

ORDINANCE 18-1485

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF CASSELBERRY, FLORIDA, RELATING TO COMMUNICATION FACILITIES; AMENDING CHAPTER 68, “ROADWAY AND UTILITY CONSTRUCTION” OF THE CITY CODE OF ORDINANCES, BY AMENDING ARTICLE II, “CONSTRUCTION AFFECTING STREETS, RIGHTS-OF-WAY OR EASEMENTS” TO CLARIFY AND UPDATE RIGHTS-OF-WAY UTILIZATION AND PERMIT REQUIREMENTS, AND BY AMENDING ARTICLE IV, “COMMUNICATIONS RIGHTS-OF-WAY”, ESTABLISHING NEW REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AND AMENDING GENERAL CRITERIA FOR COMMUNICATION FACILITIES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has adopted, and on June 23, 2017, the Governor signed into law, effective July 1, 2017, the Advanced Wireless Infrastructure Deployment Act (the “Act”) codified at Section 337.401(7), Florida Statutes, which places certain limitations on local government authority to regulate the collocation of small wireless facilities within the public rights-of-way; and

WHEREAS, the Act authorizes cities to adopt objective design standards that may require small wireless facilities and wireless support structures in the public rights-of-way to meet reasonable location context, color, stealth, and concealment requirements, and spacing and location requirements for ground-mounted equipment; and

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

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

WHEREAS, the Act further provides specific terms and conditions under which a local government must process and issue permits for collocation of small wireless facilities; and

WHEREAS, passage of the Act requires amendments to the City Code of Ordinances to implement the provisions of the Act and to ensure consistency therewith; and

WHEREAS, the City Commission of the City of Casselberry finds that the public rights-of-way are valuable public properties, acquired and maintained by the City at great expense to its taxpayers; and

WHEREAS, it is the City’s intent to exercise its authority over communications services providers, communications facility providers and pass-through providers’ placement and maintenance of facilities within its public rights-of-way; and

WHEREAS, to promote the public health, safety, aesthetics, and general welfare, the City has a substantial interest in maintaining and protecting its public rights-of-way in a reasonable, non-discriminatory, and competitively neutral manner, and requiring that providers seeking permits to conduct any type of excavation, construction or other activity do so in a safe, expeditious, and professional manner in accordance with applicable state and federal law; and

WHEREAS, the City Commission desires to amend its general permit procedures and guidelines for the utilization of public rights-of-way, to update permitting and registration criteria applicable to communication service providers, communication towers, communication antennas, and wireless communication facilities, to ensure that applications for same are acted upon consistent with state and federal law; and

WHEREAS, the City Commission has held two public hearings with due public notice to consider the proposed amendments; and

WHEREAS, the City Commission hereby finds this Ordinance to be in the best interest of the public health, safety, and welfare of the public and citizens of the City of Casselberry, Florida, while complying with the Act and all other state and federal laws and regulations governing communications facilities; and

WHEREAS, words with double underlined type shall constitute additions to the original text and ~~strike through~~ type shall constitute deletions to the original text, and asterisks (* * *) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF CASSELBERRY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Commission of the City of Casselberry.

Section 2. **Amendment of Division 2 “Permit” of Article II, “Construction Affecting Streets, Rights-of-Way or Easements”.** That Division 2, “Permit” of Article II, “Construction Affecting Streets, Rights-of-Way or Easements” of Chapter 68, “Roadway and Utility Construction” of the City Code of Ordinances, is hereby amended in part as follows:

DIVISION 2. - PERMIT

* * *

Sec. 68-42. - Exemptions.

No permit shall be required under this Division for repairs of previously permitted utilities in the rights-of-way, provided those repairs do not require cutting of any pavement, including curbs, removal or alteration of landscaping, or functional alterations to existing utility systems. No permit shall be required under this

Division for the placement or maintenance of a Communications Facility permitted in accordance with the Communications Rights-of-Way Ordinance, Article IV, Chapter 68, City Code. The modification of previously permitted wireless communication facilities, as defined in Section 68-153, shall be in accordance with Section 2-7.36(E)(4)(g), Unified Land Development Regulations.

* * *

Sec. 68-44. - Eligibility.

(a) Subject to satisfaction of and compliance with the requirements contained in this Chapter, permits may be issued under this Division to the following:

- (1) Utility corporations or companies, including county and municipal utilities, that will be servicing the installed facility.
- (2) Contractors responsible for the installation of any utility facility or structure subject to this Article.
- (3) Private citizens, corporations or organizations with a reasonable and legitimate purpose in using the rights-of-way, which purpose poses no threat or danger to the public health, safety or welfare.
- ~~(4) A Registrant as defined in Section 68-153.~~

(b) In those cases in which the services to be provided are subject to the City regulations relating to underground utilities, the applicant must be a holder of a certificate of competency issued by the Board of Examiners of Underground Utilities Contractors.

Sec. 68-45. - Application.

Except as otherwise provided herein, applications for a City engineering permit under this Division shall be subject to the following requirements:

- (1) Applications for a City engineering permit under this Division, accompanied by the appropriate fee, shall be submitted to the City Engineer.
- (2) Applications may be obtained from the Engineering Division of the Public Works Department, located at 95 Triplet Lake Drive, Casselberry, Florida 32707. Applications shall be submitted to the Engineering Division.
- (3) A minimum of two weeks is normally necessary for processing and approval of permit applications. The applicant must take this into consideration in planning proposed construction or installation or other work in the rights-of-way.
- (4) Information provided by the applicant in completing the application form shall be typewritten or printed in ink. The application, and required documents and drawings, must be legible, and all requested information must be provided prior to review.
- (5) Applications shall include a hard copy and electronic copy in both AutoCAD and PDF formats, of the following information:

- a. Engineered drawings (24" x 36" or 30" x 40") signed and sealed by a Professional Engineer licensed in the State of Florida, showing

the location of the proposed installation of facilities in the rights-of-way shall be to scale and show:

