public rights-of-way.

(b) *State-controlled rights-of-way.* This article shall apply to wireless facilities in public rights-of-way under the control and jurisdiction of the City. This article shall also apply to wireless and communications facilities in public rights-of-way under the control and jurisdiction of the Florida Department of Transportation, provided that the City is authorized to apply this article under a permit-delegation agreement between the City and Department in accordance with F.S. § 337.401(1)(a), or as otherwise provided by law.

Sec. 70-231. – Definitions.

For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the

present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words and phrases not otherwise defined in this article shall be interpreted in accordance with applicable definitions under chapter 70 of this Code of Ordinances and state and federal laws governing communications facilities, including F.S. § 337.401 except where the context clearly indicates a different meaning, and shall otherwise be construed to mean the common and ordinary meaning.

“Abandonment” shall mean the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

“Antenna” means any transmitting or receiving device mounted on, within, or incorporated into a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), light, wireless telecommunications signals or other communication signals. For the purposes of this article, the term "antenna" does not include any device designed for over-the-air reception of radio or television broadcast signals, or multi-channel multi-point distribution service.

”Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization and the Florida Building Code and the Florida Fire Prevention Code and or local amendments to those codes enacted to address building, accessibility and fire code standards and threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes this Chapter as well as objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

“Applicant” means the person registering and applying to locate wireless facilities in the right-of-way of the City and includes the applicant’s successors-in-interest and anyone owning and maintaining the wireless facilities.

“Application” means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities.

“Building official” shall mean that person, or his designee, empowered by section 18-10 of this code.

“City” means the City of Winter Garden, Florida. Where appropriate, the word "City" may refer to the City Commission or the relevant City officer or board considering an application under this article.

“City-owned real property” means real property to which the City holds title, easement, or a leasehold interest, but does not include the public rights-of-way.

“City-owned facility or City-owned structure” means any facility, structure or infrastructure to which the City holds title, easement, or a leasehold interest, including, but not limited to, communications facilities, utility poles, towers, buildings, and communications infrastructure, regardless of whether located within or outside the public rights-of-way.

“City utility pole” means a utility pole owned by the City in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community that: (a) is deed restricted as housing for older persons as defined in F.S. § 760.29(4)(b); (b) has more than 5,000 residents; and (c) has underground utilities for electric transmission or distribution.

“Cluttered” shall mean placement in a confused, disordered, disorganized, or jumbled or crowded state, which can occur when too much is located in too small of an area given the reasonable location context.

“Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

“Concealed” means a tower, ancillary structure, equipment compound, or communications facility or area (collectively "physical improvements") that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed building(s) and uses on and adjacent to the proposed location of such physical improvements.

“FCC” means the Federal Communications Commission.

“In public rights-of-way or in the public rights-of-way” shall mean in, on, over, under or across the public rights-of-way.

“Micro wireless facility” means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

“Ordinance” shall mean this ordinance.

“Pass-through provider” means any person who, upon registering with the City, places or maintains a communications facility in the City's rights-of-way and that does not remit communications service taxes as imposed by the City pursuant to F.S. ch. 202.

“Person” shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the City to the extent the City acts as a communications services provider.

“Place” or “maintain” or “placement” or “maintenance” or “placing” or “maintaining” shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A person providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute "placing or maintaining" facilities in the public rights-of-way.

“Public rights-of-way” or “rights-of-way” shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley, regardless of which governmental entity has jurisdiction and control over such, and includes the surface, the air space over the surface and the area below the surface. "Public rights-of-way" shall not include private property. "Public Rights-of-way" shall not include any real or personal City property except as described above and shall not include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

“Registrant” shall mean a communications services provider that has registered with the City in accordance with the provisions of this article.

“Registration or register” shall mean the process described in this article whereby a communications services provider provides certain information to the City.

“Small wireless facility” means a wireless facility that meets the following qualifications:

(a) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

(b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

“Stealth design” means a method of camouflaging any tower, antenna, wireless facilities, or other ancillary supporting communications facility, including, but not limited to, supporting electrical, optical, or mechanical, or other equipment, which enhances compatibility with adjacent land uses and which is visually and aurally unobtrusive. Stealth design may include a repurposed structure. Stealth design includes any method of camouflaging wireless facilities adopted by the City Commission through resolution as authorized by Sec. 70-235(n).

“Utility pole” means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

“Wireless facility” or “wireless facilities” means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, distributed antenna systems (“DAS”), wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

(a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

(b) Wireline backhaul facilities; or

(c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

“Wireless infrastructure provider” means a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

“Wireless provider” means a wireless infrastructure provider or a wireless services provider.

“Wireless services” means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

“Wireless services provider” means a person who provides wireless services.

“Wireless support structure” means a freestanding structure, such as a monopole, a guyed or self supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

Sec. 70-232. – Registration for placing or maintaining wireless facilities in public rights-of-way.

(a) A wireless provider that desires to place or maintain a wireless facility in public rights-of-way in the City shall first register with the City in accordance with this article. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a wireless facility in public rights-of-way.

(b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this article only applies for the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment

agreements before locating its facilities on the City's or another person's facilities. Registration does not excuse a wireless provider from complying with all applicable City ordinances, codes or regulations, including this article.

(c) Each wireless provider that desires to place or maintain a communication facility in public rights-of-way in the City shall file a single registration with the City Building Department which shall include the following information:

(1) Name of the applicant, including a contact person;

(2) Name, address, email address, and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;

(3) Evidence of the insurance coverage and surety bond required under this article;

(4) Acknowledgment that registrant has received and reviewed a copy of this article, which acknowledgment shall not be deemed an agreement;

(5) The number of the applicant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any

(d) The City shall review the information submitted by the applicant for registration to the Building Department. Such review shall be by the City manager or his or her designee. If the applicant submits information in accordance with subsection (c) above and other provisions of this Chapter and the City Code, the registration shall be effective and the City shall notify the applicant of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with subsection (c) above, the City shall notify the applicant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section.

(e) *Cancellation of Registration.* A registrant may cancel a registration upon written notice to the City stating that it will no longer place or maintain any communications facilities in public rights-of-way within the City and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

(f) Limited Rights conferred by Registration. Registration does not, in and of itself, establish a right to place or maintain or priority for the placement or maintenance of a wireless facility in public rights-of-way within the City but shall establish for the registrant a right to apply for appropriate and necessary permits to do so. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional City ordinances, as well as any state or federal laws that may be enacted.

Sec. 70-233. - City-owned structures, facilities, and real property.

(a) The City may allow the placement of an antenna or other wireless facility upon a City-owned structure or real property, or otherwise allow the use of City-owned facilities outside of the rights-of-way, upon such terms as the City may deem acceptable, in writing, and subject to such rental, use, utility, license, or other fees as may be consistent with the law and established by the City Commission via resolution.

(b) In the interests of facilitating the safe, efficient, and aesthetically desirable use of the public rights-of-way, and to otherwise avoid the negative effects upon the public welfare of, and address safety concerns relating to, proliferation of structures within the rights-of-way, the City may offer to an applicant who wishes to install, construct, place, or maintain an antenna or other wireless facility in the public rights-of-way, to place or co-locate such antenna or wireless facility upon or within a City-owned structure outside of the rights-of-way where feasible. Such antenna or wireless facility shall meet the requirements of this article.

(c) The City reserves and does not waive any right that the City may have in its capacity as a property owner or utility provider with respect to City-owned structures, facilities, and real property, and may exercise control over such to the extent not prohibited by law. When the City allows the placement of communications facilities upon, or the use of, City-owned structures, facilities, and real property, the City shall be deemed to be acting within its proprietary capacity, as appropriate and otherwise consistent with the law. The provisions of this article shall not limit the City's discretion with respect to the use, installation, construction, placement, or maintenance of City-owned structures, facilities, and real property.

Sec. 70-234. – Prohibitions.

(a) No wireless facilities or other communications facilities shall be installed in the City's rights-of-way without a right-of-way utilization permit, including from Orange County for County-maintained roads, a building permit, and, if applicable, payment of a collocation fee.

(b) Wireless facilities, other than small wireless facilities and micro wireless facilities, are prohibited within the public rights-of-way.

(c) To comply with clear zone requirements, no wireless facilities or other communications facilities shall be closer than 8 feet from the street curb or edge of pavement if no curb is present.

(d) Wireless facilities are prohibited within the public rights-of-way of roadways and railways under the jurisdiction and control of the Florida Department of Transportation unless approved in writing by the Florida Department of Transportation and, pursuant to any permit delegation agreement, the City.

(e) Wireless facilities are prohibited on utility poles owned by Duke Energy or its successors in interest, unless approved in writing by Duke Energy or its successors in interest.

(f) Wireless facilities are prohibited on arms used to support or mount traffic control signals and warning signals and on arms attached to utility poles.

