

**ORDINANCE NO. 3075-17**

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, RELATING TO COMMUNICATIONS FACILITIES; AMENDING CHAPTER 40, ARTICLE IV OF THE CITY CODE OF ORDINANCES TO ADD AND AMEND REGULATIONS GOVERNING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY, INCLUDING BUT NOT LIMITED TO ADDING AND AMENDING CODE DEFINITIONS, PROVIDING FOR USE AND CONSTRUCTION OF CITY-OWNED STRUCTURES AND REAL PROPERTY FOR SITING OF COMMUNICATIONS FACILITIES, PROVIDING FOR REQUIREMENTS FOR PERMITTING, SAFETY, AESTHETICS, LOCATION, APPEALS, AND CITY AUTHORITY, AND REQUIRING PAYMENT OF CERTAIN FEES BY PASS-THROUGH PROVIDERS FOR USE OF THE RIGHTS-OF-WAY; AMENDING CHAPTER 58, ARTICLE VII OF THE CITY CODE OF ORDINANCES TO ADD AND AMEND REGULATIONS GOVERNING CITY APPROVAL OF COMMUNICATION TOWERS AND ANTENNAS, INCLUDING BUT NOT LIMITED TO ADDING AND AMENDING CODE DEFINITIONS, PROVIDING FOR REQUIREMENTS FOR PERMITTING, SAFETY, AESTHETICS, LOCATION, APPEALS, AND ADMINISTRATIVE APPROVAL OF CERTAIN FACILITY MODIFICATIONS AND ANTENNA CO-LOCATIONS; PROVIDING FOR AUTHORIZATION OF CITY STAFF, CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Code of Ordinances (the "City Code") currently regulates communication towers, wireless communication facilities, antennas and other communications facilities (collectively "Communications Facilities") and imposes certain requirements related to aesthetics, safety, design, location, permitting, and other requirements; and

**WHEREAS**, Chapter 40, Article IV of the City Code generally governs Communications Facilities in the public rights-of-way, and Chapter 58, Article VII of the City Code governs communication towers and antennas; and

**WHEREAS**, the City desires to update and clarify the City Code provisions governing Communications Facilities in light of new developments in technology and the law and the growing interest of communications service providers to construct Communications Facilities within the City, including within the public rights-of-way; and

**WHEREAS**, the City recognizes the existence of various federal and state statutes and regulations placing certain limitations upon the authority of local governments to regulate Communications Facilities, which laws include but are not limited to Sections 202.24, 337.401, 364.0361, and 365.172, Florida Statutes; Sections 253 and 332(c)(7) of the Telecommunications Act of 1996;

Section 6409 of the Spectrum Act; and other laws and regulations (collectively the "Telecommunications Laws"); and

**WHEREAS**, the Telecommunications Laws preserve the authority of local governments to regulate the siting, location, aesthetics, and other matters with respect to Communication Facilities, subject to certain limitations, and the Telecommunications Laws largely do not restrict the actions of a local government when acting in its proprietary capacity or its capacity as a utility provider; and

**WHEREAS**, the City finds that this Ordinance is in compliance with all relevant provisions of the Telecommunications Laws, and that this Ordinance should be interpreted in a way consistent with the Telecommunications laws; and

**WHEREAS**, the City finds that this Ordinance and the amendments to the City Code provided for herein will help to foster the deployment of communications facilities within the City and the benefits flowing therefrom while protecting the public health, safety, and welfare, preserving the aesthetic character of the City, and ensuring the safe, efficient, and responsible use of the public rights-of-way.

**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 Section 40-83.** Chapter 40, Article IV, Section 40-83 of the City Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

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, 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 shall mean 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.

City shall mean the City of Winter Park, Florida. Where appropriate, city may refer to the city commission or the relevant city officer or board considering an application under this article.

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

City-owned facility or city-owned structure shall mean any facility, structure or infrastructure to which the City holds title 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.

Communications facility(ies) or facility(ies) or system(s) shall mean 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 in the public rights-of-way of the city and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services.

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.

FCC shall mean the Federal Communications Commission.

Communications tower or tower shall mean 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 shall mean 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 shall mean 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.

*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.*

*Ordinance shall mean this ordinance.*

Pass-through provider shall mean 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* shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley 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.

*Stealth design* shall mean a method of camouflaging any tower, antenna or other ancillary supporting communications facility, including, but not limited to, supporting electrical, optical, or mechanical, or other equipment, which is enhances compatibility with adjacent land uses and which is visually and aurally unobtrusive. Stealth design may include a repurposed structure.

