

(2) Annual payments shall be due and payable on the calendar date of approval each year. Failure to timely pay the annual payment shall result in the immediate forfeiture of all rights to locate any wireless equipment in the city's rights-of-way and all wireless equipment shall be removed within 30 days at the wireless infrastructure provider's expense. Fees not paid shall bear interest at the rate of one percent per month from the date due until the wireless equipment is removed. The acceptance of any payment required hereunder by the city shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. All fee payments shall be subject to audit by the city, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the city, such additional payment shall be subject to interest at the rate of one percent per month until the date payment is made.

(f) *Application fees.* The wireless infrastructure provider shall be responsible for paying all usual and customary application review fees, including for wireless facilities in an historic preservation district, site plan review, or any other review required.

(Ord. No. 17-49, § 2, 9-28-17)

### **Sec. 70-242. Insurance and bonds.**

(a) At all times wireless facilities are in the city's right-of-way, the wireless infrastructure company shall provide, pay for, and maintain satisfactory to the city the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state and having a financial rating in Best's Insurance Guide of B+ Class VI or better and a claims paying ability rating of A+ or better.

(b) All liability products shall provide that the city is an additional insured as to the facilities maintained and operations conducted in the city's right-of-way. The required coverages must be evidenced by properly executed certificate of insurance forms signed by an authorized representative of the insurance company.

(c) Each insurance policy shall provide that at least 30 days advanced written notice by registered or certified mail be given to the city of any cancellation, intent not to renew, or reduction in the policy coverages. The certificate of insurance must indicate that the city is an additional insured.

(d) The limits of coverage of insurance required shall be not less than the following:

Worker's Compensation	Florida statutory requirements
Employer's Liability	\$500,000.00 limit each accident \$500,000.00 limit disease accident \$500,000.00 limit disease each employee.
Comprehensive General Liability	Bodily injury and property damage— \$5,000,000.00 combined single limit each occurrence.
Automobile Liability	Bodily injury and property damage— \$5,000,000 combined single limit each accident.

(e) Wireless provider shall exercise none of the rights granted by this article until evidence of compliance with the following bonding and preceding insurance requirements have been filed with the city. Should the wireless infrastructure provider fail to comply with said requirements, it shall acquire no rights, privileges or authority whatsoever.

(f) *Bond.* Every operator of a wireless facility shall be required to obtain performance bonds and payment bonds to ensure the faithful performance of its responsibilities under this article, including safely maintaining all wireless facilities and removing all wireless equipment upon termination of the right to maintain such facilities. The amount of performance and payment bonds shall be set by the city manager or

his designee in light of the nature of the work to be performed, and is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the city attorney. The city may from time to time increase the amount of the required performance bond to reflect increased risks to the city and to the public.

(g) *Notice.* The performance and payment bonds required pursuant to this section shall require 30 days' prior written notice to the city of an intention of nonrenewal, alteration, or cancellation. The wireless provider shall, in the event of any such intended cancellation notice, obtain, pay all premiums for, and file replacement bonds or policies within 30 days following receipt by the city of any notice of intended cancellation.

(Ord. No. 17-49, § 2, 9-28-17)

### **Sec. 70-243. Compliance with state and federal law**

The wireless infrastructure provider shall maintain and operate all parts of its wireless facilities in good, safe and operable condition and shall render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Florida Public Service Commission and the Federal Communications Commission, or by other agencies of the state or federal government empowered to regulate the activities of the wireless infrastructure provider. Failure to comply with such rules and regulations terminates all rights to maintain wireless infrastructure in the city's rights-of-way.

(Ord. No. 17-49, § 2, 9-28-17)

### **Sec. 70-244. Relocation of wireless facilities.**

Except in case of any emergency, the wireless infrastructure provider shall, within 180 days after receipt of written notice from the city, adjust, alter or relocate, at its own expense, any portion of its wireless facilities in the event that the city, at the direction of the city's department of public services or the city engineer, determines that such adjustment, alteration or relocation is necessary for the city's use of its property and rights-of-way, or if the wireless facilities unreason-

ably interferes with the convenient, safe or continuous use, or the maintenance, improvement, extension or expansion of any public right-of-way in the city. In the event that such adjustment, alteration or relocation is incidental to work to be done by the city on a city road, such notice shall be given 60 days prior to the commencement of such work by the city. In the event such a contingency occurs and the wireless infrastructure provider fails to cause the aforementioned adjustment, alteration or relocation as required herein, the city may remove or relocate such portion of the wireless facilities and the total cost and expense therefore shall be charged to, and paid by, the wireless infrastructure provider. The city shall provide the wireless infrastructure provider with a notice and order as provided for in F.S. § 337.404, or any subsequently enacted law of the state, in the event it may charge the wireless infrastructure provider for the cost and expense of removing such portion of its wireless facilities pursuant to this article.

