

of-way of the city and includes the applicant's successors-in-interest and anyone owning and maintaining the wireless facilities.

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

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

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

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

*City-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 utility pole* means a utility pole owned by the city in the right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within a retirement community that:

- (a) Is deed restricted as housing for older persons as defined in F.S. § 760.29(4)(b);
- (b) Has more than 5,000 residents; and
- (c) Has underground utilities for electric transmission or distribution.

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

*Collocate* or *collocation* means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent

to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

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

*FCC* means the Federal Communications Commission.

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

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

*Ordinance* shall mean this article.

*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 provid-

ing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute "placing or maintaining" facilities in the public rights-of-way.

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

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

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

*Small wireless facility* means a wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than six 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 six cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters,

concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

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

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

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

- (a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (b) Wireline backhaul facilities; or

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

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

*Wireless provider* means a wireless infrastructure provider or a wireless services provider.

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

*Wireless services provider* means a person who provides wireless services.

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

(Ord. No. 17-49, § 2, 9-28-17)

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

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

(b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this article only applies for the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the

public rights-of-way of facilities that are not communications facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another person's facilities. Registration does not excuse a wireless provider from complying with all applicable city ordinances, codes or regulations, including this article.

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

- (1) Name of the applicant, including a contact person;
- (2) Name, address, email address, and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;
- (3) Evidence of the insurance coverage and surety bond required under this article;
- (4) Acknowledgment that registrant has received and reviewed a copy of this article, which acknowledgment shall not be deemed an agreement;
- (5) The number of the applicant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any.

(d) The city shall review the information submitted by the applicant for registration to the building department. Such review shall be by the city manager or his or her designee. If the applicant submits information in accordance with subsection (c) above and other provisions of this chapter and the city code, the registration shall be effective and the city shall notify the applicant of the effectiveness of registration in writing. If the city determines that the information has not been submitted in accordance with subsection (c) above, the city shall notify the applicant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The city shall

so reply to an applicant within 30 days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section.

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

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

(Ord. No. 17-49, § 2, 9-28-17)

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

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

(b) In the interests of facilitating the safe, efficient, and aesthetically desirable use of the public rights-of-way, and to otherwise avoid the negative effects upon the public welfare of, and address safety concerns relating to, proliferation of structures within the rights-of-way, the city may offer to an applicant who wishes to install,

construct, place, or maintain an antenna or other wireless facility in the public rights-of-way, to place or co-locate such antenna or wireless facility upon or within a city-owned structure outside of the rights-of-way where feasible. Such antenna or wireless facility shall meet the requirements of this article.

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

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-234. Prohibitions.**

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

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

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

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



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

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

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

- (1) The wireless infrastructure provider applies for review by the city's historic preservation board, which recommends approval of the method to deploy the wireless facilities in stealth so as not to detract from contributing historic structures and the ambiance of the district; and
- (2) The city commission accepts the recommendation and approves of the application.

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

(i) Wireless facilities shall not interfere with electrical lines, cable lines, or their associated equipment. For public safety, wireless facilities, including micro wireless facilities, shall be at least 20 feet away from energized electrical distribution lines. Wireless facilities may not be hung from energized lines or mounted over energized lines or on poles to be removed in conjunction with the undergrounding of electric utilities. Micro-wireless facilities shall not be on cables strung between existing utility poles in the city without the express written permission from the owner of the utility poles.

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

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

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

- (1) Wireless facilities collocated, if allowed, on the same utility pole as a street light shall be on the same disconnect as the street light.
- (2) Wireless facilities shall be grounded and otherwise comply fully with all applicable electrical codes.
- (3) Whenever conduit of the wireless facilities crosses telephone or electric power wires, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States in force at the time of the effective date of this article, and as amended.
- (4) Wireless facilities shall comply with all applicable structural requirements with respect to wind speed under the Florida Building Code and under chapter 18 of this Code.

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

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

and issued a certificate of completion pursuant to the Florida Building Code as adopted and amended by chapter 18 of this Code.