*Utility pole* shall mean any pole or structure utilized for electric, telephone, cable television, street lights, or other lighting, and other utilities.

*Wireless communications facility* shall mean 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.

**SECTION 3. Amendment of Section 40-85.** Chapter 40, Article IV, Section 40-85 of the City Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

~~Sec. 40-85. - Notice of transfer, sale or assignment of assets in public rights of way.~~ City-owned structures, facilities, and real property.

~~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.~~

(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, 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 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 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.

**SECTION 4. Amendment of Section 40-86.** Chapter 40, Article IV, Section 40-86 of the City Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

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



(a) A registrant 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.

(b) A registrant shall not 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. 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. 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 an after-the-fact permit if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. 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.

(c) Application. Except as otherwise provided, a permit shall not be granted under this article except upon approval of the city commission after a public hearing. 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) 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;

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

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

(4) 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);

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

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

(7) 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.

(d) ~~To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within all or a particular area of the public rights-of-way.~~ *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) 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) Proximity to other structures within the rights-of-way;

(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.

(e) *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 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.

~~(f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.~~ Wireless communications facilities. A wireless communications facility 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 communications facilities located within the rights-of-way, and other types of communications facilities, where applicable.

(2) Wireless 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

c. 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.

(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 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 stealth design and concealment cannot be employed under this subsection, 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) 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. Top mounted antennas and their enclosures must not extend the diameter of the supporting structure at the level of antenna attachment; and

b. Side-mounted antennas and their enclosures must not extend more than one foot beyond the exterior dimensions of the supporting structure at the level of antenna attachment. Under no circumstances shall antennas be mounted less than twelve feet above ground level.

(5) Wireless communications facilities shall be located at least ten (10) feet from a driveway, at least ten (10) feet from the edge of existing trees twelve (12) inches or greater in diameter, at least twenty-five (25) feet from a traffic signal pole unless mounted upon such traffic signal pole, and at least fifteen (15) feet from any pedestrian ramp. 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.

(6) If the right-of-way 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.

(7) If the right-of-way 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.

(8) 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.

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

(10) 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.

~~(g) 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.~~ New structures; availability of alternatives. No new pole, pole-type structure, or other free-standing structure shall be allowed in the rights-of-way unless the applicant demonstrates to the reasonable satisfaction of the city commission 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:

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

(2) Existing structures are not of sufficient height to meet applicant's engineering requirements.

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

(3) 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.

(4) 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.

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

(6) 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.

(h) Removal or relocation at the direction of the city of a registrant's communications facility in public rights of way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended. *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.

(i) *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.

(j) *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 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.

(6) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any 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.

(k) ~~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.~~ 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 subsections 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.

(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.

~~(l) 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. 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) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any 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. Completeness review; time limitation. The city shall grant or deny a properly completed application for communications facilities in the public right-of-way within ninety (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 twenty (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 twenty (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.~~

(o) *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, vacate or abandon public rights-of-way, and the city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

~~(p) 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. *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 communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of 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.

~~(q) 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. *Additional authority; permit conditions.* To the extent not otherwise prohibited by state or federal law, 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.~~

~~(r) 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.~~

~~(s) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of 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.~~

**SECTION 5. Amendment of Section 40-88.** Chapter 40, Article IV, Section 40-88 of the City Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 40-88. - Appeals.

(a) Final, written decisions under this article by ~~of the city manager or his or her designee, or the applicable city board, suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration~~ 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.

**SECTION 6. New Section 40-99.** Chapter 40, Article IV of the City Code of Ordinances is hereby amended to create a new Section 40-99, as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

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 five hundred dollars (\$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 twelve-month period during which the pass-through provider remits taxes imposed by the city pursuant to F.S. ch. 202.

(d) Annual payments shall be due and payable on April 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. 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 (1) percent per month until the date payment is made.

(e) If the payments required by this section are not made within ninety (90) days after the due date, the city may withhold the issuance of any permits to the registrant until the amount past due is paid in full.

**SECTION 7. New Section 40-100.** Chapter 40, Article IV of the City Code of Ordinances is hereby amended to create a new Section 40-100, as follows (words that are ~~stricken-out~~ are deletions; words that are underlined are additions):

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.

**SECTION 8. Amendment of Section 58-422.** Chapter 58, Article VII, Section 58-422 of the City Code of Ordinances is hereby amended as follows: (words that are ~~stricken-out~~ are deletions; words that are underlined are additions):

Sec. 58-422. - Definitions.

