

- (6) Compliance with the objective design standards set forth herein at section 70-236 with particular reference to design characteristics that conceal, reduce, or eliminate visual obtrusiveness;
- (7) Proposed ingress and egress (where applicable);
- (8) Availability of suitable existing structures or alternative technologies not requiring the installation of the communications facility as proposed;
- (9) The location context must be reasonable. Proximity to other structures within the rights-of-way cannot create a hazardous or safety condition or a cluttered appearance;
- (10) Proximity to and/or interference with other private or public uses within or outside the rights-of-way, including, but not limited to, utilities, easements, traffic control devices, and other uses;
- (11) Suitability of the right-of-way or the proposed section of the right-of-way for the proposed communications facility with reference to safety, engineering, and/or aesthetic concerns;
- (12) Whether the proposed communications facility is prohibited by section 70-234;
- (13) Clearances by height and width with respect to accessibility requirements in the most current edition of Florida Building Code and regulations interpreting the Americans with Disabilities Act; and
- (14) Any other requirements set forth in this article.

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

- (1) All communications facilities shall be placed or maintained so as not to interfere with the lawful use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way.
- (2) The use of trenchless technology (i.e., directional bore method) for the installa-

tion of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and shall be employed wherever feasible.

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

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

- (1) The aesthetic requirements and provisions under section 70-236 of this Code of Ordinances governing antennas and towers shall apply to wireless facilities located within the right-of-way.
- (2) Wireless facilities must be concealed and utilize stealth design, as defined by section 70-219 of this article. Such stealth design and concealment shall eliminate the need to locate any ground or elevated equipment on the exterior of a pole, tower, or other structure. The city commission by resolution may adopt standards for the types or style of concealment and stealth design that are required within the city or parts thereof in order to preserve and promote the aesthetic character of the city.
- (3) Any application or proposal to locate equipment at ground level on or adjacent to a pole or tower and any application or proposal to locate elevated equipment (other than antennas) on or adjacent to the exterior of a tower or pole that asserts that such cannot be accomplished by undergrounding such, and if not undergrounded then in accordance with the concealment and stealth design requirements of this article, may request a waiver to such requirements, and such application or proposal shall include Florida professional engineering certified documentation demonstrating to the

satisfaction of the city engineer that the proposed equipment cannot employ stealth design and cannot be concealed as required by this article, and that the proposed equipment, and location and configuration of such, constitute the minimum equipment necessary and are the least obtrusive as is possible to achieve needed function.

- (4) In order to avoid the clustering of multiple items of approved ground equipment or elevated equipment in a single area, only one equipment box may be located in any single location.
- (5) Where a registrant demonstrates that undergrounding and stealth design and concealment cannot be employed under this subsection and the city agrees with such demonstration, the individual approved exterior equipment boxes or containment devices shall be as small as circumstances permit and shall not exceed 28 cubic feet in volume and the configuration and dimensions of such shall be the least visually obtrusive as possible. The use of irrigated or Florida-friendly foliage and vegetation together with a maintenance agreement or other concealment method around any approved equipment may be required by the city based on conditions of the specific area where the equipment is to be located. In addition, in order to meet the stealth and concealment requirements of this article, the city may require a remote location for equipment supporting wireless facilities.
- (6) Insofar as wireless facilities are constructed underground, the wireless infrastructure provider shall become a member of, and maintain membership in Florida utility notification Sunshine One Call system, also known as Sunshine 811. Wireless facilities shall have five-foot horizontal clearance from other underground utilities and their appurtenances.

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

- (1) Materially interferes with the safe operation of traffic control equipment;
- (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- (3) Materially interferes with compliance with the Americans with Disabilities Act, or similar federal or state standards and regulations regarding pedestrian access or movement;
- (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
- (5) Fails to comply with applicable codes.

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

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

(Ord. No. 17-49, § 2, 9-28-17)

Sec. 70-236. Objective design standards.

Wireless facilities shall meet the following reasonable location, context, color, stealth, and concealment requirements. Design standards may be waived by city if the city determines that the design standards are not reasonably compatible for the particular location of a wireless facility or that the design standards impose excessive

expense in relation to the aesthetic concerns of the city. The waiver shall be granted or denied within 45 days after the date of the request.