(g) *Historic Districts.* Wireless facilities are prohibited in the rights-of-way of any geographic area approved as an historic district either by the City, the State of Florida, or listed on the National Register of Historic Places, including the City's Downtown Historic District, unless:

(1) The wireless infrastructure provider applies for review by ~~T~~the City's Historic Preservation Board, which recommends approval of the method to deploy the wireless facilities in stealth so as not to detract from contributing historic structures and the ambiance of the district; and

(2) The City Commission accepts the recommendation and approves of the application.

(h) Wireless facilities are prohibited on utility poles or similar structures 15 feet or less in height unless incorporated into and hidden in the pole under a top mounted street light in a design substantially similar to the acorn lights in the City.

(i) Wireless facilities shall not interfere with electrical lines, cable lines, or their associated equipment. For public safety, wireless facilities, including micro wireless facilities, shall be at least 20 feet away from energized electrical distribution lines.

Wireless facilities may not be hung from energized lines or mounted over energized lines or on poles to be removed in conjunction with the undergrounding of electric utilities. Micro-wireless facilities shall not be on cables strung between existing utility poles in the City without the express written permission from the owner of the utility poles.

(j) Wireless facilities may not block or interfere with the view of signs of commercial businesses or street signs.

(k) The applicant or applicant's successor must agree to remove the wireless facilities at any time if warranted by public health or safety as determined by the City.

(l) For the safety of electrical utility workers and members of the public:

(1) Wireless facilities collocated, if allowed, on the same utility pole as a street light shall be on the same disconnect as the street light;

(2) Wireless facilities shall be grounded and otherwise comply fully with all applicable electrical codes.

(3) Whenever conduit of the wireless facilities crosses telephone or electric power wires, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States in force at the time of the effective date of this article, and as amended.

(4) Wireless facilities shall comply with all applicable structural requirements with respect to wind speed under the Florida Building Code and under Chapter 18 of the City Code.

(m) *Burden of Proof to Establish Compliance.* A registrant or applicant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing or maintaining a communication facility in public rights-of-way. The burden of proof shall at all times be on an applicant to establish compliance with requirements under this article and state and federal law.

(n) A registrant shall not place, commence to place or maintain a communication facility in public rights-of-way until all applicable permits, if any, have been issued by the City or other appropriate authority, except in the case of an emergency. No wireless facility shall operate unless the City has conducted a final inspection and issued a Certificate of

Completion pursuant to the Florida Building Code as adopted and amended by Chapter 18 of this Code.

(1) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.

(2) Registrant shall provide prompt notice to the City of the placement or maintenance of a communication facility in public rights-of-way in the event of an emergency, and shall be required to apply for an after-the-fact permit within 30 days if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency.

(3) Registrant acknowledges that as a condition of granting such permits, the City may impose rules or regulations governing the placement or maintenance of a communication facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit.

(4) Further, once the emergency is abated, the communications facility placed in the public right-of-way during the emergency shall be removed unless permitted without the emergency as a basis.

(o) The wireless infrastructure provider will not assert the existence of any vested rights as to any other matter if the City issues a permit except to the extent that it is entitled to place its facilities as indicated by the permit. Further, issuance of a permit by the City shall not be construed by the wireless provider as a warranty that the placement of its conduits, antennas, and/or other facilities, or the start of construction, is in compliance with any applicable rules, regulations or laws or that there are no physical conflicts between the wireless facilities and other facilities located on the City's rights-of-way.

(p) The wireless infrastructure provider shall use its best efforts to individually notify all adjacent property owners affected by the proposed construction prior to the commencement of that work. Such notification shall not be required for emergencies requiring immediate repairs.

Sec. 70-235. – Applications; application requirements; timeframes.

(a) Notification of Completeness. Within 14 days after receiving an application to install one or more wireless facilities in the City's rights-of-way, the City shall determine and notify the applicant by electronic mail to the email address provided in the application as to whether the application is complete. If an application is deemed incomplete, the City

shall specifically identify the missing information. An application is deemed complete if the City does not provide notification to the applicant within 14 days.

(b) Application Review Period. The City shall approve or deny an application within 60 days after receipt of the complete application, or it is deemed approved in accordance with F.S. § 337.401. If the City does not use the 30-day negotiation period provided in subparagraph (g), the parties may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.

(c) Permit Duration. A collocation permit issued pursuant to an approved application shall remain effect for 1 year unless extended by the City.

(d) Notification Procedure.

(1) The City shall notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the applicable codes.

(2) If the application is denied, the City will specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the City denies the application.

(e) Opportunity to Cure Deficiencies. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after notice of the denial is sent to the applicant. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed. The City shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(f) Consolidated Applications. An applicant may file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless facilities, the City may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

(g) Alternative Collocations.

(1) If an applicant seeks to place a wireless facility upon a City utility pole or seeks to install a new utility pole, the City may, within 14 days after the date that a wireless facility application is filed, request that the proposed location of the wireless facility be moved to another location in the right-of-way and placed on an alternative utility pole or support structure or may place a new utility pole, including for aesthetic or

public safety reasons, or a location outside the right-of-way on City-owned structures or property. The City may offer an alternative location in the right-of-way for a wireless facility for health, safety, general welfare, or aesthetic reasons, subject to the final approval of the City Commission.

(2) The City and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the City of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the City of such nonagreement and the City shall grant or deny the original application within 90 days after the date the application was filed.

(3) A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location shall be in writing and provided by electronic mail.

(i) *Application requirements.* Except as otherwise provided, a permit to construct or install one or more wireless facilities shall not be granted under this article except upon approval of the City Commission after a public hearing. Each application for a permit to place or replace a wireless facility or other communications facility in the right-of-way shall include:

(1) *Plans submittal.*

- a. For each proposed wireless facility location, submit plans prepared by, approved, and signed by a qualified professional engineer showing:
 - i. The location of each proposed communications facility;
 - ii. True-to-scale site plan depicting all physical improvements including property lines within a 20 foot radius;
 - iii. A graphical depiction of each proposed communications facility to be installed;
 - iv. If applicable, pursuant to the standards of the Florida Department of Transportation, a site triangle diagram demonstrating that the proposed wireless facility will not block sight-lines at an intersection;
 - v. The size of each proposed communications facility;

- vi. The specifications for each communications facility; and
- vii. Existing utilities in the immediate vicinity.

b. Plans shall be in a hard copy format and an electronic format specified by the City, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the City.

c. If the actual installation deviates or will deviate from the submitted plans due to unforeseen conditions or any other reason, the registrant shall promptly provide revised plans.

(2) A description of the manner in which the wireless facility will be installed (i.e. anticipated construction methods or techniques);

(3) A description of the stealth design techniques proposed to minimize the visual impact of the wireless wireless facility;

(4) A maintenance of traffic plan for any disruption of the public rights-of-way;

(5) Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons);

(6) If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;

(7) The timetable for construction of the project or each phase thereof, and the areas of the City which will be affected;

(8) *Photographs and Graphic or Simulated Renderings.*

a. Color ~~P~~photographs from four equally separated directions (north, south, east, and west) clearly showing the nature and location of the site where each wireless or other communications facility is proposed to be located;

b. Color ~~P~~photographs showing the location and condition of properties adjacent to the site of each proposed wireless or other communications facility; and

c. True-to-scale graphic depictions or simulated renderings in color accurately representing the visual impact of the wireless communications

facilities when viewed from the street and from adjacent properties from 4 equally separated directions (north, south, east, and west);

(9) Coverage and propagation maps demonstrating the present or future need for each wireless facility;

(10) Letter(s) of no conflict provided by other utilities having facilities located in the area or areas that the wireless infrastructure provider desires to place conduits, antennas and/or any other facilities or to begin construction;

(11) A \$150.00 collocation fee per wireless facility and all applicable permit fees, including a right-of-way utilization permit fee and building permit and plan review fees per wireless facility; and

(12) Such additional information as the City finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.

(i) *Factors considered in granting permit.* In addition to any applicable requirements or standards imposed by this code of ordinances, the City Commission shall consider the following factors in determining whether to issue a permit to a registrant to place or maintain a wireless facility within the public rights-of-way:

(1) Height and dimensions of the proposed communications facility;

(2) Proximity of the communications facility to residential structures and residential district boundaries;

(3) Nature of uses on adjacent and nearby properties;

(4) Surrounding topography;

(5) Surrounding tree coverage and foliage;

(6) Compliance with the Objective Design Standards set forth herein at section 70-236 with particular reference to design characteristics that conceal, reduce, or eliminate visual obtrusiveness;

(7) Proposed ingress and egress (where applicable);

(8) Availability of suitable existing structures or alternative technologies not requiring the installation of the communications facility as proposed;

(9) The location context must be reasonable. Proximity to other structures within the rights-of-way cannot create a hazardous or safety condition or a cluttered appearance;

(10) Proximity to and/or interference with other private or public uses within or outside the rights-of-way, including, but not limited to, utilities, easements, traffic control devices, and other uses;

(11) Suitability of the right-of-way or the proposed section of the right-of-way for the proposed communications facility with reference to safety, engineering, and/or aesthetic concerns.