(Ord. No. 17-49, § 2, 9-28-17)

### **Sec. 70-245. Conditions of public right-of-way occupancy.**

(a) All facilities erected by the wireless infrastructure provider within the rights-of-way of the city shall be so located as to cause minimum interference with the proper use of streets, and other public rights-of-way and places and to cause minimum interference with the rights and reasonable convenience of property owners who own adjacent properties.

(b) The wireless infrastructure provider shall not, without consent of the city, in any way displace, damage or destroy any sewer, water main, pipe, electrical conduit, or any other facilities belonging to the city, or to any third party who placed or maintains such facilities therein by express authority of the city. The wireless infrastructure provider shall be liable to the city or to the third party owner, as the case may be, for the cost of any repairs made necessary by any such displacement, damage or destruction and shall pay such costs upon written demand within 30 days of wireless infrastructure provider's receipt of such demand.

(c) The wireless infrastructure provider shall, at its own cost, replace and repair without delay any improvements, facilities or city rights-of-way that have been excavated, broken, removed, displaced, damaged or disarranged by the construction, maintenance and operation of any portion of the wireless facilities, or as a result of the deterioration of any portion of the wireless facilities. The wireless infrastructure provider shall restore the same to as good a condition as existed prior to the wireless infrastructure provider commencing its work. Upon failure of the wireless infrastructure provider to complete such repairs after 20 days' written notice by the city's department of public services or the city engineer of such failure, the city may make such repairs and replacements as it deems necessary, and the wireless infrastructure provider shall pay the city all costs of such repairs and replacements. The wireless infrastructure provider, shall to the satisfaction of the city's engineer or public services director, maintain any repairs or replacements it makes pursuant to this section for a period of one year following the date of such repair or replacement.

(d) *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.
- (e) The wireless infrastructure provider shall produce and maintain a complete set of "as built" plans, including, but not limited to, horizontal and vertical profiles, within 30 days after construction of any portion of its wireless facilities.
- (f) The wireless infrastructure provider shall comply with all applicable laws, regulations and codes promulgated for the protection of the public, including, but not limited to, the National Electric Code, the National Electric Safety Code, the Florida Department of Transportation Utilities Accommodation Guide, the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways, and such other design or regulatory manuals that regulate the installation of structures within public rights-of-way.

(g) In the event the city requires the wireless infrastructure provider to alter, temporarily or permanently relocate or to change any portion of the wireless facilities to expand the city's right-of-way, or to enable another person to use the public rights-of-way of the city, the wireless provider shall be reimbursed no more than the annual permit cost, \$150.00.

(h) In an emergency, as determined by the city, when the wireless infrastructure provider or its representative is immediately unavailable or unable to provide the necessary immediate repairs to any portion of the wireless facilities

that is damaged or malfunctioning or to any faults or settles or sunken areas that may develop in any area over, around or adjacent to same, the city when apprised of such an emergency, shall have the right to make the repairs to protect the public health, safety and welfare, with the total cost of same being charged to, and paid by, the wireless provider.

(i) In an effort to minimize the number of wireless facilities within the city's rights-of-way, the disruption of traffic and roadway destruction, the wireless infrastructure provider shall attempt in good faith to reach and enter into joint use agreements with the city and other parties who are expressly authorized by the city to use its rights-of-way. Nothing herein contained shall mandate that the wireless infrastructure provider enter into joint use agreements.

(j) In the event that work to be conducted by the wireless infrastructure provider requires streets or traffic lanes to be closed or obstructed, the wireless infrastructure provider shall, pursuant to the requirements of existing or subsequently enacted city ordinances, obtain all permits from and pay all fees therefor to the city, and shall obtain approval of its maintenance-of-traffic plan from the city's police and public services departments.