As used in this article, the following terms shall have the meanings set forth below:

*Alternative tower structure* means manmade trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas and towers.

*Antenna* means any ~~exterior~~ 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.

*Backhaul network* means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

*Co-location* means the ~~ability and right of two or more different service providers (carriers) to place antennas on one tower~~ 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.

*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.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*Height* means, when referring to a tower or other structure, the distance measured from the existing natural grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

*Co-location lease* means ~~a document in recordable form which shall indicate that one or more other service providers have entered into an agreement and/or lease with the communication tower owner and that more than one service provider is entitled to locate communication antennas on the tower.~~



*Preexisting towers and preexisting antennas* means any tower or antennas existing as of the effective date of the ordinance from which this article derives, or a tower or antenna for which an active building permit has been properly issued prior to the effective date of the ordinance from which this article derives.

*Service provider* means any individual or entity which locates an antenna on a tower.

*Tower* means a building mounted or ground mounted tower, pole-type, lattice, or other structure which 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.

**SECTION 9. Amendment of Section 58-423.** Chapter 58, Article VII, Section 58-423 of the City Code of Ordinances is hereby amended as follows: (words that are ~~stricken-out~~ are deletions; words that are underlined are additions):

Sec. 58-423. - Applicability.

(a) *New towers and antennas.* All new towers or antennas in the city shall be subject to these regulations, except as provided in subsections (b) through ~~(de)~~, inclusive, below.

(b) *Amateur radio station operators/receive-only antennas.* This article shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator. Such towers shall be subject to all otherwise applicable zoning regulations.

(c) *Preexisting towers or antennas.* Preexisting towers and preexisting antennas shall not be required to meet the requirements of this article, other than the requirements of subsections 58-424(f) and 58-424(g)(9) and (11).

(d) *AM array.* For purposes of implementing this article, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array.

(e) City property, structures, and public rights-of-way. This article shall not govern any tower, antenna, communications facility, or other structure that is owned by the city, and the city retains all rights as a property owner to authorize or deny the placement of an antenna, a tower, or other communications facility upon property or a structure owned by the city upon terms agreeable to the city and in writing. Applications to install or maintain an antenna, tower, or other communications facility within the public rights-of-way are governed by chapter 40,

article IV of this code of ordinances and shall not be subject to this article except as otherwise provided.

**SECTION 10. Amendment of Section 58-424.** Chapter 58, Article VII, Section 58-424 of the City Code of Ordinances is hereby amended as follows: (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 58-424. – General requirements.

(a) *Principal or accessory use.* Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

(b) *Lot size.* For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to, setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antenna or tower may be located on leased parcels within such lot.

(c) *Inventory of existing sites.* Each applicant for an antenna and/or tower shall provide to the city an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the city or within one mile of the border thereof, including specific information about the location, height and design of each tower. The city building official may share such information with other applicants applying for administrative approvals or conditional use permits under this article or other organizations seeking to locate antennas within the jurisdiction of the city, provided, however, that the city building official is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(d) *Aesthetics.* Towers and antennas shall meet the following requirements:

(1) Towers not requiring FAA painting/marketing shall have either a galvanized finish or painted a non-contrasting blue, gray, or black finish.

(2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings.

(3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.



(4) Alternative tower structures and towers and antennas that are otherwise concealed are preferred, and the City may require that a proposed tower or antenna be in the form of an alternative tower structure or otherwise concealed where appropriate to preserve the aesthetic character of the surrounding area.

(e) *Lighting.* Towers shall not be artificially lighted, except to assure human safety or as required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views. At the time of construction of the tower in cases where there are residential uses located within a distance which is 300 percent of the height of the tower from the tower, dual mode lighting shall be requested from the FAA.

(f) *State or federal requirements.* All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

(g) *Building codes; safety standard.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days (or such shorter time as may be reasonably required by the city in an emergency situation) to bring such tower into compliance with such standards. Failure to bring such tower into compliance within the required time period shall constitute grounds for the removal of the tower or antenna at the owner's expense. Further, any improvements and/or additions (i.e., antenna, satellite dishes, etc.) to existing towers shall require submission of site plans sealed and verified by a professional engineer which demonstrate compliance with the applicable standards in effect at the time of such improvement or addition. Such plans shall be submitted to and reviewed and approved by the city building official at the time building permits are requested.

(h) *Measurement.* For purposes of measurement, tower setbacks as listed in subsection 58-427(c)(4) and separation distances as listed in subsection 58-427(c)(5) shall be calculated and applied to facilities located in the city irrespective of municipal and county jurisdictional boundaries.

