

ORDINANCE NO. 3082-17

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 40, ARTICLE IV 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 AND OTHER COMMUNICATIONS FACILITIES IN THE CITY'S RIGHTS-OF-WAY, COLLOCATION OF SMALL WIRELESS FACILITIES ON EXISTING UTILITY POLES, PLACEMENT OF NEW UTILITY POLES, INSURANCE AND SURETY BOND REQUIREMENTS, PERMITTING PROCEDURES AND REQUIREMENTS, APPEALS, SAFETY REQUIREMENTS, WAIVERS, REVIEW DEADLINES, DEFINITIONS, REGISTRATION OF COMMUNICATIONS SERVICE PROVIDERS, AND FEES; PROVIDING OBJECTIVE DESIGN STANDARDS; PROVIDING AND INCORPORATING EXHIBITS; PROVIDING FOR CITY COMMISSION AUTHORITY, CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, on April 24, 2017, the City adopted Ordinance No. 3075-17 amending Chapter 40, Article IV of the City Code regarding communications facilities in the public rights-of-way and adopting new regulations with respect thereto; and

WHEREAS, the Florida Legislature subsequently 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, the Act provides at Fla. Stat. § 337.401(7)(d) that, "Except as provided in this subsection, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way;" and

WHEREAS, passage of the Act necessitates that the City amend Ordinance No. 3075-17 and 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, 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. Any such requirements may be waived by the authority”; and

WHEREAS, the Act at Fla. Stat. § 337.401(7)(b)6. exempts from the definition of “authority utility pole” any “utility pole owned by a municipal electric utility, [or] a utility pole used to support municipally owned or operated electric distribution facilities”; and

WHEREAS, the City of Winter Park is a municipal electric utility within the meaning of Fla. Stat. § 337.401(7)(k)1., and thus any utility pole, as defined by the Act, that is owned by the City does not constitute an “authority utility pole” and is exempt from the requirements governing such authority utility poles and, therefore, the city may either prohibit or strictly regulate the allowance of wireless facilities on authority utility poles; and

WHEREAS, to remove unsightly urban clutter, the City is investing \$3.5 million annually, or a total of \$70 million, undergrounding electrical utility wires and removing poles from the City’s rights-of-way in order to improve the City’s aesthetics, safety, and long term health of the city’s extraordinary tree canopy; and

WHEREAS, the City is investing \$11.5 million funded by the Florida Department of Transportation undergrounding power lines on Fairbanks Avenue and, along Fairbanks and Aloha Avenue, replacing conventional cobra street lights with decorative poles, arms, and light fixtures to create and enhance the city’s quaint and highly desirable aesthetics; and

WHEREAS, it is the policy of the City to require underground utilities with respect to new construction, as codified at 58-84(q); 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 City’s policy is not to permit the placement of new utility poles in the public rights-of-way except for decorative street lighting, except that a new utility pole used to support communications facilities may be authorized in certain limited circumstances under Section 40-86(g) of the City Code; 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 unique and extraordinary 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 PARK, 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 40, Article IV of the City Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions):

ARTICLE IV. - COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 40-81. - Title.

This article shall be known and may be cited as the "Winter Park Communications Rights-of-Way Ordinance."

(Ord. No. 2424-01, § 1, 6-26-01)

Sec. 40-82. - 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 communications 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, as it may be amended, 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 unique and extraordinary aesthetic qualities; and (de) minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the city shall be governed by and shall comply with all applicable federal and state laws.

(b) State-controlled rights-of-way. This article shall apply to wireless and communications 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.

(Ord. No. 2424-01, § 2, 6-26-01)

Sec. 40-83. - 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 58, article VII 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 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.

City means the City of Winter Park, 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.

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.

Communications facility(ies) or ~~facility(ies)~~ or system(s) means any permanent or temporary physical plant, equipment and property, including, but not limited to, cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. The term includes wireless facilities.