1. The offset from the centerline of the rights-of-way or road to the proposed utility installation;
 2. The road rights-of-way and pavement width;
 3. The distance from the edge of the pavement to the facility or utility;
 4. Within a minimum of 100 feet of work all above ground infrastructure and improvements, including without limitation, pavement, curb, sidewalks, buildings, utility poles, street furniture, landscaping, etc.; and all below ground infrastructure and utilities, including without limitation, foundations, tanks, utilities, etc. within limits of work;
 5. The location of all other utilities and facilities, including wireless communication facilities, within the area of work;
 6. The facilities to be installed and their size;
 7. Identification of the parcels consisting of the nearest adjacent property and the zoning and jurisdiction of such property;
 8. One or more typical cross sections as required to adequately reflect the location of the facility. The minimum vertical clearance above or below the parkway or pavement shall be shown.
 9. Additional information, such as the location in relation to the nearest town, major road intersections, bridges, railroad crossings and other physical features, shall be indicated on the drawings and identified.
- b. A simple key map showing the location of the proposed facility shall be included, either on the drawing itself or as a separate sketch, to assist all concerned with the general location of the installation, indicating the applicable section, township and range.
- c. Applicable stormwater analysis, traffic impact analysis, and maintenance of traffic plan for any disruption of the public rights-of-way.
- d. Information on the ability of the public rights-of-way to accommodate the proposed facility.
- e. If appropriate, given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;
- f. The means and methods in which the facilities shall be installed.
- g. For all facilities located within applicable proximity to an intersection, a sightline obstruction analysis signed and by a Professional Engineer licensed in the State of Florida,

h. For utilization of electric utility poles and facilities, documentation of compliance with the requirements of the electric utility's franchise agreement regarding facilities for other, non-electric utility services or products.

i. The timetable for construction of the project or each phase thereof, and the areas of the City which will be affected.

(6) Upon approval of the application and payment of the fee, one copy of the application, with attachments and the permit, will be returned to the applicant, with a City approval stamp to be used as a field plan set.

(7) Applications for access to county or state roads shall be submitted to the appropriate office of the county or state department of transportation, which will then forward the application to the City for review and comment.

(8) If the plans or drawings submitted showing the proposed location for installation of the facility in the public rights-of-way require revision for any reason prior to commencing construction, the applicant shall promptly submit revised plans and drawings to the City Engineer.

* * *

Sec. 68-47. - Fee.

(a) Fees for engineering permits issued under this Division shall be established by resolution set by the City Manager and City Commission, and in accordance with Section 337.401, F.S., as amended, as applicable. Except as provided in this Article, fees shall be paid by the applicant upon submission of the permit application.

(b) Checks, money orders or cash shall be made payable to the City for the exact fee amount. Payment shall be made to the Community Development Department.

(c) Work commenced without a permit will incur a penalty fee as prescribed by the ~~City Manager and City Commission~~. Emergency repair work is excluded from this fee.

* * *

Sec. 68-54. - Compliance with applicable regulations and site plan.

(a) The applicant for any permit assumes full and total responsibility for compliance with this Article, supporting regulations, additional requirements of the ~~City Manager and City Commission~~, and county, state or federal laws, ordinances or other directives which may apply to the proposed work.

(b) The applicant for a permit assumes the responsibility to adhere to the approved site plan post-construction.

~~**Sec. 68-55. Time of review for permit application involving wireless communication facilities.**~~

~~The City's time frame for review and processing of permit applications to place, construct, or modify a wireless communication facility shall be subject to the standards and timeframes set out in applicable state and federal law.~~

~~**Sec. 68-56. Supplemental Requirements for Communication Facilities.**~~

~~In addition to the requirements set forth herein, the following provisions are applicable to all engineering permit applications for Communication Facilities, as defined in Section 68-153.~~

~~(1) Applications.— As part of any permit application to install or place a new Communications Facility, or to collocate on or maintain, modify or replace an existing Communications Facility in public rights of way, the Registrant shall provide the following:~~

- ~~a. — The location of the proposed Communication Facility, including a description of the Facilities to be installed, and the type of Facility (e.g. conduit, fiber, twisted pair, etc.), the number of fibers or other cable being installed, and the approximate size of Facilities that will be located in public rights of way.~~
- ~~b. — A statement or statements certifying that the construction of wireless communication facilities proposed to be located in the public rights of way will comply with applicable standards as set forth in the Florida Building Code, the state of Florida Department of Transportation manual of uniform minimum standards for design, construction and maintenance for streets and highways, and applicable electrical codes; and describing the proposed wireless communication facility's capacity to permit multiple users, including an example of the number and type of antennas or other attachments that can be accommodated on support structures. Any wireless communication facility which exceeds its support structure's loading capacity, which causes any pole or structure to exceed its loading capacity, or which does not conform to applicable electrical codes, shall not be permitted in the public rights of way.~~
- ~~c. — Such additional information as the City finds reasonably necessary, with respect to the placement or maintenance of the Facility that is the subject of the permit application, to review such permit application.~~
- ~~d. — In addition to the above requirements, applicants for wireless communication facilities shall submit the materials as described in Section 2-7.36(E)(3)(d), Unified Land Development Regulations.~~

~~(2) Within forty five (45) days after completion of any placement or maintenance of a Communications Facility in the public rights of way, the Communication Services Provider shall provide the City with record drawings showing the final location of such Facility in the public rights of way. Upon request by the City~~

~~Engineer, the Registrant shall also provide the City with s-built surveys within forty five (45) days after completion of any placement or maintenance of a Communications Facility in the public rights-of-way. The record drawings and as-built surveys shall be provided to the City at no cost.~~

Section 3. Repeal and Replacement of Article IV, “Communications Rights-of-Way”. That Article IV, “Communications Rights-of-Way” of Chapter 68, “Roadway and Utility Construction” of the City Code of Ordinances, is hereby repealed in its entirety and replaced with the following:

ARTICLE IV. - COMMUNICATIONS RIGHTS-OF-WAY

Sec. 68-151. - Title.

This Article shall be known and may be cited as the City of Casselberry Communications Rights-of-Way Ordinance.

Sec. 68-152. - Intent and purpose.

It is the intent of the City of Casselberry to promote the public health, safety and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the City of Casselberry; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including Section 337.401, F.S., as amended, the City of Casselberry's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications services providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City of Casselberry shall be governed by and shall comply with all applicable federal and state laws. These regulations are specifically subject to state and federal law limitations.

Sec. 68-153. - Definitions.

For purposes of this Article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

Abandonment shall mean the permanent cessation of all uses of a Communications Facility for a period of 180 or more consecutive days; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way. A wireless infrastructure provider's failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine months after the application is approved shall constitute abandonment.

Antenna shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Applicable Codes shall mean a uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes objective design standards adopted by ordinance which may require that a new utility pole replacing an existing utility pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements. The term includes objective design standards adopted by ordinance which may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

As-built plans shall mean final and complete drawings in a format as specified by the City, submitted upon completion of a project, signed and sealed by a professional surveyor or mapper as defined in Section 472.005, F.S., that reflect all changes made during the construction process, and show the exact dimensions, geometry and location of all elements of the work completed under the permit.

