

**ORDINANCE NO. 2017-06**

**AN ORDINANCE OF THE CITY OF EDGEWOOD, FLORIDA, CREATING CHAPTER 20, TELECOMMUNICATION TOWERS, ANTENNAS AND FACILITIES REGULATION, ARTICLE I, COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; IMPLEMENTING THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; MAKING FACTUAL AND LEGISLATIVE FINDINGS; ADOPTING 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 FOR CITY COUNCIL AUTHORITY, CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Legislature has 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 F.S. § 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 authorizes cities to adopt objective design standards that may require wireless facilities in the rights-of-way to meet reasonable location context, color, stealth, and concealment requirements, and spacing and location requirements for ground-mounted equipment (F.S. 337.401(7)(b)2.); and

**WHEREAS**, the Act largely preserves local government authority to adopt "rules or regulations governing the placement of utility poles in the public rights-of-way," subject to certain limitations; and

**WHEREAS**, the Act authorizes cities to adopt by ordinance reasonable and non-discriminatory provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, authority liability, authority warranties, and other requirements with respect to wireless facilities in the public rights-of-way; and

**WHEREAS**, passage of the Act necessitates that the City create Chapter 20, Article I, of the City Code in order to implement the Act and to implement new regulations as are consistent with the Act; and

WHEREAS, the City finds that this Ordinance and the regulations adopted hereby will advance the public health, safety, and welfare and help protect the unique aesthetic qualities of the City while complying with the Act and all other state and federal laws and regulations governing communications facilities.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, 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 20, Article I of the City Code is hereby created as follows:

**CHAPTER 20 - TELECOMMUNICATION TOWERS, ANTENNAS AND FACILITIES REGULATION**

**ARTICLE I. - COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY**

**Sec. 20-1. - Title.**

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

**Sec. 20-2. – 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: (i) providing for the placement or maintenance of communications facilities in the public rights-of-way within the city; (ii) adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401 as amended by the Advanced Wireless Deployment Act, the city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; (iii) 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; (iv) protecting the city's aesthetic qualities; and (v) 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.

**Sec. 20-3. - 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 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 Edgewood, Florida. Where appropriate, the word "city" may refer to the city Council 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 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.

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

FCC shall mean the Federal Communications Council.

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

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

Ordinance shall mean this ordinance.

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

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

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

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

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

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

Small wireless facility 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 Council through resolution as authorized by Sec 20-6(j)(4).

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.

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.

**Sec. 20-4. - Registration for placing or maintaining communications facilities in public rights-of-way.**

(a) A communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this article. Registration may be made by mail or in person to:

City of Edgewood  
405 Larue Avenue  
Edgewood, FL 32809

Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a communications 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 communications 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) Evidence of insurance coverage and surety bond required under this article.

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

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

(6) For an applicant that does not have a Florida Public Service Council certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the state, such as the number of the certificate from or filing with the Florida Department of State.

(d) The city clerk or designee shall review the information submitted by the applicant for registration. If the applicant submits information in accordance with subsection (c) of this section, 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) of this section, 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. An applicant has 30 days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in section 20-8.

(e) 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) Registration does not in and of itself establish a right to place or maintain or priority for the placement or maintenance of a communications 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 (c) of this section, 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 permit shall be required of a communications services provider that desires to place or maintain a communications 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 may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

**Sec. 20-5. - 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 20-4 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 city that the transferee, buyer or assignee is the new applicant.

**Sec. 20-6. - Placement 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 permit.

(2) Wireless facilities, other than small wireless facilities and micro wireless facilities, are prohibited within the public rights-of-way, unless a waiver is granted by the City.

(3) No wireless facility or other communications facility shall materially interfere with the safe operation of traffic control equipment.

(4) No wireless facility or other communications facility shall materially interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

(5) No wireless facility or other communications facility shall materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

(6) No wireless facility shall materially fail to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, as it may be amended.

(7) No wireless facility shall fail to comply with the applicable codes.

(8) 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.

(9) Wireless facilities are prohibited on utility poles owned by a municipal electric utility, and utility poles used to support municipally owned or operated electric distribution facilities, unless the City grants a waiver.

(10) Wireless facilities are prohibited on arms or any horizontal structure used to support or mount traffic control signals and other traffic control devices.

(11) Wireless facilities are prohibited on poles or similar structures 15 feet or less in height unless the city grants a waiver for such structure.

(12) 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.

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

(b) The applicant or applicant's successor must 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 the City Code.

(d) 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 a registrant or applicant to establish compliance with requirements under this article and state and federal law.