(12) Whether the proposed communications facility is prohibited by Section 70-234;

(13) Clearances by height and width with respect to accessibility requirements in the most current edition of Florida Building Code and regulations interpreting the Americans with Disabilities Act; and

(14) Any other requirements set forth in this ~~chapter~~ Article.

(k) *Non-interference; encouraged technology; additional regulations.*

(1) All communications facilities shall be placed or maintained so as not to interfere with the lawful use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way.

(2) The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and shall be employed wherever feasible.

(3) The City manager may promulgate additional reasonable rules and regulations concerning the placement or maintenance of a communication facility in public rights-of-way consistent with this article and other applicable law.

(l) *Requirements for Wireless facilities.* Wireless facilities may not be placed in the public rights-of-way unless each one meets the following requirements:

(1) The aesthetic requirements and provisions under section 70-236 of this Code of Ordinances governing antennas and towers shall apply to wireless facilities located within the right-of-way.

(2) Wireless facilities must be concealed and utilize stealth design, as defined by section 70-219 of this article. Such stealth design and concealment shall eliminate the

need to locate any ground or elevated equipment on the exterior of a pole, tower, or other structure. The City Commission by resolution may adopt standards for the types or style of concealment and stealth design that are required within the City or parts thereof in order to preserve and promote the aesthetic character of the City.

(3) Any application or proposal to locate equipment at ground level on or adjacent to a pole or tower and any application or proposal to locate elevated equipment (other than antennas) on or adjacent to the exterior of a tower or pole that asserts that such cannot be accomplished by undergrounding such, and if not undergrounded then in accordance with the concealment and stealth design requirements of this article, may request ~~an exemption~~ a waiver to such requirements, and such application or proposal shall include Florida professional engineering certified documentation demonstrating to the satisfaction of the City engineer that the proposed equipment cannot employ stealth design and cannot be concealed as required by this article, and that the proposed equipment, and location and configuration of such, constitute the minimum equipment necessary and are the least obtrusive as is possible to achieve needed function.

(4) In order to avoid the clustering of multiple items of approved ground equipment or elevated equipment in a single area, only one equipment box may be located in any single location.

(5) Where a registrant demonstrates that undergrounding and stealth design and concealment cannot be employed under this subsection and the City agrees with such demonstration, the individual approved exterior equipment boxes or containment devices shall be as small as circumstances permit and shall not exceed 28 cubic feet in volume and the configuration and dimensions of such shall be the least visually obtrusive as possible. The use of irrigated or Florida-friendly foliage and vegetation together with a maintenance agreement or other concealment method around any approved equipment may be required by the City based on conditions of the specific area where the equipment is to be located. In addition, in order to meet the stealth and concealment requirements of this Article, the City may require a remote location for equipment supporting wireless facilities.

(6) Insofar as wireless facilities are constructed underground, the wireless infrastructure provider shall become a member of, and maintain membership in Florida utility notification Sunshine eOne eCall system, also known as Sunshine 811. Wireless facilities shall have five-foot horizontal clearance from other underground utilities and their appurtenances.

(m) Grounds for Denial of Collocation. The City may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

(1) Materially interferes with the safe operation of traffic control equipment;

(2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;

(3) Materially interferes with compliance with the Americans with Disabilities Act, or similar federal or state standards and regulations regarding pedestrian access or movement;

(4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or

(5) Fails to comply with applicable codes.

(n) This article does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a private owned wireless support structure, or other private property without the written consent of the property owner.

(o) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this article does not authorize the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.

Sec. 70-236. – Objective design standards.

Wireless facilities shall meet the following reasonable location, context, color, stealth, and concealment requirements. Design standards may be waived by City if the City determines that the design standards are not reasonably compatible for the particular location of a wireless facility or that the design standards impose excessive expense in relation to the aesthetic concerns of the City. The waiver shall be granted or denied within 45 days after the date of the request.

(a) Any above-ground wireless facilities shall meet stealth design requirements.

(b) Wireless facilities may increase the height of a metal street light pole only if the antenna is top-mounted and not wider than the pole or if the antenna is hidden in a

cylinder that appears like an original part of the pole. A cellular antenna shall not extend more than ten (10) feet above the utility pole or structure upon which the wireless facility is to be collocated, and shall be shorter if the height of the utility pole requires a shorter antenna height so that the structure as a whole is proportionate.

(c) A new utility pole that replaces an existing utility pole shall be of substantially similar design, material, and color as the existing utility pole unless the existing pole is made of wood, which is no longer permitted.

(d) The antennas and related equipment shall be in a color that will provide the most camouflage, as determined by the Building Official. Ground based wireless facilities, if allowed, shall be painted forest green, unless determined otherwise by the Building Official. When on a black pole, wireless facilities shall be painted black, unless determined otherwise by the Building Official.

(e) Antennas must be hidden within the utility pole or appear like an original part of the utility pole.

(f) All wireless facilities and related equipment, other than antennas, shall be placed underground in order to, without limitation, avoid impeding pedestrian travel, to avoid providing a target for graffiti or a mounting place for unauthorized signs, to minimize danger to the public, and to preserve and enhance the aesthetic qualities of the City.

(g) Wires serving the wireless facilities must be concealed within or flush mounted to the pole in an enclosed wire chase on which the facilities are collocated and insulated in accordance with applicable codes.

(h) The photographs attached as exhibits to this ~~chapter~~ Article provide conceptual examples of acceptable, acceptable with modifications, and prohibited wireless facilities. Because of rapid advances in stealth wireless technology and techniques, the City Commission is authorized to identify by resolution other forms of acceptable wire facilities that are consistent and compatible with the aesthetic, safety, and other standards set forth in this ~~chapter~~ Article as well as prohibited wireless facilities.

(i) Antennas placed upon structures within the rights-of-way must meet the following additional requirements if stealth design, concealment, and this article's requirements regarding such cannot be met:

(1) Top mounted antennas and their enclosures must not extend the diameter of the supporting structure at the level of antenna attachment; and

(2) Side-mounted antennas and their enclosures must be flush-mounted to the supporting structure at the level of antenna attachment. Under no circumstances shall antennas be mounted less than 12 feet above ground level.

(j) *Street light fixtures with stealth wireless facilities.*

(1) On street lights, luminaires and bases should be roughly equal in size and volume for a balanced appearance.

(2) The decorative base of a decorative street light should be between 10-25% of the pole height.

(3) The length of arms extending from the base should be between 20-25% of pole height;

(4) Arms should extend from the pole at a location within 20% of pole height from the top of the pole.

(5) Street light fixtures must meet AASHTO structural guidelines for roadway application and ANSI requirements for vibrations.

(6) Pole height shall be measured from the ground to the top of the utility pole, which measurement shall include any antennas built into or appended to the utility pole.

(k) New or replacement poles that support wireless or communications facilities shall match the style, design, and color of the utility poles in the surrounding area.

(l) *Height.* The height of new wireless or communications facilities in the rights-of-way shall be no greater than the maximum size and height of any other utility or light poles located in the same portion of the right-of-way within the City other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole shall be limited to 50 feet, unless the City determines that a lower height is warranted given the location context for compatibility with existing or planned development within the vicinity of the proposed location or other provision of this article warrants such; provided however, that registrants proposing wireless facilities with antennas to be located on existing poles or other structures may increase the height of the existing pole or other structure up to six feet, if necessary, to avoid adversely affecting existing pole attachments; and provided further that the overall height above ground of any wireless or communications facility shall not exceed 40 feet or exceed the existing height of other utility or light poles located in the same portion of the right-of-way, whichever height is less.

(m) Wireless facilities shall be located at least ten feet from a driveway, at least ten feet from the edge of existing trees 12 inches or greater in diameter, at least 25 feet from a traffic signal pole unless mounted upon the vertical portion of such traffic signal pole, at least 15 feet from any pedestrian ramp, and 8 feet from the street curb or edge of pavement. The City may require greater setbacks from these and other fixtures in the right-of-way to ensure proper sight lines for public safety purposes and in other cases as deemed necessary to advance the purposes of this Article.

(n) If the right-of-way is within or abuts a residential zoning district, wireless communication facilities must be located where the shared property line between two residential parcels intersects the right-of-way, whenever possible unless an unsafe condition, cluttered appearance, or other violation of this article would result.

(o) If the right-of-way is within or abuts a nonresidential district, wireless facilities must be located between tenant spaces or adjoining properties where their shared property lines intersect the right-of-way, whenever possible, unless an unsafe condition, cluttered appearance, or other violation of this article would result.

(p) *Waivers.* The City, in consultation with the City engineer where appropriate, may waive or reduce any requirement under this section if the City determines that such requirement is not reasonably compatible for the particular location of a small wireless facility or that such requirement imposes an excessive expense, or where the waiver serves the intent or purposes of this article. The waiver shall be granted or denied within 45 days after the date of the request.

(q) *Limitations; no property right.* A permit from the City constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

Sec. 70-237. – Maintenance; replacement; micro wireless facilities.

(a) A registrant shall maintain its communication facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.

(b) All safety practices required by applicable law or accepted industry practices and standards shall be used during the construction, installation, or maintenance of wireless facilities.