(i) *Not essential services.* Towers and antennas shall be regulated and permitted pursuant to this article and shall not be regulated or permitted as essential services, public utilities, or private utilities.

(j) *Franchises.* Owners and/or operators of towers or antennas shall certify that all franchises, licenses, and approvals required by law for the construction and/or operation of a wireless communication system in the city have been obtained and shall file a copy of all required franchises, licenses and approvals with the city building official.

(k) *Public notice.* For purposes of this article, any conditional use request or appeal of an administratively-approved use or conditional use shall require public notice to all abutting property owners and all property owners of properties that are located within 500 feet of the perimeter of the parent parcel upon which the proposed tower is located in addition to any notice otherwise required by law.

(l) *Signs.* No signs, other than those required by law or those necessary to insure public safety, shall be allowed on an antenna or tower.

(m) *Buildings and support equipment.* Buildings and support equipment associated with antennas or towers shall comply with the requirements of section 58-428.

(n) *Multiple antenna/tower plan.* The city encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites.

(o) *Height limit.* In no event may a tower exceed 180 feet in height (including the height of a structure on which the tower is placed).

(p) *Completeness review; time limitation.* The city shall grant or deny a properly completed application for a tower, antenna, or other communications facility within ninety (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 twenty (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 twenty (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.



**SECTION 11. Amendment of Section 58-425.** Chapter 58, Article VII, Section 58-425 of the City Code of Ordinances is hereby amended as follows: (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 58-425. - Permitted uses

(a) *Generally.* The uses listed in this section are deemed to be permitted uses and shall not require administrative approval or a conditional use permit.

(b) *Permitted uses.* The following uses are specifically permitted: Antennas or towers located on property owned, leased, or otherwise controlled by the city, provided a permit, license, or lease, or other written approval authorizing such antenna or tower has been ~~approved~~ issued by the city.

**SECTION 12. Amendment of Section 58-426.** Chapter 58, Article VII, Section 58-426 of the City Code of Ordinances is hereby amended to add a new Subsection 58-426(b)(4): (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 58-426. - Administratively-approved uses.

(a) *Generally.* The following provisions shall govern the issuance of administrative approvals for towers and antennas.

(1) The city building official may administratively approve the uses listed in this section, subject to a site plan review by the planning and zoning commission for all uses except a site plan review shall not be required for uses on existing towers as set forth in subsection 58-426(b)(1)b.

(2) Each applicant for administrative approval shall provide the information set forth in subsections 58-427(c)(1) and (c)(3) and a nonrefundable fee as established by the city commission.

(3) The city building official shall review the application for administrative approval and determine if the proposed use complies with section 58-424 and subsections 58-427(c)(4)—(7) (except that subsections 58-427(c)(4)—(7) shall apply only to towers not located on buildings), and shall schedule a site plan review if applicable.

(4) In connection with any such administrative approval, the city building official may, in order to encourage tower/antenna location on existing buildings, administratively waive any separation distances between towers in subsection 58-427(c)(5)b. by up to 50 percent, and may administratively waive separation distances from off-site uses in subsection 58-427(c)(5)a. by up to 100 percent.

(5) In connection with any such administrative approval, the city building official may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction so long as the height of the new monopole tower does not exceed that of the existing tower.

(6) If an administrative approval is denied, then prior to filing any appeal that may be available under the city's Code of Ordinances or other applicable law, the applicant must file an application for a conditional use permit, to be heard by (i) the planning and zoning commission (if no site plan review by the planning and zoning commission has occurred) and (ii) the city commission.

(b) *List of administratively-approved uses.* The following uses may be approved by the city building official after conducting an administrative review, and after a site plan review by the planning and zoning commission, if applicable, or as otherwise indicated:

(1) Locating antennas on existing structures or towers and tower modifications consistent with the terms of ~~subsections a. and b.~~ below:

a. Non-substantial tower modifications. An application to modify an existing tower or base station which does not substantially change the physical dimensions of such tower or base station shall be approved subject only to building permit review and administrative review to determine whether the proposed modification constitutes a substantial modification. A modification substantially changes the physical dimensions of a tower or base station if it meets any of the following criteria:

1. For towers outside of public rights-of-way, it increases the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater;

2. For towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;

4. It entails any excavation or deployment outside the current site of the tower or base station;

5. It would defeat the existing concealment elements of the tower or base station; or



6. It does not comply with conditions associated with the prior approval of construction or modification of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding “substantial change” thresholds identified above.