Base station shall mean a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a communication tower as defined in Section 5-21.2, Unified Land Development Regulations, or any equipment associated with a tower. "Base station" includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological

configuration (including distributed antenna systems (“DAS”) and small-cell networks).

3. Any structure other than a tower that, at the time the relevant application is filed with the City under this subsection, supports or houses equipment described in subsections (1) and (2) of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the city under this subsection, does not support or house equipment described in subsections (1) and (2) of this definition.

City shall mean Casselberry, Florida.

City Utility Pole shall mean a utility pole owned by the City in the public rights-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 public rights-of-way within a retirement community that: (a) is deed restricted as housing for older persons as defined in Section 760.29(4)(b), F.S.; (b) has more than 5,000 residents; and (c) has underground facilities for electric transmission or distribution.

Collocate or Collocation shall mean to install, mount, maintain, modify, operate, or replace one or more wireless communication 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.

Communications Facility or Facility or System shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the City and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. For the purposes of this article, the term shall include wireless communication facility or wireless communication facilities.

Communications Services shall mean the definition in Section 202.11(1), F.S., as may be amended, and also includes, but is not limited to wireless services, as defined herein.

Communications Services Provider shall mean any Person including a municipality or county providing communications services through the placement

or maintenance of a Communications Facility in Public Rights-of-Way. "Communications Services Provider" shall also include any Person including a municipality or county that places or maintains a Communications Facility in Public Rights-of-Way but does not provide Communications Services. The term includes Pass-Through Providers and Wireless Infrastructure Providers.

Dealer means any person, municipality or county providing communications services to an end user in the City through the use and operation of communications facilities installed, placed and maintained in the public rights-of-way, whether owner or leased, and who has registered with the Florida Department of Revenue as a provider of communications services pursuant to Chapter 202, F.S. This term is intended to include any "Reseller."

Eligible Facilities Request shall mean any request for modification of an existing tower or base station in the public rights-of-way that, in accordance with the definitions contained in FCC regulations codified at 47 C.F.R. § 1.40001, does not substantially change the physical dimensions of the existing structure and is requesting:

- (1) Collocation of new transmission equipment;
- (2) Removal of existing transmission equipment; or
- (3) Replacement of existing transmission equipment.

FCC shall mean 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 shall mean 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 Facilities shall mean the facilities for a communications system that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

Pass-Through Provider shall mean any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the City pursuant to Chapter 202, F.S. A pass-through provider can also be a wireless infrastructure provider or a communications facility provider as defined in this section.

Permit shall mean a Communications Rights-of-Way Utilization Permit required pursuant to Section 68-156 prior to commencement of any placement or maintenance of facilities within the public rights-of-way.

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 only to the extent the City acts as a communications services provider.

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

Public Rights-of-Way shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley for which the City is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Public Rights-of-Way" shall not include private property. "Public Rights-of-Way" shall not include any real or personal City property except as described above and shall not include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

Reasonably shall mean not excessive, moderate and in accordance with sound judgment and industry standards.

Registrant shall mean a Communications Services Provider that has registered with the City of Casselberry 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 of Casselberry.

Repurposed structure shall mean an existing structure that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its primary existing purpose while also supporting the attachment of communications facilities, through stealth design or otherwise, that is

approximately in the same location as the existing structure and in such a manner that does not result in a net increase in the number of structures located within the Public Rights-of-Way and does not interfere with pedestrian or vehicular access, and is compliant with applicable codes. To “repurpose an existing structure” shall mean the act of renovating, reconfiguring or replacing an existing structure as described above.

Reseller shall mean any person providing Communications Services within the City over a Communications System, or portion thereof, for which a separate charge is made, where that person does not place or maintain, nor own or control, any of the underlying facilities in the Public Rights-of-Way by either interconnecting with the facilities of a Communications Services Provider utilizing the Public Rights-of-Way or by leasing excess capacity from a facility-based Communications Services Provider.

Stealth Design shall mean a method of camouflaging any tower, antenna or other Communications Facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure or a wrap.

Small wireless facility shall mean a wireless communication facility that meets the following qualifications:

- (1) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- (2) 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.

Surrounding Neighborhood shall mean the area within a six hundred (600) foot radius of a communications facility site or proposed communications facility site.

Temporary facility shall mean any structure that can be readily and completely dismantled or removed from the site when the authorized use terminates.

Utility Pole shall mean a pole or other similar structure that is used in whole or part to provide communication 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 the City grants a waiver for the pole. The term does not include a City utility pole, nor does it include any other utility pole exempt from such term pursuant to Section 337.401, F. S.

Wireless communication facility (WCF) means any staffed or unstaffed location for the transmission and/or reception of radio frequency signals, or other personal wireless communications, as defined in the Telecommunications Act of 1996, and usually consisting of an antenna or antenna array, transmission cables, feed lines, equipment cabinets, towers, cabling, antenna brackets, and other such equipment. The following shall be deemed a wireless communication facility: new, replacement, or existing towers, government-owned towers, modified towers, collocation on existing towers or base stations, attached concealed and non-concealed antenna, dual purpose facilities, DAS, small cell, concealed towers, and non-concealed towers, so long as those facilities are used in the provision of personal wireless services as that term is defined in the Telecommunications Act.

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

Wireless Provider shall mean a wireless infrastructure provider or a wireless services provider.

Wireless Services shall mean any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless communication facilities.

Wireless Services Provider shall mean a person who provides wireless services.

Wireless Support Structure shall mean a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or cable of supporting wireless communication facilities. The term does not include a utility pole.

Wrap shall mean an aesthetic covering depicting scenic imagery, such as vegetation, which blends with the surrounding area.

Sec. 68-154. – General Prohibitions.

- (a) Wireless communication facilities, other than small wireless facilities and micro wireless facilities, are prohibited within the public rights-of-way.
- (b) Wireless communication facilities are prohibited on arms used to support or mount traffic control signals and warning signals and on arms attached to utility poles.

Sec. 68-155. - Registration for placing or maintaining communications facilities in public rights-of-way.

(a) **Applicability.** All persons, including, but not limited to, a communications services provider, pass-through provider, or wireless infrastructure provider, that desires to place or maintain a communications facility in the public rights-of-way shall first register with the City in accordance with this article before being eligible to receive a permit. Subject to the terms and conditions prescribed in this article, and issuance of a permit, a registrant may place or maintain such facilities in public rights-of-way.