Communications services shall mean the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, for purposes of this article, "cable service", as defined in F.S. § 202.11(2), as it may be amended, is not included in the definition of "communications services," and cable service providers may be subject to other ordinances of the city.

Communications services provider shall mean any person, including a municipality or county, providing communications services through the placement or maintenance of a communications facility in public rights-of-way. "Communications services provider" shall also include any person, including a municipality or county, that places or maintains a communications facility in public rights-of-way but does not provide communications services.

Communications tower or tower means a building-mounted or ground-mounted tower, pole-type, lattice or other structure that has the sole or primary purpose of supporting communication (transmission and/or receiving) equipment for telephone, radio, television, microwave, cellular and/or similar other communication purposes. Towers may include self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

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.

~~*Co-location*~~ *Collocation* means the placement on or within an existing structure of a second or subsequent antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the placement, location or operation of the second or subsequent antenna 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.

FCC shall mean 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 for which the city is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, 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 or small wireless facilities 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 40-86(k)(2).

Utility pole means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, street lights or other lighting, cable television, 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. ~~means any pole or structure utilized for electric, telephone, cable television, street lights, or other lighting, and other utilities.~~

~~Wireless communications facility means any equipment or facility used for the transmission of wireless communications. This term includes, but is not limited to, wireless support structures, antennas, cabling, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and including distributed antenna system ("DAS") and small cell networks.~~

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 and micro 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.

(Ord. No. 2424-01, § 3, 6-26-01; Ord. No. 3075-17, § 2, 4-24-17)

Sec. 40-84. - Registration for placing or maintaining communications facilities in public rights-of-way.

(a) A communications services provider that desires to place or maintain a communication 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 communication 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 governs only 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 communications services provider from complying with all applicable city ordinances, codes or regulations, including this article.

(c) Each communications services 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 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) For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;~~

~~(34) Evidence of the insurance coverage and surety bond required under this article;~~

~~(4) and a 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 communication facility in public rights-of-way within the city but shall establish for the registrant a right to apply for a permit, if permitting is required by the city. 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.

~~(g) A registrant shall renew its registration with the city by April 1 of even numbered years in accordance with the registration requirements in this article, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within 30 days of any change in the information required to be submitted pursuant to subsection (e), except, as of October 1, 2001, subsection (e)(3), a registrant shall provide updated information to the city. If no information in the then existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this article~~

(h) — In accordance with applicable city ordinances, codes or regulations, a right-of-way utilization permit and a building permit shall be required of a communications services provider that desires to place or maintain a communication facility in public rights-of-way. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall apply. ~~A permit~~ Permits may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

(Ord. No. 2424-01, § 4, 6-26-01)

Sec. 40-85. - City-owned structures, facilities, and real property.

(a) The city may construct or designate existing city-owned structures, facilities, and real property, within or outside the public rights-of-way, including any accompanying equipment or communications facilities necessary to provide communications services via such structures, facilities, or real property, for the purpose of housing privately or publicly owned antennas and other communications facilities, or to provide communications services to, or support the provision of communications services by, providers of communications services within the city. The city may allow the placement of an antenna or other communications 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 ~~require~~ offer to an applicant who wishes to install, construct, place, or maintain an antenna or other communications facility in the public rights-of-way, to place or co-locate such antenna or communications facility upon or within a city-owned structure outside of the rights-of-way where feasible, ~~except where the applicant can demonstrate, in writing, to the satisfaction of the reviewing city board or officer, that such requirement (i) would be inconsistent with state or federal law, or (ii) would otherwise be inappropriate or inconsistent with the public welfare.~~ Such antenna or communications 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 or capacity as a utility provider, 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.

(Ord. No. 3075-17 , § 3, 4-24-17)

Editor's note— Ord. No. 3075-17 , § 3, adopted April 24, 2017, amended § 40-85 in its entirety to read as set out herein. Former § 40-85 pertained to notice of transfer, sale or assignment of assets in public rights-of-way and derived from Ord. No. 2424-01, § 5, adopted June 26, 2001.