(k) In the event the wireless infrastructure provider deems the trimming and removal of any trees reasonably necessary to construct any portion of its wireless facilities and to maintain the integrity and safety of same it shall, pursuant to the requirements of existing and subsequently enacted city ordinances, at wireless infrastructure provider's expense; obtain all approvals and applicable permits from, and pay all applicable fees to, the city, and comply with all other requirements of said ordinances. All tree trimming shall be done in accord with the standards of the Florida Urban Forestry Council and/or American Society of Landscape Architects except where following such standards would violate applicable federal or state safety codes. All tree trimming shall be coordinated with and approved by the city's arborist.

(l) In the event wireless infrastructure provider's work requires the temporary obstruction of city owned parking spaces, wireless infrastructure provider shall obtain city approval to block such spaces prior to doing so.

(m) Whenever, in case of fire or other disaster, it becomes necessary, in the reasonable judgment of the city, to remove or damage any of the wireless infrastructure provider's facilities, no charge shall be made by wireless infrastructure provider against the city for restoration and repair reasonably necessary under the circumstances. The city shall endeavor to avoid or limit damage to the extent necessary under the circumstances.

(Ord. No. 17-49, § 2, 9-28-17)

**Sec. 70-246. Erection of new utility poles; 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 commission 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 commission related to the availability of suitable existing structures or alternative technology. Evidence submitted to demonstrate that no existing structure or alternative technology can accommodate the applicant's proposed communications facility may consist of, but is not limited to, the following factors to be considered by the city commission:

- (a) No existing structures are located within the geographic area which would meet applicant's engineering requirements.
- (b) Existing structures are not of sufficient height to meet applicant's engineering

requirements, which shall be demonstrated by, at minimum, propagation and coverage maps.

- (c) Existing structures do not have sufficient structural strength to support applicant's proposed antenna or other communications facility and related equipment.
- (d) 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.
- (e) 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.
- (f) The applicant demonstrates that there are other limiting factors that render existing structures unsuitable.
- (g) 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 wire line system, is unsuitable. Costs of alternative technology that exceed new structure or antenna development shall not be presumed to render the technology unsuitable.

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-247. Notice of transfer, sale or assignment of assets in public rights-of-way.**

(a) 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.

(b) 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.

(c) 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 70-220 above, within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the public services department that the transferee, buyer or assignee is the new applicant.

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-248. Termination.**

(a) *Involuntary termination of registration.* The city, at its option, may forthwith declare a forfeiture and termination of, and revoke and cancel all rights granted under the permit issued to the wireless provider in the event that the wireless provider:

- (1) Violates any of the material provisions of this article;
- (2) Ceases to operate its wireless system within the city for any consecutive period of seven days;
- (3) Is prohibited by state or federal regulatory authorities from operating its wireless system due to suspension, denial, or revocation of a certificate or license to provide communications services;
- (4) Fails to remit the \$150.00 annual collocation fee, permit fees, or any other mandated fees allowed by law;
- (5) Fails to maintain a bond as required by section 70-242;
- (6) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary or unreasonable danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; or

- (7) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with section 70-231.
- (b) Prior to termination, the registrant shall be notified by the city with a written notice setting forth all matters pertinent to the proposed termination action, including the grounds therefore, and describing the proposed action of the city with respect thereto. The registrant shall have 30 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the city, to accomplish the same. If the plan is rejected, the city shall provide written notice of such rejection to the registrant. A decision by a city to terminate a registration may only be accomplished by an action of the building official and may be appealed to the city commission. A registrant shall be notified by written notice of any decision by the city commission to terminate its registration. Such written notice shall be sent within seven days after the decision.
- (c) In the event of termination, the former registrant shall: (a) notify the city of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or (b) provide the city with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection, which determination of noncompliance is subject to appeal as provided in section 70-255, 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 30 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. The wireless provider shall, within 30 days following demand by the city, remove or abandon the system and take such steps as are necessary to render every portion of the wireless facilities remaining within the rights-of-way of the city safe, and shall thereupon be deemed to have abandoned same in its entirety; and the same shall thereupon become the sole property of the city without payment to the wireless infrastructure provider; provided, however, if the city chooses to have all or any portion of the wireless facilities removed from the city's right-of-way, the wireless infrastructure provider shall do so at its own expense within 30 days after notice by the city.
- (e) In the event of termination of a registration, this section does not authorize the city to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the city, if required. (Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-249. Abandonment.**

- (a) Upon abandonment of a wireless facility owned by a registrant in public rights-of-way, the registrant shall notify the city within 30 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:
- (1) Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;
  - (2) 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, in which case 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;

- (3) Creates a maintenance condition that is disruptive to the public rights-of-way's use; or
- (4) Removal of the communications facility would improve or enhance the city's aesthetics.