(b) **Application Requirements.** Every communications services provider shall file a single registration with the City, on a form approved by the City Engineer or designee, which shall, at minimum, include the following information:

- (1) Name of the applicant under which it will transact business in the City and, if different, in the State of Florida; and
- (2) Name, address and telephone number of the applicant's principal place of business in the State of Florida and any branch office located in the City, or, if none, the name, address and telephone number of the applicant's national headquarters and its registered agent in Florida; and
- (3) Name, 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; and
- (4) The type of communications services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a pass-through provider or is intending only to place and maintain pass-through facilities, as the case may be, and whether the applicant currently remits or intends to remit Communications Services Tax, as authorized in Ch. 202, F.S.; and
- (5) A copy of both the applicant's resale certificate and certificate of registration issued by the Florida Department of Revenue to engage in the business of providing communications services in the State of Florida, if any; and

(6) A copy of the applicant's certificate of authorization, public convenience and necessity of other similar certification issued by the Florida Public Service Commission, the FCC, or other federal or state authority, if any; and

(7) If the applicant is a corporation, proof of authority to do business in the state of Florida, including the number of the corporate certification; and

(8) Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article, which acknowledgment shall not be deemed an agreement.

(c) **Review of Registration.** The City shall review the information submitted by the applicant. Such review shall be by the City Manager or designee. If the applicant submits information in accordance with subsection (b) above, 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 (b) 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. An applicant has 30 days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in section 68-164.

(d) **Application Fees.** No registration application fees shall be imposed for registration under this article.

(e) **Limits of Registration.** An effective registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this article governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the City or another person's facilities. Registration does not excuse a communications services provider from complying with all applicable City ordinances, codes or regulations, including this article.

(f) **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.

(g) Non-exclusivity. Registration does not in and of itself establish a right to place or maintain or priority for the placement or maintenance of a communications facility in public rights-of-way within the City but shall establish for the registrant a right to apply for a permit, if permitting is required by the City. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional City ordinances, as well as any state or federal laws that may be enacted. Registration does not excuse or exempt a communications services provider from having to obtain a local business tax receipt, if required, from the City in accordance with the City code.

(h) Registration Renewal. A registrant shall renew its registration with the City by October 1 of even numbered years in accordance with the registration requirements in this article, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (b), a registrant shall provide updated information to the City. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the City restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this article.

(i) Effect of Registration. In accordance with applicable City ordinances, codes or regulations, a communications rights-of-way permit shall be required of a communications services provider that desires to place or maintain a communications facility in public rights-of-way. An effective registration shall be a condition of obtaining such permit. Notwithstanding an effective registration, permitting requirements shall apply. Subject to the terms and conditions prescribed in this article, a registrant may apply for a permit to place or maintain a communications facility in public rights-of-way.

(j) Applicability to resellers. A reseller, which by definition does not place or maintain communications facilities in the public rights-of-way, is not required to register with the City.

Sec. 68-156. – Permit Required.

(a) *Communications Rights-of-Way Permit Required.* Unless otherwise exempt as provided herein, a communications services provider shall not commence to place, modify, or maintain a communications facility in public rights-of-way until all applicable permits, including, but not limited to, a communications rights-of-way permit issued in accordance with this article, have been issued by the City or other appropriate authority. An effective registration shall be a condition of obtaining a permit. A permit may be obtained by or on behalf of a registration having an effective registration if all permitting requirements are met. The communications services provider acknowledges that as a condition of granting

such permits, the City may impose reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit.

(b) *Permit Not Required.*

(1) A registrant shall be allowed to perform emergency maintenance within the public rights-of-way without first obtaining a permit. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency, and may be required to obtain an after-the-fact permit within 15 days of completing the emergency work, if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency.

(2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation in the public rights-of-way. If routine maintenance requires the closure of the public rights-of-way, a permit shall be required.

(3) A permit shall not be required for replacement of an existing small wireless facility with a small wireless facility that is substantially similar or of the same or smaller size.

(4) A permit shall not be required for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights of-way and who is remitting taxes under Chapter 202, F.S. At least 30 days prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, the registrant shall submit a certification of the micro wireless facility's dimensions to the City for review. If the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way.

(5) Prior to performing any work authorized herein without a permit, a registrant shall provide reasonable advance written notice to the City identifying the areas where such work will occur, scope of work, and dates(s) and duration of work to be performed.

(c) *Pre-Application Conference.* To minimize issues related to permit application, prior to submitting materials for a permit application, a registrant must request a pre-submittal meeting with the City Manager or designee to discuss the registrant's plans and network goals for placing and maintaining wireless communications facilities in the public rights-of-way. The City shall undertake efforts to accommodate a registrant's request within ten (10) business

days of a request.

(d) *Application Requirements.* Except as otherwise provided by applicable law, permit applications shall be in a form approved by the City, and shall include such information as the City finds reasonably necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application. Applications shall include, at minimum, the following:

(1) *Site Plan.* A site plan, in the form of a signed and sealed plans from a Florida licensed professional engineer of record that show the location of the proposed facilities, in a hard copy format and electronic format as specified by the City Engineer. The site plan shall also include:

(a) A description of the facilities to be installed, where the facilities are to be located, and the size, dimensions and height of the proposed facilities;

(b) For new communications facility poles or wireless support structures, how many collocations the new poles or structures can support in terms of capacity;

(c) Sufficient specificity as to demonstrate compliance with the Florida Building Code, specifically in terms of compliance with ASCE-7-10, or latest edition for requirements of wind load;

(d) For new communication facility poles, wireless support structures, or any excavation work, a geotechnical report for the existing soil conditions, or a soil statement by a Florida licensed professional engineer, attesting to the soil conditions; and

(e) A description of existing and proposed landscaping.

(2) *Description of installation or construction to include:*

(a) A description of the type of facility and the manner in which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques); and

(b) A description of stealth design to be utilized. Additionally, each application for a permit to place a communications facility pole or a wireless support structure in the public rights-of-way shall include photographs showing the location and condition of the surrounding neighborhood, and a description of the stealth design techniques proposed to minimize the visual impact of the communications facility pole or wireless support structure and graphic depictions accurately representing the visual impact of the communications facility pole or wireless support structure when viewed from the street and from adjacent properties.

(c) Alternatively, a signed and sealed statement from a Florida state licensed professional engineer that stealth design cannot be utilized on any particular facility and documentation demonstrating to the satisfaction of the City Engineer that the proposed communications facility cannot employ stealth design and the proposed exterior location and configuration of equipment are the minimum equipment necessary to achieve the needed function.