Sec. 40-86. - Placement ~~or~~ and maintenance of a communication facility in public rights-of-way.

(a) Prohibitions.

(1) No wireless facilities or other communications facilities shall be installed in the City's rights-of-way without a right-of-way utilization permit.

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

(3) 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.

(4) 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 by the City.

(5) Wireless facilities are prohibited on utility poles owned by a municipal electric utility, utility poles owned by the city, and utility poles used to support municipally owned or operated electric distribution facilities, unless expressly permitted herein.

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

(7) 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 unless:

- a. the city's Historic Preservation Board 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
- b. the City Commission accepts the recommendation and approves of the application.

(8) 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.

(9) Wireless facilities shall not interfere with electrical lines, cable lines, or their associated equipment. 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 on poles suspending energized lines or on poles to be removed in conjunction with the City's undergrounding of electric utilities.

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

(11) Because utility poles of Winter Park Utilities are exempt from the Act, wireless facilities shall not be suspended on cables strung between existing utility poles in the City.

(b) 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.

(c) 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 22 of the City Code.

(d) Grounds for denial. The City may deny a proposed collocation of a small wireless facility in the public rights-of-way if the applicant fails to comply with any provision of this chapter or 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 most current edition of the Florida Department of Transportation Utility Accommodation Manual; or

(5) Fails to comply with applicable codes.

(e) 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.

(f) 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 Article II, Section 22-28 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 ~~obtain~~ 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 reasonable 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.

(g) Application review; decisions; time-frames; permit duration

(1) Notification of Completeness. Within 14 days after receiving an application, 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.

(2) 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 (e), 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.

(3) Permit Duration. A right-of-way utilization permit issued pursuant to an approved application shall remain effect for 1 year unless extended by the city.

(4) Notification Procedure.

a. 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.

b. 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.

(5) 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.

(6) 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 and micro wireless facility collocations for which incomplete information has been received or which are denied.

(7) Alternative Collocations.

a. 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 in accordance with Section 40-85. 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.

b. 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.

c. 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.

(8) Administrative Review and Approval for wireless facilities on private property. Applications for wireless facilities on private property may be approved administratively pursuant to chapter 58-426.

(eh) Application requirements. Except as otherwise provided, a permit to construct or install wireless facilities or other communications 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: As part of any permit application to place a new or replace an existing communication facility in public rights of way, the registrant shall provide the following:

(1) Plans submittal. The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of facilities that will be located in public rights of way;

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. The size of each proposed communications facility;
- v. The specifications for each communications facility; and
- vi. 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 communications 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 communications 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. 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. 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 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) 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;

(10) 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

(711) 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.

(di) *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 communications 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 subparagraph ~~(g)~~(4) ~~(k)~~(5) Design of the communications facility, with particular reference to design characteristics that ~~have the effect of~~concealing, ~~reducing~~, or ~~eliminating~~ 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; ~~and~~

(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 40-86(a);

(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.

(ej) *Non-interference; encouraged technology; additional regulations.* All communications facilities shall be placed or maintained so as not to unreasonably interfere with the 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. 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 ~~should~~shall be employed wherever feasible. 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.

(fk) Requirements for Wireless and communications facilities. ~~A~~wWireless and communications facilities may not be placed in the public rights-of-way unless it meets the following requirements:

(1) The aesthetic requirements and provisions under section 58-424 of this Code of Ordinances governing antennas and towers shall apply to ~~antennas and wireless~~ and communications facilities located within the right-of-way, ~~and other types of communications facilities, where applicable.~~

(2) Wireless and communications facilities must be concealed and utilize stealth design, as defined by section 40-83 of this article. Such stealth design and concealment shall eliminate the need to locate any ground or elevated equipment (~~other than antennas~~) 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 unique aesthetic character of the city.