- (a) Any above-ground wireless facilities shall meet stealth design requirements.
- (b) Wireless facilities may increase the height of a metal street light pole only if the antenna is top-mounted and not wider than the pole or if the antenna is hidden in a cylinder that appears like an original part of the pole. A cellular antenna shall not extend more than ten feet above the utility pole or structure upon which the wireless facility is to be collocated, and shall be shorter if the height of the utility pole requires a shorter antenna height so that the structure as a whole is proportionate.
- (c) A new utility pole that replaces an existing utility pole shall be of substantially similar design, material, and color as the existing utility pole.
- (d) The antennas and related equipment shall be in a color that will provide the most camouflage, as determined by the building official. Ground based wireless facilities, if allowed, shall be painted forest green, unless determined otherwise by the building official. When on a black pole, wireless facilities shall be painted black, unless determined otherwise by the building official.
- (e) Antennas must be hidden within the utility pole or appear like an original part of the utility pole.
- (f) All wireless facilities and related equipment, other than antennas, shall be placed underground in order to, without limitation, avoid impeding pedestrian travel, to avoid providing a target for graffiti or a mounting place for unauthorized signs, to minimize danger to the public, and to preserve and enhance the aesthetic qualities of the city.
- (g) Wires serving the wireless facilities must be concealed within or flush mounted to the pole in an enclosed wire chase on

which the facilities are collocated and insulated in accordance with applicable codes.

- (h) The photographs attached as exhibits to this article provide conceptual examples of acceptable, acceptable with modifications, and prohibited wireless facilities. Because of rapid advances in stealth wireless technology and techniques, the city commission is authorized to identify by resolution other forms of acceptable wire facilities that are consistent and compatible with the aesthetic, safety, and other standards set forth in this article as well as prohibited wireless facilities.
- (i) Antennas placed upon structures within the rights-of-way must meet the following additional requirements if stealth design, concealment, and this article's requirements regarding such cannot be met:
 - (1) Top mounted antennas and their enclosures must not extend the diameter of the supporting structure at the level of antenna attachment; and
 - (2) Side-mounted antennas and their enclosures must be flush-mounted to the supporting structure at the level of antenna attachment. Under no circumstances shall antennas be mounted less than 12 feet above ground level.
- (j) *Street light fixtures with stealth wireless facilities.*
 - (1) On street lights, luminaires and bases should be roughly equal in size and volume for a balanced appearance.
 - (2) The decorative base of a decorative street light should be between 10—25 percent of the pole height.
 - (3) The length of arms extending from the base should be between 20—25 percent of pole height;

- (4) Arms should extend from the pole at a location within 20 percent of pole height from the top of the pole.
 - (5) Street light fixtures must meet AASHTO structural guidelines for roadway application and ANSI requirements for vibrations.
 - (6) Pole height shall be measured from the ground to the top of the utility pole, which measurement shall include any antennas built into or appended to the utility pole.
- (k) New or replacement poles that support wireless or communications facilities shall match the style, design, and color of the utility poles in the surrounding area.
- (l) *Height.* The height of new wireless or communications facilities in the rights-of-way shall be no greater than the maximum size and height of any other utility or light poles located in the same portion of the right-of-way within the city other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole shall be limited to 50 feet, unless the city determines that a lower height is warranted given the location context for compatibility with existing or planned development within the vicinity of the proposed location or other provision of this article warrants such; provided however, that registrants proposing wireless facilities with antennas to be located on existing poles or other structures may increase the height of the existing pole or other structure up to six feet, if necessary, to avoid adversely affecting existing pole attachments; and provided further that the overall height above ground of any wireless or communications facility shall not exceed 40 feet or exceed the existing height of other utility or light poles located in the same portion of the right-of-way, whichever height is less.
- (m) Wireless facilities shall be located at least ten feet from a driveway, at least ten feet from the edge of existing trees 12 inches or greater in diameter, at least 25 feet from a traffic signal pole unless mounted upon the vertical portion of such traffic signal pole, at least 15 feet from any pedestrian ramp, and eight feet from the street curb or edge of pavement. The city may require greater setbacks from these and other fixtures in the right-of-way to ensure proper sight lines for public safety purposes and in other cases as deemed necessary to advance the purposes of this article.
 - (n) If the right-of-way is within or abuts a residential zoning district, wireless communication facilities must be located where the shared property line between two residential parcels intersects the right-of-way, whenever possible unless an unsafe condition, cluttered appearance, or other violation of this article would result.
 - (o) If the right-of-way is within or abuts a nonresidential district, wireless facilities must be located between tenant spaces or adjoining properties where their shared property lines intersect the right-of-way, whenever possible, unless an unsafe condition, cluttered appearance, or other violation of this article would result.
 - (p) *Waivers.* The city, in consultation with the city engineer where appropriate, may waive or reduce any requirement under this section if the city determines that such requirement is not reasonably compatible for the particular location of a small wireless facility or that such requirement imposes an excessive expense, or where the waiver serves the intent or purposes of this article. The waiver shall be granted or denied within 45 days after the date of the request.
 - (q) *Limitations; no property right.* A permit from the city constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this

article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(Ord. No. 17-49, § 2, 9-28-17)