(c) After the completion of any placement or maintenance of a wireless facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to the original condition that existed before such work. If the

registrant fails to make such restoration within 15 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. For 12 months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense.

(d) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556, as it may be amended.

(e) Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas. The person constructing, installing, and maintaining wireless facilities must be a licensed electrician, certified to work as a lineworker, or have successfully completed an accredited lineworker apprenticeship program.

(f) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any utilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the City, Duke Energy or its successors, or any other person's facilities lawfully occupying the public rights-of-way of the City.

(g) The City shall have the right to make such inspections of wireless facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Article.

(h) *Coordination of work; work schedule.* Upon request of the City, and as notified by the City of the other work, construction, installation or repairs referenced below, a registrant may be required to coordinate with the City or Duke Energy or its successors the placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way, and registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.

(i) *No warranties; vacation of rights-of-way.* The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's public rights-of-way, City-owned structures, and City-owned real property for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk. Nothing in this article shall affect

the City's authority to add to, vacate or abandon public rights-of-way, or add vehicular travel lanes, and the City makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

(j) *Alteration of rights-of-way; other work and facilities in rights-of-way.*

(1) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the City and within said limits as same may from time to time be altered. The wireless provider shall remove or relocate its wireless facilities at its own cost to accommodate any widening of the vehicle travel lanes and sidewalks, if deemed necessary by the City.

(2) A registrant shall, on the request of any person holding a permit issued by the City, temporarily raise or lower its wireless or other communications facilities to permit the work authorized by the permit. The expense of temporarily raising or lowering facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation.

(3) *Replacement and maintenance of wireless facilities.* The City shall not require approval or require fees or other charges for:

a. Routine maintenance;

b. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

c. a communications service provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

Notwithstanding this paragraph, for public safety, the wireless provider must give reasonable notice to the City's Public Services Department before undertaking these activities and a right-of-way permit shall be required for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane. In addition, for

public safety, the wireless provider must pull a permit for any work that will involve replacement of existing wireless facilities with new wireless facilities of any size or electrical work on existing wireless facilities with new wireless facilities so that proper inspections can be performed. Fees for such permit will be waived so long as the Act prohibits such fees.

(4) If the replacement wireless facilities are not substantially similar to the existing wireless facilities or are not the same or smaller in size, a new application must be made, which shall be treated as an application for a new communications facility under this article, as appropriate.

(k) *Additional authority; permit conditions.* To the extent not otherwise prohibited by state or federal law and this ~~chapter~~ Article, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within all or parts of the public rights-of-way. The City may impose reasonable conditions upon the grant of a permit, in addition to the specific requirements of this code, as deemed appropriate to advance the intent or purposes of this article.

Sec. 70-238. – Collocation on City utility poles.

To the extent possible, the wireless infrastructure provider shall make use of existing poles and other facilities already existing in the City’s right-of-way. The wireless provider may erect additional poles or construct other facilities so long as all applicable permits and consents are obtained and the poles are located in the proper location context so as not to create clutter. Collocation of small wireless facilities on City utility poles is subject to the following requirements:

(a) *Make-Ready for Collocation.*

(1) For a City utility pole that does not support an aerial facility used to provide communications services or electric service, the applicant seeking to collocate a small wireless facility shall provide a make-ready estimate at the applicant’s expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The City shall not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the City.

(2) The City shall not require more make-ready work than is required to meet applicable codes or industry standards.

(3) Fees for make-ready work shall not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to wireless service providers other than wireless services providers for similar work and shall not include any consultant fee or expense.

(4) Fees for make-ready work must be paid to the City, even if they exceed the applicant's estimate, before the wireless facilities may be operational.

(b) No person or entity shall be granted the exclusive right to attach equipment to City utility poles.

(c) For a City utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

(d) A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with any undergrounding requirements of the City that prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the City.

Sec. 70-239. - Force majeure.

(a) In the event a registrant's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result; provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court.

(b) Causes or events within registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or

comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors, subcontractors, or agents.

Sec. 70-240. - Reservation of rights and remedies.

(a) The City reserves the right to amend this Article as it shall find necessary in the lawful exercise of its police powers.

(b) This Article shall be applicable to all wireless facilities placed in the public rights-of-way on or after the effective date of the ordinance from which this article derives and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of the ordinance, to the full extent permitted by state and federal law.

(c) The adoption of this article is not intended to affect any rights or defenses of the City or a wireless service provider under any existing franchise, license or other agreements with a wireless services provider.

(d) Nothing in this article shall affect the remedies the City or the registrant has available under applicable law.

(e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

Sec. 70-241. - Pass-Through Provider Fees, Collocation Fees, and Other Charges.

(a) *Pass-Through Providers.*

(1) Pass-through providers shall pay to the City on an annual basis an amount equal to \$500.00 per linear mile or portion thereof of communications facilities placed and/or maintained in the City's rights-of-way. For purposes of this section, the City's rights-of-way do not include rights-of-way that extend in or through the City but are state, county or another authority's roads or rights-of-way.

(2) The amounts charged pursuant to this section shall be based on the linear miles of rights-of-way where a wireless facility is placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one communications facility for purposes of this subsection.

(3) Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits taxes imposed by the City pursuant to F.S. ch. 202.

(b) Collocation Fees.

(1) The wireless provider shall remit a \$150.00 collocation fee per wireless facility to the City with the application to pay for the first year's fee for collocating small wireless facilities on a City utility pole.

(2) The wireless infrastructure provider shall remit a \$150.00 collocation fee per wireless facility to the City within thirty (30) days of the anniversary of the approval of the collocation. Failure to timely pay the Collocation Fee shall result in the immediate forfeiture of all rights to collocate on the City utility pole and any wireless equipment collocated on the utility pole shall be removed within thirty (30) days at the wireless provider's expense.

(c) Fees for City Connections. The City reserves the right to assess pole connection fees or other fees for the use of City employees and contractors as well as fees for access to any fiber network the City may construct.

(d) Permit Fees. The wireless infrastructure provider shall remit with its application all appropriate and customary fees, including a right-of-way utilization permit fee, building permit fee, and plan review fees.

(e) Fees for Non-Collocated Communications Facilities.

(1) Fees for non-collocated communications facilities may be charged to any person not a dealer of communications services as defined by Florida Statutes § 202.11.

(2) Annual payments shall be due and payable on the calendar date of approval each year. Failure to timely pay the annual payment shall result in the immediate forfeiture of all rights to locate any wireless equipment in the City's rights-of-way and all wireless equipment shall be removed within thirty (30) days at the wireless infrastructure provider's expense. Fees not paid shall bear interest at the rate of one percent per month from the date due until the wireless equipment is removed. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable. All fee payments shall be subject to audit by the City, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the City, such

additional payment shall be subject to interest at the rate of one percent per month until the date payment is made.

(f) Application Fees. The wireless infrastructure provider shall be responsible for paying all usual and customary application review fees, including for wireless facilities in an historic preservation district, site plan review, or any other review required.

Sec. 70-242. Insurance and Bonds.

(a) At all times wireless facilities are in the City's right-of-way, the wireless infrastructure company shall provide, pay for, and maintain satisfactory to the City the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state and having a financial rating in Best's Insurance Guide of B+ Class VI or better and a claims paying ability rating of A+ or better.

(b) All liability products shall provide that the City is an additional insured as to the facilities maintained and operations conducted in the City's right-of-way. The required coverages must be evidenced by properly executed certificate of insurance forms signed by an authorized representative of the insurance company.

(c) Each insurance policy shall provide that at least 30 days advanced written notice by registered or certified mail be given to the City of any cancellation, intent not to renew, or reduction in the policy coverages. The certificate of insurance must indicate that the City is an additional insured.

(d) The limits of coverage of insurance required shall be not less than the following:

| | |
|------------------------------|---|
| <u>Worker's Compensation</u> | <u>Florida statutory requirements</u> |
| <u>Employer's Liability</u> | <u>\$500,000.00 limit each accident</u> <u>\$500,000.00 limit disease accident</u> |

| | |
|--|--|
| | <u>\$500,000.00 limit disease each employee</u> |
| <u>Comprehensive General Liability</u> | <u>Bodily injury and property damage—\$5,000,000.00 combined single limit each occurrence.</u> |
| <u>Automobile Liability</u> | <u>Bodily injury and property damage—\$5,000,000 combined single limit each accident.</u> |

(e) Wireless provider shall exercise none of the rights granted by this ~~chapter~~Article until evidence of compliance with the following bonding and preceding insurance requirements have been filed with the City. Should the wireless infrastructure provider fail to comply with said requirements, it shall acquire no rights, privileges or authority whatsoever.

(f) *Bond.* Every operator of a wireless facility shall be required to obtain performance bonds and payment bonds to ensure the faithful performance of its responsibilities under this ~~chapter~~Article, including safely maintaining all wireless facilities and removing all wireless equipment upon termination of the right to maintain such facilities. The amount of performance and payment bonds shall be set by the City Manager or his designee in light of the nature of the work to be performed, and is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the City attorney. The City may from time to time increase the amount of the required performance bond to reflect increased risks to the City and to the public.