~~(3) Each application for a permit to place a wireless communications facility in the right-of-way shall include:~~

~~a. Photographs clearly showing the nature and location of the site where each wireless communications facility is proposed to be located;~~

~~b. Photographs showing the location and condition of properties adjacent to the site of each proposed wireless communications facility; and~~

~~e. A description of the stealth design techniques proposed to minimize the visual impact of the wireless communications facility and shall include graphic depictions accurately representing the visual impact of the wireless communications facilities when viewed from the street and from adjacent properties.~~

(4)(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 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. 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. 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 not exceed 12 cubic feet in volume and the configuration and dimensions of such shall be the least visually obtrusive as possible. The use of foliage and vegetation 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.

(4) Insofar as wireless facilities are constructed underground, the wireless infrastructure provider shall become a member of, and maintain membership in Florida utility notification one call system. Wireless facilities shall have five-foot horizontal clearance from other underground utilities and their appurtenances. (5) 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 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, without limitation, to 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 on which the facilities are collocated and insulated in accordance with applicable codes.

h. The photographs attached as exhibits to this chapter 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 as well as prohibited wireless facilities.

(5)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:

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

~~b.(ii)~~ Side-mounted antennas and their enclosures must ~~not extend more than one foot beyond the exterior dimensions of~~ 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.

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

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

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

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

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

(vi) 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.~~(10)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.

~~(9)l.~~ The size and 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 or communications 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 greater~~less~~.

(6) Wireless and communications 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 such traffic signal pole, and at least 15 feet from any pedestrian ramp and 8 feet from the street curb. 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.

(7) 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, where feasible whenever possible unless an unsafe condition, cluttered appearance, or other violation of this article would result.

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

~~(9) The size and height of new wireless 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; provided however, that registrants proposing wireless communications 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 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 greater.~~

~~(10) ——— New or replacement poles that support wireless communications facilities shall match the style, design, and color of the poles in the surrounding area.~~

~~(11)~~(9) The city, in consultation with the city engineer where appropriate, may waive or reduce the requirements of this subsection where doing so serves the intent or purposes of this article. 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.

(g1) *New structures; 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 to the reasonable satisfaction of the city commission determine; 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:

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

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

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

(4) 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.

(5) 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.

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

(7) 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 wireline system, is unsuitable. Costs of alternative technology that exceed new structure or antenna development shall not be presumed to render the technology unsuitable.

~~(hm) *Waivers and exemptions.* The city commission may waive or reduce the burden of any requirement of this section where doing so serves the intent or purposes of this article. City-owned structures and facilities are exempt from the requirements of this section, except that this section shall govern the placement or maintenance of a privately owned communications facility upon a city-owned structure.~~

~~(in) *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.~~

~~(jo) *Construction; maintenance; safety; inspection; and restoration.*~~

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

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

(3) After the completion of any placement or maintenance of a communication facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 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.

(4) 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.

(5) 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 successfully complete an accredited lineworker apprenticeship program.

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

(7) The city shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article.

(kp) *Modifications; antenna co-locations; removal and relocation.*

(1) An application to modify a tower or base station that does not involve substantial change to the physical dimensions of such tower or base station, as provided in subsection 58-426(b)(1)a. of this Code of Ordinances, shall be governed by such subsection 58-426(b)(1)a. An application to co-locate an additional antenna(s) upon a tower or other structure involving minimal changes in physical dimensions, all as described in subsection 58-426(b)(1)b. of this

City Code, shall be governed by such subsection 58-426(b)(1)b. An application to modify any communications facility or co-locate an antenna upon any structure within the rights-of-way not falling within subsection 58-426(b)(1)a. or 58-426(b)(1)b. shall be treated as an application for a new communications facility under this article, as appropriate. This subsection (k)(1) shall not govern applications to modify or co-locate antennas upon any structure or facility owned by the city.