(3) A temporary sidewalk closure plan, if appropriate given the facility proposed, to accommodate placement or maintenance of the communications facility.

(4) A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate, given the facility proposed, to accommodate installation and/or modification of the communications facility.

(5) Information on the capacity of the public rights-of-way to accommodate the cumulative impact of (i) the proposed facility together with (ii) other existing and proposed facilities in the adjacent public rights-of-way, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons).

(6) Based on the facility proposed, a restoration plan and an estimate of the cost of restoration of the public rights-of-way.

(7) The timetable for placement or maintenance of the proposed facility or each phase of the placement or maintenance thereof, and the intended areas of the City to be served by the communications facility.

(8) For project permits that involve multiple collocations or attachments to existing structures, repurposed structures or installation of multiple new wireless support structures, the applicant shall only be required to provide a structural certification by a Florida licensed professional engineer as to each type of facility, not for each facility proposed as part of the overall project. No such certification is required with respect to wireline pole attachment installations made in the communications space of utility poles.

(9) The applicant shall certify that any and all of its abandoned facilities within the public rights-of-way has or have been removed, indicating the prior location of such abandoned facilities.

(10) In order to assess the impacts on the public rights-of-way resources and the potential for collocations or use of repurposed structures, identification of all communications facility poles and wireless support structures in the public rights-of-way within a five hundred (500) foot radius of the proposed new communications facility (such information may be produced without certification

as to correctness to the extent obtained from other registrants with facilities in the public rights-of-way). No such identification is required with respect to wireline pole attachment installations made in the communications space of utility poles or for small wireless facilities.

(11) In order to assess the impacts on the public rights-of-way resources, the impact on surrounding neighborhoods and other properties within the permit area, and the potential for collocations or use of existing structures, identification of all above-grade structures in the public right-of-way within a five hundred (500) foot radius of the proposed new communications facility (including utility poles, equipment boxes, below-grade and above-grade communications service facilities and antennae) shall be provided (such information may be produced without certification as to correctness to the extent obtained from other registrants with facilities in the public rights-of-way). No such identification is required with respect to wireline pole attachment installations made in the communications space of utility poles or for small wireless facility installations.

(12) *Affidavits.*

(a) An application for a permit to install new utility pole(s) (as opposed to collocations, applications to use an existing structure, or wireline pole attachment installations made in the communication space of utility poles) shall include an affidavit from a Florida licensed professional engineer with a statement that it is not feasible to locate applicant's proposed facilities on existing poles along the proposed route and all the facts relied upon in the applicant's attempt to both collocate or attach the proposed new communications facilities on existing structures within the public rights-of-way, as well as on property outside the public rights-of-way, within a five hundred (500) foot radius of the proposed new communications facility.

(b) An application for collocation shall include an affidavit from the owner of the facility or existing structure being collocated upon that the applicant has been granted permission to attach to the facility or existing structure being collocated upon or attached to.

(c) An application from a wireless infrastructure provider to place a new utility pole in the public rights-of-way to support the collocation of small wireless facilities shall include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved. 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.

(d) The applicant shall certify that any and all of its abandoned facilities within the public rights-of-way have been removed, indicating the prior location of such abandoned facilities.

(13) *Registrant agrees to indemnification.* A statement shall be included within the application for a permit that by execution of the application and by applying for the permit, the registrant agrees to be bound to the City with respect to the indemnification provisions set forth in Section 68-168 as though such indemnification provisions are set forth verbatim in the permit application.

(14) *Additional information as reasonably required for review of permit application.* Such additional information as the City Engineer 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, which information may include, but is not necessarily limited to: (i) evidence satisfactory to the City Engineer that the proposed facility will not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive or other dangerous chemicals; and (ii) a written statement from a qualified radio frequency engineer that the construction and placement of the proposed facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent properties.

(15) *Application Submittal Appointment.* To ensure compliance with federal and state law, applicants shall request and schedule an application submittal appointment with the City Manager or designee. Permit application submittal appointments shall be scheduled by the City, at the City's sole discretion, upon no less than five business days advanced written notice by the applicant. No permit application shall be deemed accepted by the City unless received at a scheduled permit application submittal appointment. No more than one consolidated collocation permit application, for a maximum of thirty (30) small wireless facilities, or five individual permit applications shall be received at a permit application submittal appointment.

(16) *Permit Applicant Not Registrant.* If the applicant for the permit is not the registrant, the application must include a statement of authority by the registrant for the applicant to act on behalf of the registrant. In addition, if the applicant is a contractor, the application must include the contractor's license or registration confirming the contractor's authority to perform construction in the City and statements as to whether the contractor has any open permits with the City, and if so, the permit identification number or information.

(17) *Information regarding height limitations.* For applications for installation of a utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the heights of other utility poles located in the public rights-of-way within five hundred (500) feet of the proposed

location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole, the applicant shall so certify.

(18) *Revised Plans.* If the plans or drawings submitted showing the proposed location for installation of the facility in the public rights-of-way require revision for any reason prior to commencing construction, the communications services provider shall promptly submit revised plans and drawings to the City Engineer.

(19) *Consolidated Collocation Application.* An applicant seeking to collocate small wireless facilities within the City's boundaries may, at the applicant's discretion, file a consolidated application with the City and receive a single permit for the collocation of up to thirty (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.

(20) *Stop Work Order.* The City Manager or designee may issue an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety, or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable, to appropriate enforcement remedies as set forth herein.

(21) *Communications Services Tax In Lieu of Permit fee.* A registrant that places or maintains communications facilities in the public rights-of-way and that pays communications services taxes shall not be required to pay a permit fee since the City has elected to collect the communications services tax pursuant to Ch. 202, F.S., as same may be amended from time to time. Pass-through providers shall pay a fee pursuant to Section 337.401 (5), F.S., as same may be amended from time to time and Section 68-175.

Sec. 68-157. – Permit Review.

(a) *Permit Review Process.* The City shall process and issue permits for the placement or maintenance of a small wireless facility, micro wireless facility, or utility pole for collocation of a small wireless facility in the public rights-of-way subject to the following requirements:

(1) Within 14 days after the date of receiving the application, the City shall determine and notify the applicant by electronic mail to the email address provided in the application as to whether the application is complete. If an application is deemed incomplete, the City shall specifically identify the missing information. An application is deemed complete if the City does not provide notification to the applicant within 14 days.