(g) *Notice.* The performance and payment bonds required pursuant to this section shall require 30 days' prior written notice to the City of an intention of nonrenewal, alteration, or cancellation. The wireless provider shall, in the event of any such intended cancellation notice, obtain, pay all premiums for, and file replacement bonds or policies within 30 days following receipt by the City of any notice of intended cancellation.

Sec. 70-243. Compliance with State and Federal Law

The wireless infrastructure provider shall maintain and operate all parts of its wireless facilities in good, safe and operable condition and shall render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Florida Public Service Commission and the Federal Communications Commission, or by other agencies of the state or federal government empowered to regulate the activities of the wireless infrastructure provider. Failure to comply with such rules and regulations terminates all rights to maintain wireless infrastructure in the City's rights-of-way.

Sec. 70-244. Relocation of Wireless Facilities.

Except in case of any emergency, the wireless infrastructure provider shall, within 180 days after receipt of written notice from the City, adjust, alter or relocate, at its own expense, any portion of its wireless facilities in the event that the City, at the direction of the City's department of Public Services or the City engineer, determines that such adjustment, alteration or relocation is necessary for the City's use of its property and rights-of-way, or if the wireless facilities unreasonably interferes with the convenient, safe or continuous use, or the maintenance, improvement, extension or expansion of any public right-of-way in the City. In the event that such adjustment, alteration or relocation is incidental to work to be done by the City on a City road, such notice shall be given 60 days prior to the commencement of such work by the City. In the event such a contingency occurs and the wireless infrastructure provider fails to cause the aforementioned adjustment, alteration or relocation as required herein, the City may remove or relocate such portion of the wireless facilities and the total cost and expense therefore shall be charged to, and paid by, the wireless infrastructure provider. The City shall provide the wireless infrastructure provider with a notice and order as provided for in F.S. § 337.404, or any subsequently enacted law of the state, in the event it may charge the wireless infrastructure provider for the cost and expense of removing such portion of its wireless facilities pursuant to this ~~Article~~chapter.

Sec. 70-245. Conditions of public right-of-way occupancy.

(a) All facilities erected by the wireless infrastructure provider within the rights-of-way of the City shall be so located as to cause minimum interference with the proper use of streets, and other public rights-of-way and places and to cause minimum interference with the rights and reasonable convenience of property owners who own adjacent properties.

(b) The wireless infrastructure provider shall not, without consent of the City, in any way displace, damage or destroy any sewer, water main, pipe, electrical conduit, or any other facilities belonging to the City, or to any third party who placed or maintains such facilities therein by express authority of the City. The wireless infrastructure provider shall be liable to the City or to the third party owner, as the case may be, for the cost of any repairs made necessary by any such displacement, damage or destruction and shall pay such costs upon written demand within 30 days of wireless infrastructure provider's receipt of such demand.

(c) The wireless infrastructure provider shall, at its own cost, replace and repair without delay any improvements, facilities or City rights-of-way that have been excavated, broken, removed, displaced, damaged or disarranged by the construction, maintenance and operation of any portion of the wireless facilities, or as a result of the deterioration of any portion of the wireless facilities. The wireless infrastructure provider shall restore the same to as good a condition as existed prior to the wireless infrastructure provider commencing its work. Upon failure of the wireless infrastructure provider to complete such repairs after 20 days' written notice by the City's department of Public Services or the City engineer of such failure, the City may make such repairs and replacements as its deems necessary, and the wireless infrastructure provider shall pay the City all costs of such repairs and replacements. The wireless infrastructure provider, shall to the satisfaction of the City's engineer or Public Services director, maintain any repairs or replacements its makes pursuant to this section for a period of one year following the date of such repair or replacement.

(d) *Make-Ready for Collocation.*

(1) For a City utility pole that does not support an aerial facility used to provide communications services or electric service, the applicant seeking to collocate a small wireless facility shall provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The City shall not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the City.

(2) The City shall not require more make-ready work than is required to meet applicable codes or industry standards.

(3) Fees for make-ready work shall not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to communications service providers other than wireless services providers for similar work and shall not include any consultant fee or expense.

(4) Fees for make-ready work must be paid to the City, even if they exceed the applicant's estimate, before the wireless facilities may be operational.

(e) The wireless infrastructure provider shall produce and maintain a complete set of "as built" plans, including, but not limited to, horizontal and vertical profiles, within 30 days after construction of any portion of its wireless facilities;

(f) The wireless infrastructure provider shall comply with all applicable laws, regulations and codes promulgated for the protection of the public, including, but not limited to, the National Electric Code, the National Electric Safety Code, the Florida Department of Transportation Utilities Accommodation Guide, the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways, and such other design or regulatory manuals that regulate the installation of structures within public rights-of-way.

(g) In the event the City requires the wireless infrastructure provider to alter, temporarily or permanently relocate or to change any portion of the wireless facilities to expand the City's right-of-way, or to enable another person to use the public rights-of-way of the City, the wireless provider shall be reimbursed no more than the annual permit cost, \$150.00.

(h) In an emergency, as determined by the City, when the wireless infrastructure provider or its representative is immediately unavailable or unable to provide the necessary immediate repairs to any portion of the wireless facilities that is damaged or malfunctioning or to any faults or settles or sunken areas that may develop in any area over, around or adjacent to same, the City when apprised of such an emergency, shall have the right to make the repairs to protect the public health, safety and welfare, with the total cost of same being charged to, and paid by, the wireless provider.

(i) In an effort to minimize the number of wireless facilities within the City's rights-of-way, the disruption of traffic and roadway destruction, the wireless infrastructure provider shall attempt in good faith to reach and enter into joint use agreements with the City and other parties who are expressly authorized by the City to use its rights-of-way. Nothing herein contained shall mandate that the wireless infrastructure provider enter into joint use agreements.

(j) In the event that work to be conducted by the wireless infrastructure provider requires streets or traffic lanes to be closed or obstructed, the wireless infrastructure provider shall, pursuant to the requirements of existing or subsequently enacted City ordinances, obtain all permits from and pay all fees therefor to the City, and shall obtain approval of its maintenance-of-traffic plan from the City's police and Public Services departments.

(k) In the event the wireless infrastructure provider deems the trimming and removal of any trees reasonably necessary to construct any portion of its wireless facilities and to maintain the integrity and safety of same it shall, pursuant to the requirements of existing and subsequently enacted City ordinances, at wireless infrastructure provider's expense; obtain all approvals and applicable permits from, and pay all applicable fees to, the City, and comply with all other requirements of said ordinances. All tree trimming shall be done in accord with the standards of the Florida Urban Forestry Council and/or American Society of Landscape Architects except where following such standards would violate applicable federal or state safety codes. All tree trimming shall be coordinated with and approved by the City's arborist.

(l) In the event wireless infrastructure provider's work requires the temporary obstruction of City owned parking spaces, wireless infrastructure provider shall obtain City approval to block such spaces prior to doing so.

(m) Whenever, in case of fire or other disaster, it becomes necessary, in the reasonable judgment of the City, to remove or damage any of the wireless infrastructure provider's facilities, no charge shall be made by wireless infrastructure provider against the City for restoration and repair reasonably necessary under the circumstances. The City shall endeavor to avoid or limit damage to the extent necessary under the circumstances.

Sec. 70-246. Erection of New Utility Poles; Availability of Alternatives.

No new utility pole, pole-type structure, or other freestanding structure shall be allowed in the rights-of-way unless the applicant demonstrates and staff and the City Commission determines that no existing structure or alternative technology that does not require the placement of a new structure in a right-of-way can accommodate the applicant's proposed antenna or other communications facility. Such a demonstration by the applicant shall not give rise to a right to locate the proposed facility within the rights-of-way or in any way guarantee City approval of such. An applicant shall submit information requested by the City Commission related to the availability of suitable existing structures or alternative

technology. Evidence submitted to demonstrate that no existing structure or alternative technology can accommodate the applicant's proposed communications facility may consist of, but is not limited to, the following factors to be considered by the City Commission:

(a) No existing structures are located within the geographic area which would meet applicant's engineering requirements.

(b) Existing structures are not of sufficient height to meet applicant's engineering requirements, which shall be demonstrated by, at minimum, propagation and coverage maps.

(c) Existing structures do not have sufficient structural strength to support applicant's proposed antenna or other communications facility and related equipment.

(d) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing structures, or the antenna on the existing structures would cause interference with the applicant's proposed antenna.

(e) The fees, costs, or contractual provisions required by the owner in order to share an existing structure or to adapt an existing structure for sharing are unreasonable.

(f) The applicant demonstrates that there are other limiting factors that render existing structures unsuitable.

(g) The applicant demonstrates that an alternative technology that does not require the use of new structures, such as cable microcell network using multiple low-powered transmitters/receivers attached to wire line system, is unsuitable. Costs of alternative technology that exceed new structure or antenna development shall not be presumed to render the technology unsuitable.