(2) 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, ~~or aesthetics or as otherwise authorized by law.~~ The wireless facilities provider must remove its wireless facilities within 30 days notice that the City will remove a utility pole, including to replace a cobra streetlight with a decorative street light fixture.

(3) 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.

(4) 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.

~~(l) Plans required. A permit application to place a new or replace an existing communication facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or 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.~~

~~(m) 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 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.~~

~~(n) Completeness review; time limitation. The city shall grant or deny a properly completed application for communications facilities in the public right-of-way within 90 days or, as required~~

~~by federal and state law, after the date the application is determined to be properly completed. An application is deemed submitted or resubmitted on the date the application is received by the city. The city shall notify the applicant within 20 days after the date the application is initially submitted or additional information resubmitted, whether the application is properly completed in compliance with the city's requirements. If the application is not completed in compliance with the city's requirements, the city shall so notify the applicant in writing indicating with specificity any deficiencies which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the city shall notify the applicant, in writing, no later~~

~~than 20 days after the additional information is submitted, of any remaining deficiencies that must be cured. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the city may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed.~~

~~(er)~~ *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.

~~(ps)~~ *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.

(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 works 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.

(4) The City may charge a pole connection fee for connecting to a city utility pole in a reasonable amount to be determined by Winter Park Utilities.

(qt) Additional authority; permit conditions. To the extent not otherwise prohibited by state or federal law and this chapter, 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.

(u) The approval of the installation, placement, maintenance, or operation of a small wireless facility or other 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.

(v) 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.

(Ord. No. 2424-01, § 6, 6-26-01; Ord. No. 3075-17, § 4, 4-24-17)

Sec. 40-87. - Suspension of permits.

The city may suspend a permit for work in the public rights-of-way for one or more of the following reasons subject to section 40-88 below:

- (1) Violation of permit conditions, including conditions set forth in the permit, this article or other applicable city ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way;
- (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
- (3) Failure to properly renew or ineffectiveness of registration; or
- (4) Failure to relocate or remove facilities as may be lawfully required by the city.

The city shall provide notice and an opportunity to cure any violation of subsections (1) through (4) above, each of which shall be reasonable under the circumstances.

(Ord. No. 2424-01, § 7, 6-26-01)

Sec. 40-88. - Appeals.

~~Final, written decisions under this article by the city manager or his or her designee, or the applicable city board, are subject to appeal. An appeal must be filed with the city manager within 30 days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The city commission shall hear or appoint a hearing officer to consider the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within 20 days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted. There shall be no right to an appeal from any decision of the city commission under this article, or any decision of a hearing officer appointed by the city commission to hear an appeal under this section, except as may be provided by law. Any decision by a City official may be appealed to the City Commission. Any decision by the City Commission is subject to review as provided by law.~~

(Ord. No. 2424-01, § 8, 6-26-01; Ord. No. 3075-17 , § 5, 4-24-17)

Sec. 40-89. - Involuntary termination of registration.

(a) The city may terminate a registration if:

(1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services;

(2) 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

(3) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with section 40-96.

(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 which of subsections (1) through (3) above is applicable as the reason therefore, and describing the proposed action of the city with respect thereto. The registrant shall have 60 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 and shall make a recommendation to the city regarding a decision as to termination of registration. A decision by a city to terminate a registration may only be accomplished by an action of the ~~city commission~~ 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 40-88, 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 90 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.

(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.

(Ord. No. 2424-01, § 9, 6-26-01)

Sec. 40-90. - Existing facilities.

A communications services provider with an existing communications facility in the public rights-of-way of the city has 60 days from the effective date of the ordinance from which this article derives (June 26, 2001), to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

(Ord. No. 2424-01, § 10, 6-26-01)

Sec. 40-91. - Insurance.

(a) A registrant shall provide, pay for and maintain satisfactory to the city an acceptable policy or policies of liability insurance, including comprehensive general liability insurance, products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, contractual liability, automobile liability (owned, non-owned and hired automobiles), workers' compensation and employee liability.