(2) If an applicant seeks to place or collocate a small wireless facility in the public rights-of-way, the City may, within 14 days after the date of filing the

application, request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative City utility pole or support structure or may place a new utility Pole. 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 agreed upon new location and all other locations in the application. If an agreement is not reached, the applicant must notify the City of such non-agreement and the City must grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail. If the City does not use the 30-day negotiation period provided herein regarding collocation alternatives, 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.

(3) The City shall process all applications on a nondiscriminatory basis. Except as extended by the 30-day negotiation period provided in subsection (2) above, if the City fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. The application review period may be extended upon mutual agreement by the parties.

(4) A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.

(5) 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 provisions of this Article. If the application is denied, the City shall specify in writing the basis for denial, including the specific code provisions on which the denial is based, and shall send the documentation to the applicant by electronic mail on the day the City denies the application. 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. Failure by the applicant to timely resubmit the application shall result in a final denial of the application. The City shall approve or deny a timely filed 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.

(b) *Expert Review.* The City may require that all permit applications be reviewed by a third-party consultant or expert at the expense of the applicant for compliance with the requirements set forth herein. No permit shall be issued to any applicant that has not fully reimbursed the City for the third-party review fees, which shall be limited to the specifically identified reasonable expenses incurred in the review.

(c) *Factors Considered in Granting Permit.* In addition to any applicable

requirements or standards imposed by this article, the City Engineer shall consider the following factors in determining whether to issue a permit to a registrant for the placement or maintenance of a communications facility within the public rights-of-way:

(1) The sufficiency of space to accommodate all of the present and pending applications to place communications facilities and pending or planned applications to place and maintain facilities in that area of the public rights-of-way;

(2) The sufficiency of space to accommodate City plans for public improvements or projects adopted as part of its community investment capital improvements plan that the City determines in the best interest of the public;

(3) The impact on traffic and traffic safety;

(4) The proximity to and/or interference with other private or public uses within or outside the public rights-of-way, including, but not limited to, utilities, easements, traffic control devices, and other uses;

(5) Compliance with the objective design standards set forth in Section 2-7.36(E)(4) of the Unified Land Development Regulations;

(6) Proposed ingress and egress (where applicable);

(7) The availability of suitable existing structures or alternative technologies not requiring the installation of the communications facility as proposed;

(8) The proximity of the communications facility to residential structures and residential district boundaries;

(9) The nature and uses on adjacent and nearby properties;

(10) Surrounding topography, tree coverage and foliage.

(d) *Denial of Collocation of Small Wireless Facilities.* 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 regarding pedestrian access or movement.

(4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

(5) Fails to comply with applicable codes, Unified Land Development Regulations, and the applicable provisions of this article.

(e) *Limited Purpose of Communications Rights-of-Way Permit.* A communications rights-of-way permit issued by the City constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create any property right or other vested interest, or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way. Permits shall be granted only for specific routes or locations in the public rights-of-way and for such term as described in the permit. The City's issuance of a permit shall not be construed as a warranty that the placement of any communications facility is in compliance with applicable codes, regulations or laws.

(f) *Permit processing timeframes; "shot clock".* The City's action on proposals to place or maintain communications facilities shall be subject to the applicable standards and time frames set out in Section 365.172, F.S., as amended; and 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as amended. All federal and state "shot clock" timeframe guidelines that apply to any particular permit are hereby recognized by the City, and the City will make all reasonable efforts to comply.

Sec. 68-158. – Design, Placement and Collocation Standards.

(a) *Objective Design Standards.* The placement of communications facilities anywhere in the public rights-of-way shall in all cases be designed in such a manner that the facilities and structures are placed in a safe location that do not interfere with the traveling public, and shall be designed to maximize compatibility with the surrounding neighborhood and minimize any negative visual impact on the surrounding neighborhood. Unless otherwise provided herein, all communications facilities shall be subject to the design standards set forth in Section 2-7.36(E)(2) of the Unified Land Development Regulations.

(b) *Waiver.* The City's design standards set forth Section 2-7.36(E)(2) of the Unified Land Development Regulations, may be waived upon mutual agreement of the City Engineer and Community Development Director upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense for a small wireless facility. The waiver shall be granted or denied within 45 days after the date the request is received by the City.

(c) *Zoning and Land Use Regulations.* Unless otherwise provided herein, all communications facilities shall be subject to the City's zoning and land use regulations, including the performance, construction and design standards set forth in Section 2-7.36 of the Unified Land Development Regulations.

(d) *Height.* Wireless communication facilities, including any attached antennas shall not exceed the following height requirements:

(1) *Utility Poles and Wireless Support Structures.* The height of a new pole or wireless support structure within the public rights-of-way shall be in accordance with Section 2-7.36(E)(2), Unified Land Development Regulations.

(2) *Small Wireless Facilities.* The height of a small wireless facility, including any attached antennas, shall not exceed ten feet above the utility pole or wireless support structure upon which the small wireless facility is to be collocated. Unless waived by the City, the height for a new utility pole installed in conjunction with the collocation of a small wireless facility is limited to the tallest existing utility pole as of July 1, 2017, located in the same public right-of-way, 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 not exceed 50 feet. Small wireless facilities are prohibited on utility poles, wireless support structures, or similar structures 15 feet or less in height unless waived by the City upon a showing of good cause by the City Engineer or designee.

(e) *Collocation of Small Wireless Facilities on City Utility Poles.*

(1) Notwithstanding anything to the contrary contained herein, the City may reserve space on City utility poles for future public safety uses. If replacement of a City utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to the make-ready provisions of this ordinance and the replaced pole shall accommodate the future public safety use.

(2) The City shall not enter into an exclusive arrangement with any person for the right to attach equipment to City utility poles.

(3) The City hereby levies, establishes, and sets an annual rate that shall be paid by all those applicants who file an application to collocate small wireless facilities on City utility poles in the amount of \$150 per pole per year. The initial payment shall be made as a condition of the granting of the permit, with remaining annual payments to be made in all subsequent years on the same date.

(4) For a City utility pole that supports an aerial facility used to provide communications services or electric service by another, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 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.

(5) For a City utility pole that does not support an aerial facility used to provide communications services or electric service by another, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole

to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the City may require the applicant seeking to collocate a small wireless facility to 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 by the City, 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 may 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.

(6) The City may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(f) *Placement of Utility Poles By Wireless Infrastructure Providers In the Public Rights-of-Way In Support of Collocation of Small Wireless Facilities.* A wireless infrastructure provider may apply to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved by the City. The City shall accept and process the application in accordance with any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way, including but not limited to the provisions of Section 68-158, provisions applicable to wireless communication facilities set forth in Sections 2-5.3 and 2-7.36 of the City Unified Land Development Regulations, and any applicable historic preservation provisions and requirements set forth in the City Code, as amended.