(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 30 days or such other 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, any successor in interest to the registrant, or surety.

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-250. Removal and relocation.**

(a) The grant of a permit under this article shall not limit the authority and discretion of the city to regulate and control the public rights-of-way, and the city may at any time require the removal or relocation of a communications facility within the rights-of-way in the interests of the public welfare, health, or safety, aesthetics or as otherwise authorized by law. The wireless provider must remove its wireless facilities within 30 days' notice that the city will remove a utility pole, including to replace a cobra or other utilitarian streetlight with a decorative street light fixture.

(b) 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 provi-

sions 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.

(c) *Removal due to technology advances.* The city may require removal of wireless facilities and utility poles no longer required or necessary to provide coverage or which provide redundant coverage due to advances in technology, including, without limitation, technological advances allowing larger distances between wireless facilities, or due to enhanced coverage provided under current technology.

(d) As part of a city undergrounding initiative or requirement, a wireless provider must remove wireless facilities from a utility pole within 30 days' notice from the city. In its discretion based on the reasonable location context, the city may offer an alternative collocation.

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-251. Inspection; correction of defects of the system.**

(a) The city may, at any time, inspect the construction and condition of the wireless facilities to ensure proper and safe performance of the terms of this article.

(b) If the wireless provider should violate any of the terms of this article or any of the rules and regulations as may hereafter be from time to time lawfully adopted, the city shall promptly give wireless provider written notice of the violation, breach, default or noncompliance. The wireless provider shall within 30 days after service of such notice substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the city. In the event that the wireless provider fails to substantially undertake such corrective action within 30 days of the date of such written notice and promptly complete the corrective action, the city may, notwithstanding any other remedies provided in this article, or otherwise available under law:

- (1) Make such correction itself and charge the cost of the same to the wireless infrastructure provider; and/or

- (2) Secure the proceeds from any bond posted by the wireless infrastructure provider or impose the sum of \$100.00 per day for each day as liquidated damages following the cure date that wireless infrastructure provider fails to complete the corrective action; and/or
- (3) For a material breach of this article, including failure to timely pay the \$150.00 collocation fee annually, declare the wireless infrastructure provider in default and terminate the all rights granted under this article.

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-252. Communications with regulatory agencies**

(a) Copies of all petitions, applications, communications and reports submitted to the public service commission or any other state or federal regulatory commission or agency having jurisdiction in respect to any matters affecting the construction and operation of the wireless facilities in the rights-of-way shall, if requested by the city, shall be filed with the city.

(b) Copies of all certificates of approval issued by the PSC or any other state or federal regulatory agency or commission having jurisdiction over construction or operation of the wireless facilities shall be filed with the city and the information supplemented within 45 days after modification, renewal and/or revocation of any such certificate(s).

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-253. 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 installation, placement, or maintenance of its wireless facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation

hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the city. This provision includes, but is not limited to, the city's reasonable attorneys' fees and costs incurred in defending against any such claim, suit or proceedings. The city agrees to notify the registrant, in writing, within a reasonable time of the city receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted:

- (1) As denying to either party any remedy or defense available to such party under the laws of the state; or
- (2) As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.

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

(Ord. No. 17-49, § 2, 9-28-17)

#### **Sec. 70-254. Enforcement remedies.**

(a) A registrant's failure to comply with provisions of this article shall constitute a violation of this article and shall subject the registrant to the code enforcement provisions and procedures as provided in the applicable code of the city.

(b) In addition, violation of this article may be punishable as provided in F.S. § 162.22, as it may be amended.

(c) Before imposing a fine pursuant to this section, the city manager or the city manager's designee shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have 30 days to either: (a) cure the violation to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation; or (b) file an appeal with the city to contest the alleged viola-