(b) Policies of liability insurance shall be in the minimum single limit amount of \$5,000,000.00 per occurrence.

(c) The insurance policy or policies shall contain contractual liability insurance naming the city as an insured, and shall also insure against the types of liabilities covered by the indemnification and hold harmless provisions of section 40-92.

(d) All insurance shall be from responsible companies duly authorized to do business in the state and having a rating reasonably acceptable to the city.

(e) All liability policies shall provide that the city is an additional insured as to the activities under this article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the city annually.

(f) Thirty days' advance written notice by registered, certified or regular mail or facsimile as determined by the city must be given to the city of any cancellation, intent not to renew or reduction in the policy coverages.

(g) The insurance requirements may be satisfied by evidence of self-insurance with sufficient financial strength and reserves or other types of insurance acceptable to the city.

(Ord. No. 2424-01, § 11, 6-26-01)

Sec. 40-92. - 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 placement or maintenance of its ~~communications system~~ or 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.

(Ord. No. 2424-01, § 12, 6-26-01)

Sec. 40-93. - Construction bond.

(a) Prior to issuing a permit ~~where the work under the permit will require restoration of public rights-of-way~~, the city may require a construction bond to secure the restoration of the public rights-of-way and removal of abandoned equipment or equipment not removed after termination of registration or non-renewal of the annual permit. Notwithstanding the foregoing, a construction bond hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in section 40-94. Twelve months after the completion of the restoration in public rights-of-way in accordance with the bond and removal

of wireless facilities, the registrant may eliminate the bond. However, the city may subsequently require a new bond for any subsequent work in the public rights-of-way.

(b) The construction bond shall be issued by a surety having a rating reasonably acceptable to the city; shall be subject to the approval of the city manager; and shall provide that: "For twelve (12) months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(c) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this article, or at law or equity.

(d) The rights reserved to the city under this section are in addition to all other rights of the city, whether reserved in this article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.

(Ord. No. 2424-01, § 13, 6-26-01)

Sec. 40-94. - Security fund.

At or prior to the time a registrant receives its first permit to place or maintain a communication facility in public rights-of-way after the effective date of the ordinance from which this article derives (June 26, 2001), the registrant may be required to file with the city, for city approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$25,000.00 or other appropriate amount having as a surety a company qualified to do business in the state, and acceptable to the city manager, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of: (i) transfer, sale or assignment to another registrant who shall comply with this provision or removal of all communications facilities in public rights-of-way; or (ii) twelve months after the termination or cancellation of any registration. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to section 40-95, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the city may in its sound discretion not require a security fund or may accept a corporate guarantee of the registrant's or its parent company, if it has sufficient financial strength and reserves, in lieu of the security fund.

(Ord. No. 2424-01, § 14, 6-26-01)

Sec. 40-95. - 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 40-88 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.

(Ord. No. 2424-01, § 15, 6-26-01)

Sec. 40-96. - Abandonment.

(a) Upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the city within 90 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: (a) compromises safety at

any time for any public rights-of-way user or during construction or maintenance in public rights-of-way; (b) 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; ~~or~~ (c) 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. In the event of (b), 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.

(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 a reasonable 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 or any successor in interest to the registrant.

(Ord. No. 2424-01, § 16, 6-26-01)

Sec. 40-97. - 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 or agents.

(Ord. No. 2424-01, § 17, 6-26-01)

Sec. 40-98. - 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 communications facilities placed in the public rights-of-way on or after the effective date of the ordinance from which this article derives (June

26, 2001) 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 communications service provider under any existing franchise, license or other agreements with a communications 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.

(Ord. No. 2424-01, § 18, 6-26-01)

Sec. 40-99. - Pass-through provider fees and charges.

(a) 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.

(b) The amounts charged pursuant to this section shall be based on the linear miles of rights-of-way where a wireless communications 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.