(e) A registrant shall not place, commence to place or maintain a wireless or other 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 or other communications 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 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 wireless or other communication facility in public rights-of-way in the event of an emergency, and shall be required to apply for an after-the-fact permit within 30 days if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency.

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

(f) *Application review; decisions; time-frames; permit duration*

(1) Pre-application Meeting – To the extent permitted by F.S. § 337.401 and applicable law, an applicant shall schedule and conduct a pre-application meeting with the city clerk and staff to discuss the prospective application and submittals.

(2) 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.

(3) 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 (7), 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.

(4) Permit Duration. A permit issued pursuant to an approved application shall remain in effect for 1 year unless extended by the city.

(5) 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.

(6) 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.

(7) 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.

(8) 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 city utility pole or support structure or may place a new utility pole.

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 non-agreement 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.

(g) *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 Council, or such city board as the city Council has designated by resolution or ordinance to consider applications under this article, after a public hearing. To the extent permitted by F.S. § 337.401 and applicable law, prior to filing an application for a permit, applicant shall conduct a pre-application meeting with city staff in accordance with s. 20-6(f)(1) of this Article. Each application for a permit to place or replace a wireless facility or other communications facility in the right-of-way shall include:

(1) *Plans submittal.*

a. For each proposed wireless facility location, submit plans prepared by, approved, and signed by a qualified professional engineer showing:

i. The location of each proposed communications facility;

ii. True-to-scale site plan depicting all physical improvements including property lines within a 20 foot radius;

iii. A graphical depiction of each proposed communications facility to be installed;

iv. 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) All applicable permit fees; and

(10) 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.

(h) *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 shall be employed wherever feasible. The city clerk 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.

(i) *Objective design standards; other requirements.* Wireless and other communications facilities shall meet the following requirements, including 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.

(1) Any above-ground wireless or other communications facilities shall be concealed and utilize stealth design. Such stealth design and concealment shall eliminate the need to locate any ground or elevated equipment on the exterior of a pole, tower, or other structure, unless an exemption is granted as provided below.

(2) 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.

(3) 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.

(4) The city Council 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.

(5) 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.

(6) 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 City approves use of a new design or material on the basis that it constitutes an upgrade.

(7) 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.

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

(9) 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.

(10) 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.

(11) The City Council is authorized to identify by resolution forms of acceptable wireless facilities that are consistent and compatible with the aesthetic, safety, and other standards set forth in this article as well as prohibited wireless facilities.

(12) 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 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.

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

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

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

c. The length of arms extending from the base should be between 20-25% of pole height;

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

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

f. 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.

(14) 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.

(15) 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 less.

(16) 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.

(17) If the right-of-way is within or abuts a residential zoning district, wireless and other communication facilities must be located where the shared property line between two

residential parcels intersects the right-of-way, whenever possible unless an unsafe condition, cluttered appearance, or other violation of this article would result.

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

(19) The city, in consultation with the city engineer where appropriate, may waive any requirement under this section if the city determines that such requirement is not reasonably compatible for the particular location of a wireless or other communications 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.

(j) *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 the city Council determines that no existing structure or alternative technology that does not require the placement of a new structure in a right-of-way can accommodate the applicant's proposed antenna or other communications facility. Such a demonstration by the applicant shall not give rise to a right to locate the proposed facility within the rights-of-way or in any way guarantee city approval of such. An applicant shall submit information requested by the city Council 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 Council:

(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 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.

(k) *Waivers and exemptions.* The city Council may waive or reduce the burden of any requirement of this section where doing so serves the intent or purposes of this article.

(l) *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.

(m) *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, 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, 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.

(n) *Removal and relocation.*

(1) 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 wireless or other communications facility within the rights-of-way in the interests of the public welfare, health, or safety, or as otherwise authorized by law. The registrant must remove its wireless facilities within 30 days notice that the City will remove a utility pole.

(2) 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.

(o) *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.

(p) *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.

(q) *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 an annual fee for each small wireless facility collocated upon a city utility pole in the amount of \$150.00.

(r) *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 and as is consistent with the law.

(s) The approval of the installation, placement, maintenance, or operation of a small wireless facility or other communications facility pursuant to this article does not authorize the installation, placement, maintenance, or operation of any facility other than that approved.

(t) *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.

#### **Sec. 20-7. - Suspension of permits.**

(a) The city may suspend a permit for work in the public rights-of-way for one or more of the following reasons:

(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.

(b) The city clerk or designee shall provide notice and an opportunity to cure any violation of subsections (a)(1) through (a)(4) of this section, each of which shall be reasonable under the circumstances.