Sec. 70-247. - Notice of transfer, sale or assignment of assets in public rights-of-way.

(a) If a registrant transfers, sells or assigns its assets located in public rights-of-way incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article.

(b) Written notice of any such transfer, sale or assignment shall be provided by such registrant to the City within 20 days after the effective date of the transfer, sale or assignment.

(c) If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a

current registrant, then the transferee, buyer or assignee shall register as provided in section 70-220 above, within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the public services department that the transferee, buyer or assignee is the new applicant.

Sec. 70-248. Termination.

(a) Involuntary termination of registration. The City, at its option, may forthwith declare a forfeiture and termination of, and revoke and cancel all rights granted under the permit issued to the wireless provider in the event that the wireless provider:

(1) Violates any of the material provisions of this Article;

(2) Ceases to operate its wireless system within the City for any consecutive period of seven days;

(3) Is prohibited by state or federal regulatory authorities from operating its wireless system due to suspension, denial, or revokcation of a certificate or license to provide communications services;

(4) Fails to remit the \$150.00 annual collocation fee, permit fees, or any other mandated fees allowed by law;

(5) Fails to maintain a bond as required by section 70-242;

(5) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary or unreasonable danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; or

(6) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with section 70-231.

(b) Prior to termination, the registrant shall be notified by the City with a written notice setting forth all matters pertinent to the proposed termination action, including the grounds therefore, and describing the proposed action of the City with respect thereto. The registrant shall have 30 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City, to accomplish the same. If the plan is rejected, the City shall provide written notice of such rejection to the registrant. A decision by a City to terminate a registration may only be accomplished by an action of the building official and may be appealed to the City

Commission. A registrant shall be notified by written notice of any decision by the City Commission to terminate its registration. Such written notice shall be sent within seven days after the decision.

(c) In the event of termination, the former registrant shall: (a) notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or (b) provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection, which determination of non-compliance is subject to appeal as provided in section 70-255, the City may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities or requiring the registrant within 30 days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal.

(d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City. The wireless provider shall, within 30 days following demand by the City, remove or abandon the system and take such steps as are necessary to render every portion of the wireless facilities remaining within the rights-of-way of the City safe, and shall thereupon be deemed to have abandoned same in its entirety; and the same shall thereupon become the sole property of the City without payment to the wireless infrastructure provider; provided, however, if the City chooses to have all or any portion of the wireless facilities removed from the City's right-of-way, the wireless infrastructure provider shall do so at its own expense within 30 days after notice by the City.

(e) In the event of termination of a registration, this section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is Registered with the City, if required.

Sec. 70-249. - Abandonment.

(a) Upon abandonment of a wireless facility owned by a registrant in public rights-of-way, the registrant shall notify the City within 30 days.

(b) The City may direct the registrant by written notice to remove all or any portion of such abandoned communications facility at the registrant's sole expense if the City

determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:

(1) compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;

(2) prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available, in which case the City may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.;

(3) creates a maintenance condition that is disruptive to the public rights-of-way's use; or (d) removal of the communications facility would improve or enhance the City's aesthetics.

(c) In the event that the City does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the City or another person at such third party's cost.

(d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the City within 30 days or such other time period as may be required by the City under the circumstances, the City may perform such removal and charge the cost of the removal against the registrant, any successor in interest to the registrant, or surety.

Sec. 70-250. Removal and Relocation.

(a) The grant of a permit under this article shall not limit the authority and discretion of the City to regulate and control the public rights-of-way, and the City may at any time require the removal or relocation of a communications facility within the rights-of-way in the interests of the public welfare, health, or safety, aesthetics or as otherwise authorized by law. The wireless provider must remove its wireless facilities within 30 days notice that the City will remove a utility pole, including to replace a cobra or other utilitarian streetlight with a decorative street light fixture.

(b) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by applicable requirements of F.S. §§ 337.403 and 337.404, as they may be amended, in addition to any other applicable City regulations or provisions of law. Unless otherwise provided by law, this City Code, or agreement, a registrant shall bear all costs of any removal or relocation of its facilities.

(c) Removal due to technology advances. The City may require removal of wireless facilities and utility poles no longer required or necessary to provide coverage or which provide redundant coverage due to advances in technology, including, without limitation, technological advances allowing larger distances between wireless facilities, or due to enhanced coverage provided under current technology.

(d) As part of a City undergrounding initiative or requirement, a wireless provider must remove wireless facilities from a utility pole within 30 days notice from the City. In its discretion based on the reasonable location context, the City may offer an alternative collocation.

Sec. 70-251. Inspection; correction of defects of the system.

(a) The City may, at any time, inspect the construction and condition of the wireless facilities to insure proper and safe performance of the terms of this Article chapter.

(b) If the wireless provider should violate any of the terms of this Article chapter or any of the rules and regulations as may hereafter be from time to time lawfully adopted, the City shall promptly give wireless provider written notice of the violation, breach, default or noncompliance. The wireless provider shall within 30 days after service of such notice substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the City. In the event that the wireless provider fails to substantially undertake such corrective action within 30 days of the date of such written notice and promptly complete the corrective action, the City may, notwithstanding any other remedies provided in this Article chapter, or otherwise available under law:

(1) Make such correction itself and charge the cost of the same to the wireless infrastructure provider; and/or

(2) Secure the proceeds from any bond posted by the wireless infrastructure provider or impose the sum of \$100.00 per day for each day as liquidated damages following the cure date that wireless infrastructure provider fails to complete the corrective action; and/or

(3) For a material breach of this Article chapter, including failure to timely pay the \$150.00 collocation fee annually, declare the wireless infrastructure provider in default and terminate the all rights granted under this Article chapter.

Sec. 70-252. Communications with Regulatory Agencies

(a) Copies of all petitions, applications, communications and reports submitted to the Public Service Commission or any other state or federal regulatory Commission or agency having jurisdiction in respect to any matters affecting the construction and operation of the wireless facilities in the rights-of-way shall, if requested by the City, shall be filed with the City.

(b) Copies of all certificates of approval issued by the PSC or any other state or federal regulatory agency or Commission having jurisdiction over construction or operation of the wireless facilities shall be filed with the City and the information supplemented within 45 days after modification, renewal and/or revocation of any such certificate(s).

Sec. 70-253. Indemnification.

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the installation, placement, or maintenance of its wireless facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This provision includes, but is not limited to, the City's reasonable attorneys' fees and costs incurred in defending against any such claim, suit or proceedings. The City agrees to notify the registrant, in writing, within a reasonable time of the City receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted:

(1) As denying to either party any remedy or defense available to such party under the laws of the state; or

(2) As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.

(b) The indemnification requirements shall survive and be in effect after the termination, suspension or cancellation of a registration.

Sec. 70-254. - Enforcement remedies.

(a) A registrant's failure to comply with provisions of this article shall constitute a violation of this article and shall subject the registrant to the code enforcement provisions and procedures as provided in the applicable code of the City.

(b) In addition, violation of this article may be punishable as provided in F.S. § 162.22, as it may be amended.

(c) Before imposing a fine pursuant to this section, the City manager or the City manager's designee shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have 30 days to either: (a) cure the violation to the City's satisfaction and the City shall make good faith reasonable efforts to assist in resolving the violation; or (b) file an appeal with the City to contest the alleged violation. Section 70-255 shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30-day period, the City may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(d) In determining which remedy is appropriate, the City shall take into consideration the nature of the violation, the person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City determines are appropriate to the public interest. In any proceeding before the City where there exists an issue with respect to a registrant's performance of its obligations pursuant to this article, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this article. The City may find a registrant that does not demonstrate compliance with the terms and conditions of this article in default and apply any remedy as authorized by this article or other applicable laws, ordinances, regulations or City codes. The City manager or a designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law. Failure of the City to enforce any requirements of this article shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 70-255. - Appeals.

Any final decision by a City official or board other than the City Commission may be appealed to the City Commission by filing a written notice of appeal with the city manager or designee within 30 days of the date of the decision. Any appeal not timely filed as set forth above shall be waived. A timely filed appeal shall be heard within a reasonable time in light of the circumstances. Any final decision by the City Commission is subject to review as provided by law.

SECTION 3. Exhibits and City Commission Authority. This ordinance incorporates Exhibits 1-14 attached hereto, which objectively illustrate, but are not exhaustive, of wireless facilities that may be acceptable, may be acceptable if modified, and wireless facilities which are prohibited in the City's rights-of-way. Because of rapid advances in stealth wireless technology and techniques, the City Commission is authorized to identify by resolution other forms of acceptable wireless facilities that are consistent and compatible with the aesthetic standards set forth in this Article as well as prohibited wireless facilities.

SECTION 4. Codification and Reservation of Rights. This Ordinance shall be incorporated into the Winter Garden City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made. Adoption and codification of this ordinance does not waive the City's right to contest or otherwise challenge the constitutionality, validity, enforceability, and effectiveness of the Act or any part thereof, and the City hereby reserves the right to contest and otherwise challenge the Act.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 7. Effective date. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Garden, Florida, and shall apply to all existing and future applications for permits.