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

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

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

(c) After the completion of any placement or maintenance of a wireless facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to the original condition that existed before such work. If the registrant fails to make such restoration within 15 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the city may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. For 12 months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense.

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

(e) Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas. The person constructing, installing, and maintaining wireless facilities must be a licensed electrician,

certified to work as a lineworker, or have successfully completed an accredited lineworker apprenticeship program.

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

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

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

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

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

- (1) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered. The wireless provider shall remove or relocate its wireless facilities at its own cost to accommodate any widening of the vehicle travel lanes and sidewalks, if deemed necessary by the city.
- (2) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its wireless or other communications facilities to permit the work authorized by the permit. The expense of temporarily raising or lowering facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation.
- (3) Replacement and maintenance of wireless facilities. The city shall not require approval or require fees or other charges for:
 - a. Routine maintenance;
 - b. Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

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

Notwithstanding this paragraph, for public safety, the wireless provider must give reasonable notice to the city's public services department before undertaking these activities and a right-of-way permit shall be required for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane. In addition, for public safety, the wireless provider must pull a permit for any work that will involve replacement of existing wireless facilities with new wireless facilities of any size or electrical work on existing wireless facilities with new wireless facilities so that proper inspections can be performed. Fees for such permit will be waived so long as the Act prohibits such fees.

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

(k) Additional authority; permit conditions.
 To the extent not otherwise prohibited by state or federal law and this article, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within all or parts of the public rights-of-way. The city may impose reasonable conditions upon the grant of a permit, in addition to the specific requirements of this code, as deemed appropriate to advance the intent or purposes of this article.
 (Ord. No. 17-49, § 2, 9-28-17)

Sec. 70-238. Collocation on city utility poles.

To the extent possible, the wireless infrastructure provider shall make use of existing poles and other facilities already existing in the city's right-of-way. The wireless provider may erect additional poles or construct other facilities so long as all applicable permits and

consents are obtained and the poles are located in the proper location context so as not to create clutter. Collocation of small wireless facilities on city utility poles is subject to the following requirements:

(a) *Make-ready for collocation.*

- (1) For a city utility pole that does not support an aerial facility used to provide communications services or electric service, the applicant seeking to collocate a small wireless facility shall provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The city shall not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the city.
- (2) The city shall not require more make-ready work than is required to meet applicable codes or industry standards.
- (3) Fees for make-ready work shall not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to wireless service providers other than wireless services providers for similar work and shall not include any consultant fee or expense.
- (4) Fees for make-ready work must be paid to the city, even if they exceed

the applicant's estimate, before the wireless facilities may be operational.

- (b) No person or entity shall be granted the exclusive right to attach equipment to city utility poles.
- (c) For a city utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- (d) A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with any undergrounding requirements of the city that prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the city.

(Ord. No. 17-49, § 2, 9-28-17)

Sec. 70-239. Force majeure.

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

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

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

(Ord. No. 17-49, § 2, 9-28-17)

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

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

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

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

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

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

(Ord. No. 17-49, § 2, 9-28-17)

Sec. 70-241. Pass-through provider fees, collocation fees, and other charges.

(a) Pass-through providers.

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

- (2) The amounts charged pursuant to this section shall be based on the linear miles of rights-of-way where a wireless facility is placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one communications facility for purposes of this subsection.
 - (3) Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits taxes imposed by the city pursuant to F.S. ch. 202.
- (b) *Collocation fees.*
- (1) The wireless provider shall remit a \$150.00 collocation fee per wireless facility to the city with the application to pay for the first year's fee for collocating small wireless facilities on a city utility pole.
 - (2) The wireless infrastructure provider shall remit a \$150.00 collocation fee per wireless facility to the city within 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 30 days at the wireless provider's expense.

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

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

(e) *Fees for non-collocated communications facilities.*

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