(c) 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.

(d) 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 April 1 of 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 ~~within ten days after the due date~~ shall bear interest at the rate of one percent per month from the date due until ~~paid~~ 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.

(e) Collocation Fees.

(1) The wireless infrastructure 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.

(f) 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.

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

(eh) If the payments required by this section are not timely made ~~within 90 days after~~ by the due date, the city may withhold the issuance of any permits, including for other wireless facilities, to the registrant until the amount past due is paid in full.

(Ord. No. 3075-17, § 6, 4-24-17)

Sec. 40-100. - Notice of transfer, sale or assignment of assets in public rights-of-way.

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. 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. 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 40-84 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 works department that the transferee, buyer or assignee is the new applicant.

(Ord. No. 3075-17, § 7, 4-24-17)

SECTION 3. Exhibits and City Commission Authority. This ordinance incorporates Exhibits 1-11 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 chapter as well as prohibited wireless facilities.

SECTION 4. Codification and Reservation of Rights. This Ordinance shall be incorporated into the Winter Park 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.**

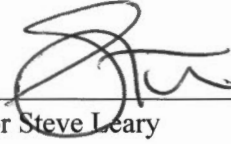
SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, 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 Park, Florida, and shall apply to all existing and future applications for permits.

ADOPTED this 28th day of August, 2017, by the City Commission of the City of Winter Park, Florida.

CITY COMMISSION
CITY OF WINTER PARK



A handwritten signature in black ink, appearing to read 'Steve Leary', written over a horizontal line.

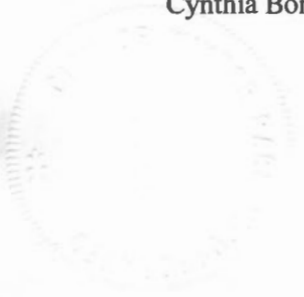
Mayor Steve Leary

ATTEST:



A handwritten signature in blue ink, appearing to read 'Cynthia Bonham', written over a horizontal line.

Cynthia Bonham, 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, the manufacturer of the City’s decorative lights. This would be an acceptable design with an arm that matched the design of the City’s existing decorative lights; 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. The light pole design may also be acceptable on certain streets with double mast arms matching the design of the City’s existing decorative lights and down lighting luminaires by Sternberg mirroring one other.



Exhibit 2. The antenna is narrower than, and in scale with the pole. This may be an acceptable design for a cobra-style light fixture; however, the City is transitioning from cobra lights to decorative lights. The applicant would need to remove its wireless facility within 30 days upon notice that the city will replace the light pole and 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 if the pole otherwise resembled the city's decorative pole features.



Exhibit 5. 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 luminaries 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.

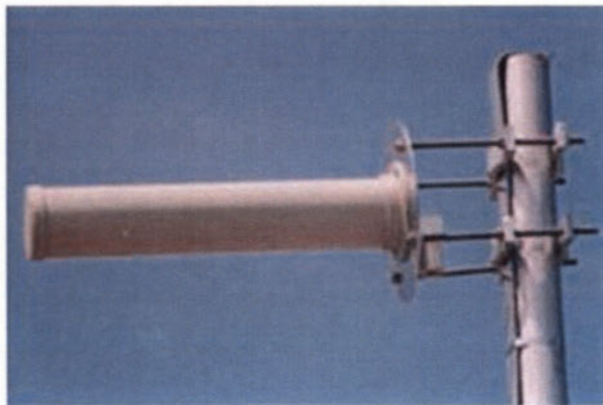


Exhibit 9. The antenna extends horizontally from the pole. This design is prohibited.



Exhibit 10. Wooden poles are prohibited. The City is transitioning away from wooden poles. In addition, 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.

C:\Users\rsg\AppData\Local\Temp\ywmxofm\Ordinance Amending Chapter 40 to Implement Wireless Deployment Act [FINAL DRAFT FOR SECOND READING] - 8 15 17.docx