The changes in height resulting from a modification should be measured from the original support structure in cases where the deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

b. *Antenna co-locations with minimal change to physical dimensions.* An application to co-locate an antenna (beyond an initial, previously approved antenna) upon a tower or upon certain non-tower structures meeting the following requirements shall be approved subject only to building permit review and administrative review to determine whether the following requirements are met:

1. Co-location on towers, including nonconforming towers:

i. The co-location does not increase the height of the tower to which the antenna is to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

ii. The co-location does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities;

iii. The co-location consists of one or more antennas, equipment enclosures and ancillary facilities that are of a design and configuration consistent with all applicable design and aesthetic regulations, restrictions, or conditions, if any, applied to the initial antenna placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antenna.

2. Co-location upon any structure except for a tower or historic building, structure, site, object, or district:

i. The co-location does not increase the height of the existing structure to which the antenna is to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;

ii. The co-location does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

iii. The co-location consists of one or more antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements for location on the structure, but not prohibitions or restrictions on the placement of additional co-locations on the existing structure or additional procedural requirements.

*ac. Towers/antennas on existing structures.* Any tower and/or antenna may be approved by the city building official as an accessory use to any commercial, industrial, professional, multifamily or institutional building, provided:

1. The building is at least 45 feet in height;
2. The building is not located in a single family residential zoning district;
3. The tower or antenna does not extend more than 15 feet above the roof surface of the structure;
4. The tower and/or antenna(s) comply with all applicable FCC and FAA regulations; and
5. The tower and/or antenna(s) comply with all applicable building codes.

*bd. Antennas on existing towers.* Any antenna which is proposed to be attached to an existing tower may be approved by the city building official subject to the following. To minimize adverse visual impacts associated with the proliferation and clustering of towers, co-location of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such co-location is accomplished in a manner consistent with the following:

1. A tower which is modified or reconstructed to accommodate the co-location of an additional antenna shall be of the same tower type as the existing tower, unless the city building official allows reconstruction as monopole.
2. Height:
  - i. An existing tower may be modified or rebuilt to a taller height, not to exceed 30 feet over the tower's existing height to accommodate the co-location of additional antennas, but subject to the overall height limit set forth in subsection 58-424(o).



ii. The height change referenced in subsection 2.i., above, may only occur one time per communication tower.

iii. The additional height referenced in subsection 2.i., above, shall not require an additional distance separation as set forth in subsection 58-427(c)(5). The tower's premodification height shall be used to calculate such distance separations.

3. Onsite location:

i. A tower which is being rebuilt to accommodate the co-location of an additional antenna may be moved onsite within 50 feet of its existing location.

ii. After the tower is rebuilt to accommodate co-location, only one tower may remain on the site.

iii. A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to subsection 58-427(c)(5). The relocation of a tower hereunder shall in no way be deemed to cause a violation of subsection 58-427(c)(5).

iv. The onsite relocation of a tower which comes within the separation distances to residential units or residentially-zoned lands as established in subsection 58-427(c)(5) shall only be permitted when approved as a conditional use by the city commission.

(2) Locating any alternative tower structure in the C-1, C-3, I-1, or PQP zoning districts, that in the judgment of the city building official is in conformity with the goals set forth in section 58-121;

(3) Installing a cable microcell network through the use or multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

**SECTION 13. Amendment of Section 58-432.** Chapter 58, Article VII, Section 58-432 of the City Code of Ordinances are hereby amended as follows: (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 58-432. - Appeals.

Final, written decisions of the building official or the planning and zoning commission under this article may be appealed as provided in section 58-94 of this code of ordinances. There shall be no right to an appeal of a decision by the city commission under this article except as provided by law.

~~The planning and zoning commission and/or the city commission shall hear and decide any appeals of decisions made by the building official in the enforcement or administration of this article as specified in section 58-91.~~

**SECTION 14. City Staff Authorization.** City staff under the direction of the city manager are authorized to gather facts regarding the City's options with respect to constructing or installing City-owned communications facilities, infrastructure, and other structures, provided that no construction or installation shall occur nor contract be executed without approval by the City Commission.

**SECTION 15. Codification.** 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.

**SECTION 16. 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 17. 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 18. Effective date.** This ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

**ADOPTED** this 24<sup>th</sup> day of April, 2017, by the City Commission of the City of Winter Park, Florida.

CITY COMMISSION  
CITY OF WINTER PARK

  
\_\_\_\_\_  
Steve Leary, Mayor/Commissioner

ATTEST:

  
\_\_\_\_\_  
Cynthia Bonham, City Clerk