#### **Sec. 20-8. - Appeals.**

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

**Sec. 20-9. - 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 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 20-16.

(b) Prior to termination, the registrant shall be notified by the city clerk or designee with a written notice setting forth all matters pertinent to the proposed termination action, including which of subsections (a)(1) through (a)(3) of this section is applicable as the reason therefor, 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 clerk or designee, to accomplish the same. If the plan is rejected, the city clerk or designee shall provide written notice of such rejection to the registrant and shall make a recommendation to the city Council regarding a decision as to termination of registration. A decision by the city to terminate a registration may only be accomplished by an action of the city Council. A registrant shall be notified by written notice of any decision by the city Council 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: (i) 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 (ii) 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, 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.

**Sec. 20-10. - Existing communications facilities in public rights-of-way.**

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 is derived to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

**Sec. 20-11. - 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 this article.

(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 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.

**Sec. 20-12. - 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 wireless or other communications facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the city. This provision includes, but is not limited to, the

city's reasonable attorneys' fees and costs incurred in defending against any such claim, suit or proceedings. The city agrees to notify the registrant, in writing, within a reasonable time of the city receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted:

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

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

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

**Sec. 20-13. - Construction bond.**

(a) Prior to issuing a permit, 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 this article. 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 clerk; 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.

**Sec. 20-14. - 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, 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 clerk, 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, 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 accept a corporate guarantee of the registrant's parent company.

**Sec. 20-15. - 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 clerk or the city clerk'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. 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 clerk or a designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law. Failure of the city to enforce any requirements of this article shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

**Sec. 20-16. - 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; (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.

**Sec. 20-17. - 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.

**Sec. 20-18. - 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 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.

**Sec. 20-19. - 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. Initial payments may be pro-rated as appropriate. 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 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.

(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.

(h) If the payments required by this section are not timely made 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.

**SECTION 3.** Chapter 134, Article VI, Section 134-641 of the City Code is hereby amended as follows:

**Sec. 134-641. - Legislative findings, intent and purpose.**

The general purpose of this article is to regulate the placement, construction and modification of towers and telecommunications facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the city. This Article shall not be applicable to small wireless facilities and micro wireless facilities, as defined in Section 20-3, which are subject to the Advanced Wireless Deployment Act and Chapter 20 of this Code of Ordinances. The city has been confronted with requests to site communications towers. Accordingly, the city council of the city finds that the promulgation of this article is warranted and necessary:

- (1) To direct the location of communication towers in the city;
- (2) To protect residential areas and other land uses from potential adverse impacts of communication towers and telecommunications facilities;
- (3) To consider the public health and safety effects of communication towers and telecommunications facilities;
- (4) To ensure that towers and telecommunications facilities are compatible with surrounding land uses;
- (5) To minimize adverse visual impacts of telecommunications facilities and towers through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (6) To accommodate the growing need for communication towers;
- (7) To promote and encourage shared use of and collocation of antennas on existing and new communication towers as a primary option rather than construction of additional single-use towers;
- (8) To encourage the location of towers in nonresidential areas and to enhance the installation of camouflage or stealth communication towers;
- (9) To avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures;
- (10) To promote and encourage utilization of technological designs that will either eliminate or reduce the need for the erection of new towers to support antenna and telecommunications facilities;
- (11) To enhance the ability of the providers of telecommunication services to provide such services to the community quickly, effectively and efficiently.

**SECTION 4. Codification.** This Ordinance shall be incorporated into the Edgewood 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 or the City Code may be freely made.

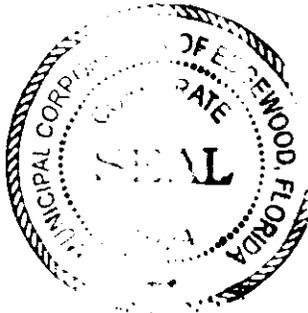
**SECTION 5. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, 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 Council of the City of Edgewood, Florida.

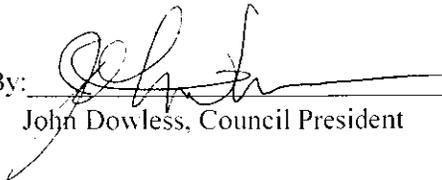
**DULY ADOPTED** by the City Council of the City of Edgewood, Florida, this **21st** day of **November**,

2017.



ATTEST:

CITY COUNCIL OF EDGEWOOD, FLORIDA

By:   
John Dowless, Council President

By:   
Bea Meeks, City Clerk