(g) *Prohibited Collocations, Attachments, Installations, and Services Not Authorized.* This section does not authorize, and the City hereby prohibits, the following:

(1) The collocation or attachment of wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately-owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(2) The provision of any voice, data, or video services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the public rights-of-way.

(3) This subsection does not affect provisions relating to pass-through providers contained in this Section and in Section 337.401(6), F.S.

(4) This subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by the City's underground utilities ordinance.

(5) The collocation of small wireless facilities or micro wireless facilities on a City utility pole, or the erection of a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

68-159. – General conditions.

As a condition of allowing the placement or maintenance of a communications system or any communications facility in the public rights-of-way, and under additional authority granted pursuant to Chapter 337, F.S., the City hereby imposes the following rules, regulations and general conditions. Unless otherwise provided in this article, these rules, regulations and general conditions shall apply to all communications services providers, including those that are pass-through providers irrespective of whether they place and maintain only conduit, dark fiber or pass-through facilities.

(a) *Compliance with Laws.* A communications services provider shall at all times comply with and abide by all applicable provisions of state and federal law and City ordinances, codes and regulations in placing or maintaining a communications facility in the public rights-of-way. Except as provided herein, the placement of a communications facility anywhere in the corporate limits of the City shall in all cases be subject to the City's zoning and land use regulations, including those set forth in Section 2-7.36, of the City Unified Land Development Regulations. The burden of proof shall at all times be on the communications services provider to establish compliance with requirements under this article and state and federal law.

(b) *Due Care.* A communications services provider 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.

(c) *Power to Restrict Area.* To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new

or additional communications facilities within a particular area of the public rights-of-way and deny the issuance of a permit.

(d) *Responsibility for Contractors.* Every communications services provider that is registered with the City shall be liable for the actions of contractor(s) hired by them to perform the placement or maintenance of facilities in the public rights-of-way and shall be responsible for making sure that such contractor meets and complies fully with the rules, regulations and general conditions set forth in this article.

(e) *Provision and Form of As-Built Plans.* Within forty-five days after completion of any placement or maintenance of a communications facility in the public rights-of-way, the communications services provider shall provide the City with as-builts showing the final location of such facility in the public rights-of-way. Upon request by the City Engineer, the communications services provider shall also provide the City with as-built plans within forty-five (45) days after completion of any placement or maintenance of a communications facility in the public rights-of-way. The as-built plans shall be provided to the City at no cost.

(f) *Production and Filing of As-Built Plans.* Every registrant shall produce and keep on file at its principal place of business an accurate and complete set of as-built plans of all facilities placed and maintained in the public rights-of-way. The location and identification of facilities and the production of as-built plans shall be at the sole expense of the communications services provider. Within thirty (30) days of any written request by the City Engineer, the communications services provider must provide to the City, at no cost, copies of complete sets of as-built plans for the indicated public rights-of-way. The failure of the communications services provider to produce, keep on file, or provide to the City as-built plans as required under this article is sufficient grounds for the City to deny the issuance of permits in the future.

(g) *Removal of Facilities Placed Without Permit.* Any communications facilities placed in the public rights-of-way by the communications services provider without first having obtained the required permit shall be removed within thirty (30) days of written notice by the City to remove the same and in default of compliance with such notice, such Facilities may be removed by order of the City Engineer and the cost of removal shall be borne and paid by the communications services provider upon demand.

(h) *Underground.* Unless otherwise exempt, the placement or maintenance of all communications facilities shall be underground unless otherwise approved in writing by the City Engineer. In order for the City Engineer to approve alternative placement, the applicant shall demonstrate in writing to the satisfaction of the City Engineer why the proposed facilities cannot be placed or maintained underground. Communications facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the City Engineer. All communications facilities shall have consistent alignment parallel with the edge of pavement, and a thirty-six inch (36") depth of cover for, and two feet (2') of

horizontal clearance from, other underground utilities and their appurtenances. Where approved by the City Engineer, facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as determined by the City Engineer.

(i) *Above-Ground Approval.* Attachment to any utility pole or other above-ground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument. Location on any utility pole or other above-ground structure shall not be considered a vested interest of the communications services provider or wireless infrastructure provider. Such utility poles or structures, if owned by the communications services provider or wireless infrastructure provider, must be removed or modified by the communications services provider or wireless infrastructure provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby.

(j) *Undergrounding of Electric Utility Facilities.* The communications services provider or wireless infrastructure provider shall, at the time the electric utility facilities or other communications facilities are placed underground or are required by the City to be placed underground, concurrently place its communications facilities underground without cost to the City.

(k) *Placement and Maintenance Standards.* The placement or maintenance of communications facilities in the public rights-of-way shall be performed in accordance with standards and requirements of the following, as is applicable and as each is in force at the time of the respective placement or maintenance of a communications system or Facility:

(1) the Florida Department of Transportation Utilities Accommodation Guide;

(2) the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways;

(3) the Trench Safety Act (Chapter 553, F.S.);

(4) the Underground Facility Damage Prevention and Safety Act (Chapter 556, F.S.);

(5) all applicable structural requirements with respect to wind speed under the Florida Building Code;

(6) the National Electrical Code or the ANSI National Electrical Safety Code; and

(7) 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.

(l) *Sunshine State One-Call.* Every communications services provider shall utilize, and if permissible, maintain membership in the utility notification one call system administered by Sunshine State One-Call of Florida, Inc.

(m) *Safety and Minimal Interference.* All placement and maintenance of

communication facilities in the public rights-of-way shall be subject to the City Code and other regulations of the City, and shall be performed with the least possible interference with the use and appearance of the public rights-of-way and the rights and reasonable convenience of the property owners who abut or adjoin the public rights-of-way and in compliance with the rules and regulations of the Florida Department of Transportation. The communications services provider shall at all times employ reasonable care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury or be a nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. All placement and maintenance shall be done in such a manner as to minimize to the greatest extent any interference with the usual travel on such public rights-of-way. The use of trenchless technology (i.e., microtunneling and horizontal directional drilling techniques) for the installation of communications facilities in the public rights-of-way as well as joint trenching or the collocation of facilities in existing conduit is strongly encouraged, and should be employed wherever and whenever feasible.