- (1) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.
- (2) Registrant shall provide prompt notice to the city of the placement or maintenance of a communication facility in public rights-of-way in the event of an emergency, and shall be required to apply for an after-the-fact permit within 30 days if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency.
- (3) Registrant acknowledges that as a condition of granting such permits, the city may impose rules or regulations governing the placement or maintenance of a communication facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit.
- (4) Further, once the emergency is abated, the communications facility placed in the public right-of-way during the emergency shall be removed unless permitted without the emergency as a basis.
- (o) The wireless infrastructure provider will not assert the existence of any vested rights as to any other matter if the city issues a permit except to the extent that it is entitled to place its facilities as indicated by the permit. Further, issuance of a permit by the city shall not be construed by the wireless provider as a warranty that the placement of its conduits, antennas, and/or other facilities, or the start of construction, is in compliance with any applicable rules, regulations or laws or that there are no physical conflicts between the wireless facilities and other facilities located on the city's rights-of-way.
- (p) The wireless infrastructure provider shall use its best efforts to individually notify all adjacent property owners affected by the proposed

construction prior to the commencement of that work. Such notification shall not be required for emergencies requiring immediate repairs. (Ord. No. 17-49, § 2, 9-28-17)

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

(a) *Notification of completeness.* Within 14 days after receiving an application to install one or more wireless facilities in the city's rights-of-way, the city shall determine and notify the applicant by electronic mail to the email address provided in the application as to whether the application is complete. If an application is deemed incomplete, the city shall specifically identify the missing information. An application is deemed complete if the city does not provide notification to the applicant within 14 days.

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

(c) *Permit duration.* A collocation permit issued pursuant to an approved application shall remain effect for one year unless extended by the city.

(d) *Notification procedure.*

- (1) The city shall notify the applicant of approval or denial by electronic mail. The city shall approve a complete application unless it does not meet the applicable codes.
- (2) If the application is denied, the city will specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the city denies the application.

(e) *Opportunity to cure deficiencies.* The applicant may cure the deficiencies identified by the city and resubmit the application within 30

days after notice of the denial is sent to the applicant. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed. The city shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

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

(g) *Alternative collocations.*

- (1) If an applicant seeks to place a wireless facility upon a city utility pole or seeks to install a new utility pole, the city may, within 14 days after the date that a wireless facility application is filed, request that the proposed location of the wireless facility be moved to another location in the right-of-way and placed on an alternative utility pole or support structure or may place a new utility pole, including for aesthetic or public safety reasons, or a location outside the right-of-way on city-owned structures or property. The city may offer an alternative location in the right-of-way for a wireless facility for health, safety, general welfare, or aesthetic reasons, subject to the final approval of the city commission.
- (2) The city and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the city of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agree-

ment is not reached, the applicant must notify the city of such nonagreement and the city shall grant or deny the original application within 90 days after the date the application was filed.

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

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

(1) *Plans submittal.*

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

- b. Plans shall be in a hard copy format and an electronic format specified by the city, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the city.
  - c. If the actual installation deviates or will deviate from the submitted plans due to unforeseen conditions or any other reason, the registrant shall promptly provide revised plans.
- (2) A description of the manner in which the wireless facility will be installed (i.e. anticipated construction methods or techniques);
  - (3) A description of the stealth design techniques proposed to minimize the visual impact of the wireless facility;
  - (4) A maintenance of traffic plan for any disruption of the public rights-of-way;
  - (5) Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons);
  - (6) If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;
  - (7) The timetable for construction of the project or each phase thereof, and the areas of the city which will be affected;
  - (8) Photographs and graphic or simulated renderings.
    - a. Color photographs from four equally separated directions (north, south, east, and west) clearly showing the nature and location of the site where each wireless or other communications facility is proposed to be located;
    - b. Color photographs showing the location and condition of properties adjacent to the site of each proposed wireless or other communications facility; and
    - c. True-to-scale graphic depictions or simulated renderings in color accurately representing the visual impact of the wireless communications facilities when viewed from the street and from adjacent properties from 4 equally separated directions (north, south, east, and west);
  - (9) Coverage and propagation maps demonstrating the present or future need for each wireless facility;
  - (10) Letter(s) of no conflict provided by other utilities having facilities located in the area or areas that the wireless infrastructure provider desires to place conduits, antennas and/or any other facilities or to begin construction;
  - (11) A \$150.00 collocation fee per wireless facility and all applicable permit fees, including a right-of-way utilization permit fee and building permit and plan review fees per wireless facility; and
  - (12) Such additional information as the city finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.
- (j) *Factors considered in granting permit.* In addition to any applicable requirements or standards imposed by this code of ordinances, the city commission shall consider the following factors in determining whether to issue a permit to a registrant to place or maintain a wireless facility within the public rights-of-way:
- (1) Height and dimensions of the proposed communications facility;
  - (2) Proximity of the communications facility to residential structures and residential district boundaries;
  - (3) Nature of uses on adjacent and nearby properties;
  - (4) Surrounding topography;
  - (5) Surrounding tree coverage and foliage;