FIRST READING AND PUBLIC HEARING: September 14, 2017

SECOND READING AND PUBLIC HEARING: September 28, 2017

ADOPTED this 28th day of September, 2017, by the City Commission of the City of Winter Garden, Florida.



CITY COMMISSION
CITY OF WINTER GARDEN


John Rees, Mayor/Commissioner

ATTEST:


Kathy Golden, City Clerk

EXHIBITS 1-14



Exhibit 1. Simulated fluted pole to be manufactured by Nepsa with capacity for two internal, collocated wireless antennas. Decorative mast arm and down lighting luminaire by Sternberg Lighting. This ~~would~~ may be an acceptable design, depending on the location context; however, the pole's location, mere inches from the curb, would violate the 8 foot clear space requirement from the curb or edge of pavement.

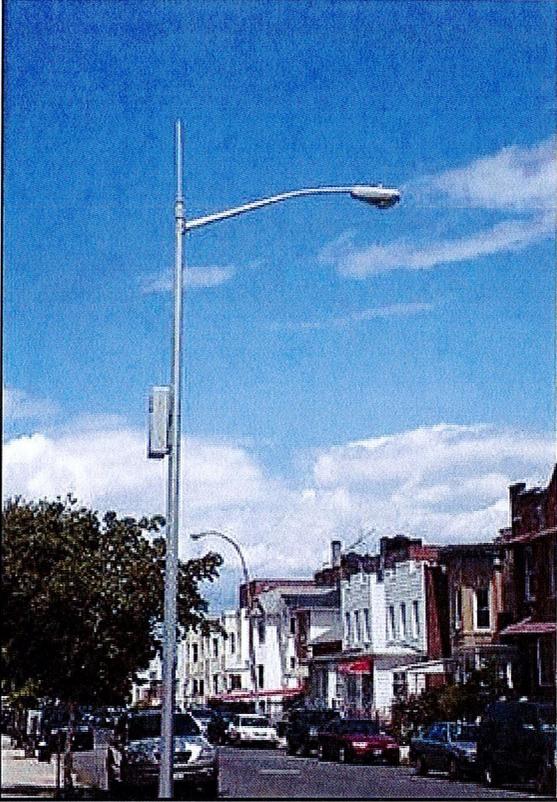


Exhibit 2. The antenna is narrower than, and in scale with the pole. This would be an acceptable design for a cobra-style light fixture.



Exhibit 3. An antenna incorporated into, and hidden in the pole of top mounted, pedestrian scaled light may be acceptable if painted black, featured an acorn luminaire, and otherwise substantially resembled the acorn light fixtures already existing in the City. The photo depicts a Philips pole with internal Ericsson antennas.



Exhibit 4. The antenna, by Valmont, is painted black to blend-in with the pole and is in scale with the pole base. The arm is within the top 15-20% of the pole height, appearing in balance. This may be an acceptable design depending on the location context and color, which should be consistent with existing poles in the immediate vicinity.



Exhibit 5. This design may be acceptable if consistent with other fixtures in the immediate vicinity. The base is out of scale to the arms and luminaires. In addition, while symmetrical, the pole and antenna extend far above the luminaires, making the design appear vertically out of proportion. Arms and luminaires should be within the top 20% of the pole height. This design is prohibited; however, a similar design may be acceptable with appropriate modifications.

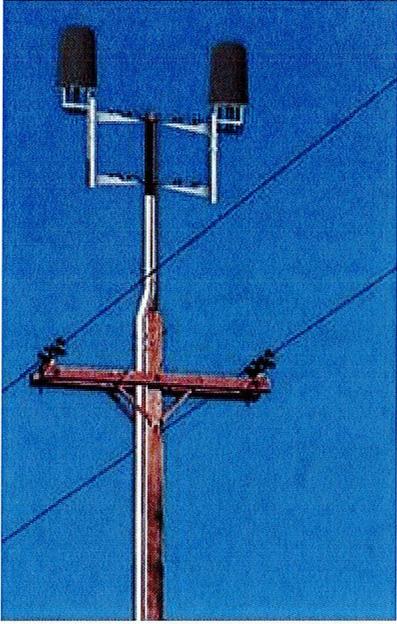


Exhibit 6. Wireless facilities over, or within 20 feet of energized wires are prohibited.

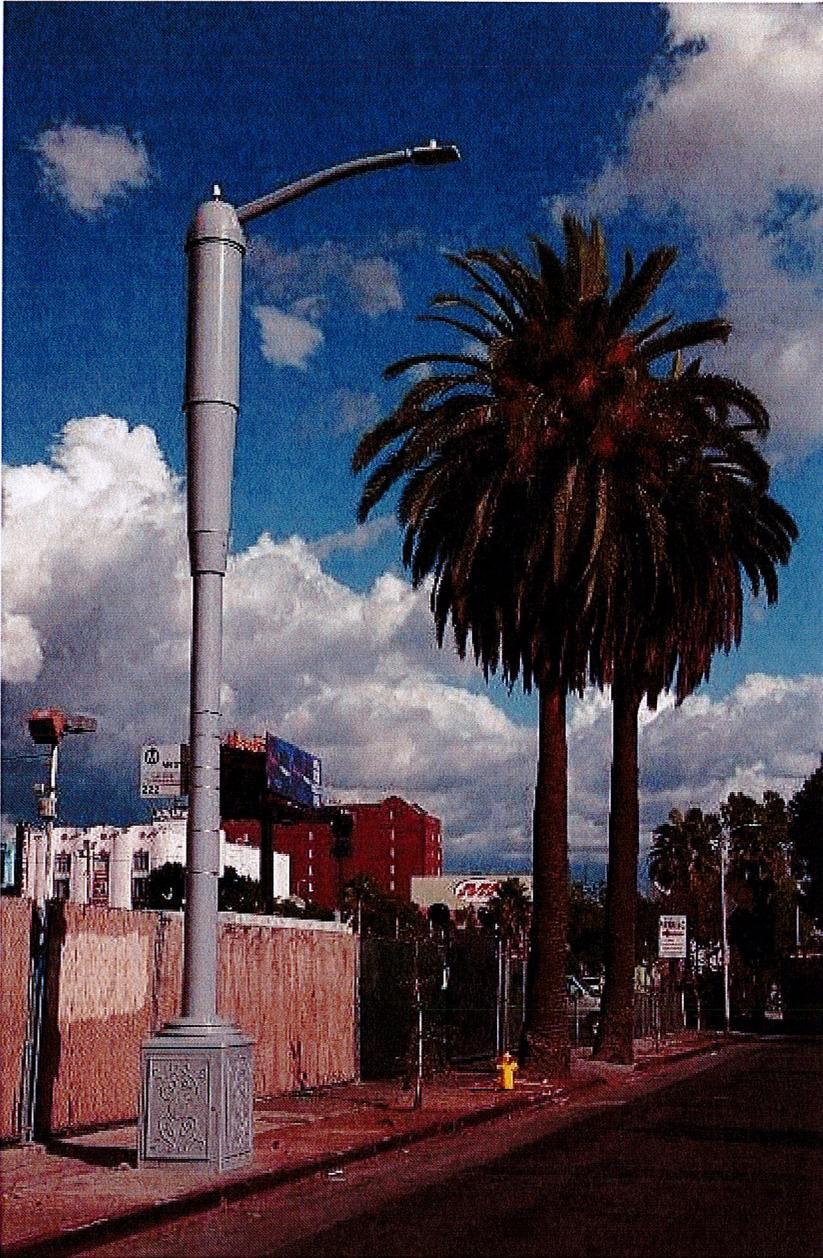


Exhibit 7. The antenna enclosure has a larger diameter than the pole, rendering it insufficiently cloaked. This design is prohibited.

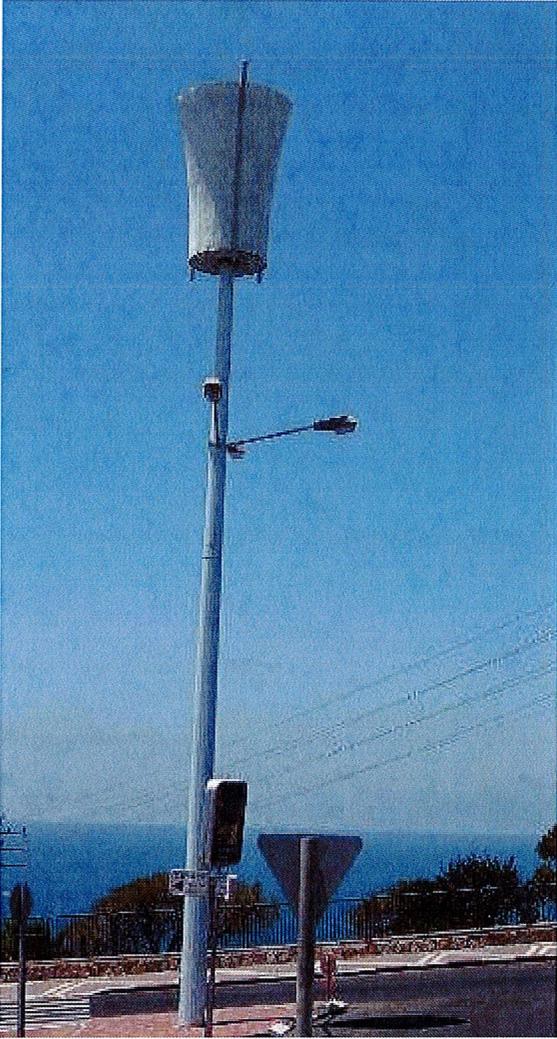


Exhibit 8. The antenna is wider than, and out-of-scale to the pole. This design is prohibited.

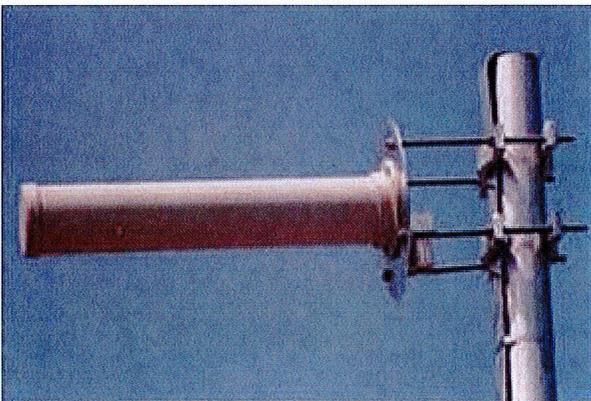


Exhibit 9. The antenna extends horizontally from the pole. This design is prohibited.

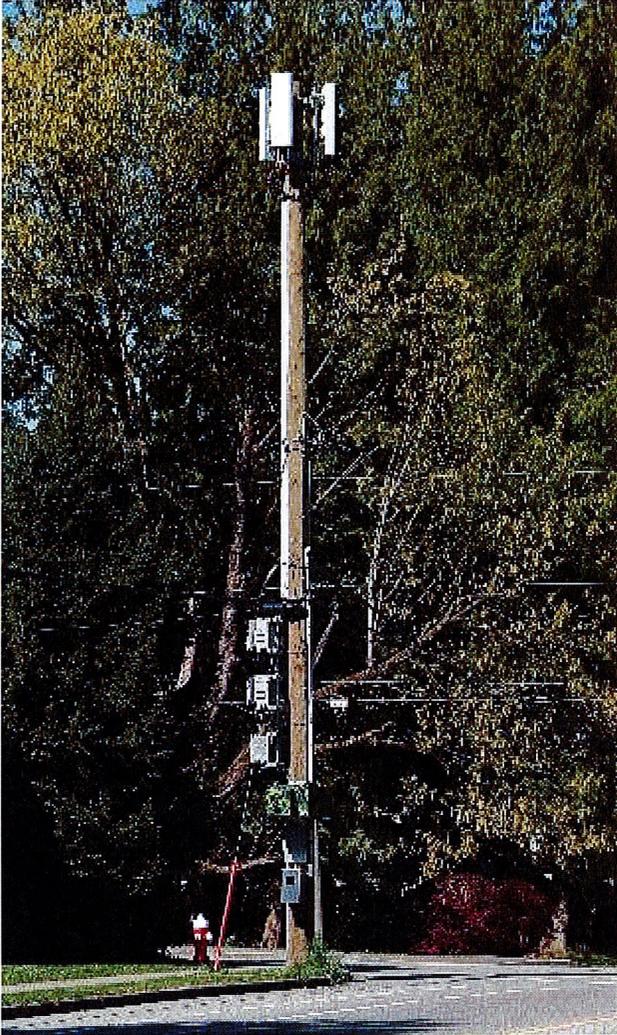


Exhibit 10. ~~Wooden poles are prohibited. In addition, t~~The top-mounted antennas extend on arms away from the pole. This design is prohibited.

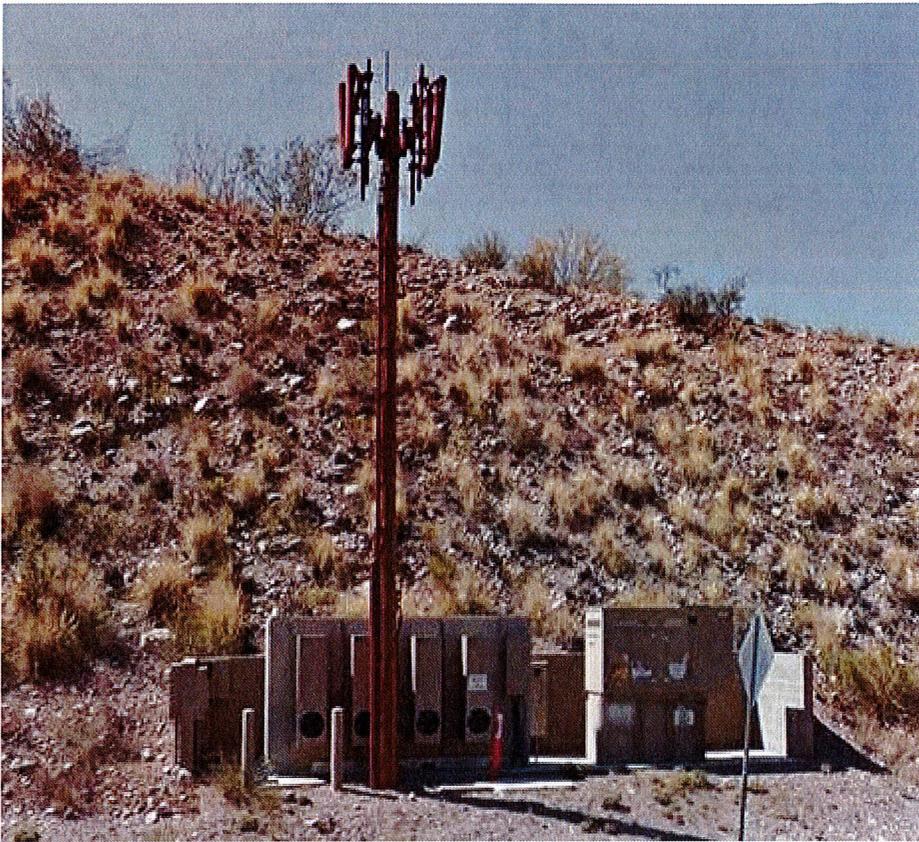


Exhibit 11. Antennas on arms are prohibited.

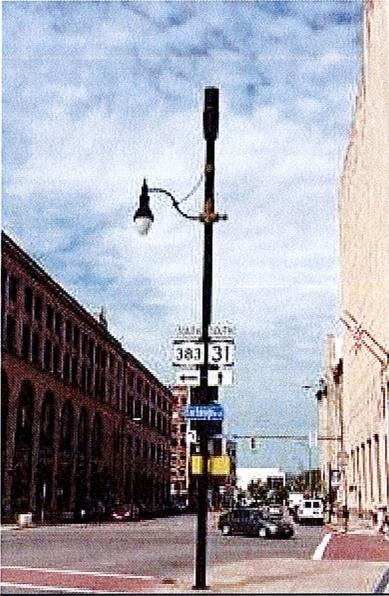


Exhibit 12. The pole lacks a base in scale to the volume of the antenna, which is larger than the diameter of the pole and does not appear to be an original part of the pole. This design would be prohibited.



Exhibit 13. The base is out-of-scale to the size of the luminaire. In addition, the antenna is larger than the pole diameter and does not look like an original part of the pole. This design would be prohibited.

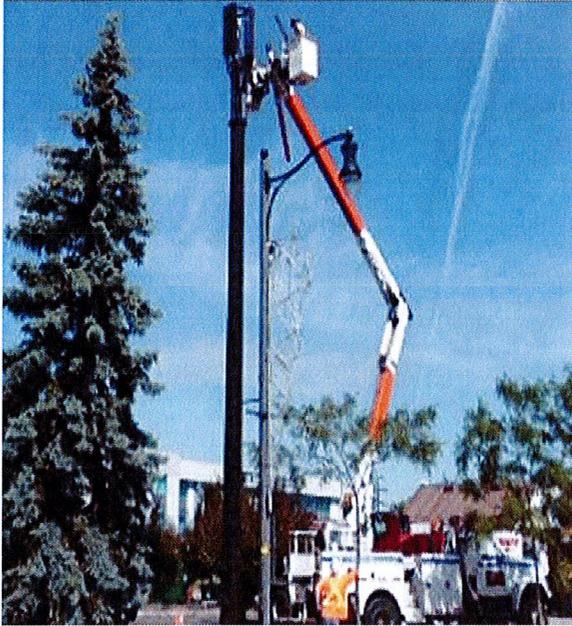


Exhibit 14. The location context for this small cell monopole is not reasonable because it creates a cluttered appearance. In addition, the antenna is larger than the diameter of the pole, lacks of pole base of comparable volume, and is vertically out-of-scale to the existing streetlights.