(n) *Correction of Harmful Conditions.* If, at any time, the City or other authority of competent jurisdiction reasonably determines that any communications facility is, or has caused a condition that is, harmful to the health, safety or general welfare of any person, then the communications services provider shall, at its own expense, promptly correct or eliminate all such facilities and conditions. In an emergency, as determined by the City Engineer, when the communications services provider is not immediately available or is unable to provide the necessary immediate repairs to any communications facility that is damaged or malfunctioning, or has caused a sunken area or other condition and, in the City Engineer's sole discretion, is deemed a threat to public safety, then the City, when apprised of such an emergency, shall have the right to remove, make repairs to or eliminate same with the total cost being charged to and paid for by the communications services provider upon demand.

(o) *Remedy of Hazardous Conditions.* If, at any time, a condition exists that the City or other authority of competent jurisdiction reasonably determines is an emergency that is potentially hazardous or life threatening to any person or is a threat to the health or safety of the general public, and to remedy such condition the City or other authority of competent jurisdiction reasonably determines that a communications services provider must temporarily relocate or temporarily shut off service or transmissions through a specific facility, then the City, as an appropriate exercise of its police powers, may order the communications services provider to immediately perform such temporary relocation or shut off until the condition has been remedied, and to do so at its own expense and without liability to or recourse against the City. In such an emergency, when the communications services provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific communications facility, then the City shall have the right to perform, or cause to be performed, such temporary relocation or shut off until the condition has been remedied with the total cost being charged to and paid for by the communications services provider upon demand.

(p) *Interference with Other Facilities.* A communications services provider shall not, in violation of any applicable laws or regulatory standards, design, place or maintain its communications facilities in a manner that will interfere with the signals or facilities of any municipal or county police, fire or rescue department, the facilities of any public utility, or the communications facilities of another communications service provider, including any cable service provider.

(q) *Relocation or Removal of Facilities.*

(1) The grant of a permit under this article shall not limit the authority and discretion of the City to regulate and control the public rights-of-way, and the city may at any time require the removal or relocation of a wireless or other communications facility within the rights-of-way in the interests of the public welfare, health, or safety, or as otherwise authorized by law. The registrant must remove its wireless facilities within thirty (30) days' notice that the City will remove a utility pole.

(2) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by applicable requirements of Sections 337.403 and 337.404, F.S. as amended, in addition to any other applicable City regulations or provisions of law. Unless otherwise provided by law, this City Code, or an agreement, a registrant shall bear all costs of any removal or relocation of its facilities.

(r) *Temporary Raising or Lowering of Facilities.* A communications services provider, upon request of any person holding a validly issued building or moving permit from the City to temporarily encroach on or perform moving operations in or across the public rights-of-way, shall temporarily raise or lower its communications facilities to accommodate such temporary encroachment or move. The expense of such temporary raising or lowering of facilities shall be paid by the Person requesting the same, and the communications services provider shall have the authority to require such payment in advance. The communications services provider shall be given not less than twenty (20) days advance written notice from such person to arrange for the temporary relocation, which notice must detail the time and location of the permitted activity, and not less than twenty-four (24) hours advance notice from the permit holder advising of the actual operation. The City is not subject to, nor shall it be liable for, any such expense or notice requirement for the moving of houses or structures unless performed by the City or its contractors.

(s) *Coordination.* In an effort to minimize the adverse impact on the public rights-of-way and other municipal improvements, a communications services provider may be required by the City Engineer to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein that is occurring or is scheduled to occur within a reasonable time from application for a permit as determined by the City Engineer. Every communications services provider shall make space in its trench and/or conduit within the public rights-of-way available to other providers consistent with the federal requirements of 47 U.S.C. 224. Every

communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(t) *Collocation and Joint Use.* A communications services provider, in an effort to minimize the adverse impact on the useful life of the public rights-of-way, shall, whenever possible, enter into joint use agreements with the City and other parties who have registered with, or who are expressly authorized by, the City to use its public rights-of-way; provided that the terms of such agreements are satisfactory to the communications services provider. Nothing herein shall mandate that the communications services provider enter into joint use agreements with parties other than the City. However, prior to placement of any new or additional underground conduit in the public rights-of-way, a communications services provider is required to certify in writing to the City Engineer that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the public rights-of-way as to the availability of existing or planned conduit that the particular communications services provider could reasonably utilize to meet its needs, and that no such conduit is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The communications services provider shall not be permitted to perform any placement or maintenance of facilities in those segments of the public rights-of-way where there exists vacant or available conduit, dark fiber or surplus fiber owned by the City, or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the communications services provider's system or network. Under such circumstances the communications services provider shall have the opportunity to enter into a use agreement or lease arrangement with the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a permit from the City.

(u) *Maintenance-of-Traffic.* In the event that placement or maintenance of communications facilities conducted by the communications services provider requires streets or traffic lanes to be closed or obstructed, the communications services provider must, pursuant to the requirements of existing or subsequently enacted City ordinances, obtain all necessary permits from City, and shall obtain approval of its maintenance-of-traffic plan from the City Engineer.

(v) *Restoration of the Public Rights-of-Way.* After completion of any placement or maintenance of a communications facility in the public rights-of-way or each phase thereof, the communications services provider shall, at its own expense and in a manner reasonably acceptable to the City, restore without delay the public rights-of-way so disturbed to its original condition immediately prior to the placement or maintenance work. If the communications services provider fails to make such restoration within thirty (30) days following the completion of such

placement or maintenance, the City may perform such restoration and charge the costs of the restoration to the communications services provider in accordance with Section 337.402, F.S., as it may be amended. The communications services provider shall, to the satisfaction of the City Engineer, maintain and correct any restorations made pursuant hereto for a period of twelve (12) months following the date of its completion. Failure to comply with this subsection shall be deemed sufficient grounds for denial of any future permits for the placement or maintenance of communications facilities.

(w) *Disruption or Destruction of Other Facilities or Property.* A communications services provider shall not knowingly place or maintain any Facility in a manner that shall in any way disrupt, displace, damage or destroy any sewer line, gas line, water main, pipe, conduit, wires, fiber-optics or other facilities, or property belonging to the City or any other person lawfully occupying the public rights-of-way, without first obtaining the explicit and specific consent of the City. The communications services provider shall bear all responsibility and costs for any such conduct where City consent has not been obtained and shall pay such costs upon demand.

(x) *Preservation of Public Rights-of-Way for Planned Public Projects.* To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way and may consider, among other things and without limitation, the sufficiency of space to accommodate all of the present communications facilities and pending applications to place and maintain facilities in that area of the public rights-of-way, the sufficiency of space to accommodate City announced plans for public improvements or projects that the City determines are in the public interest, the impact on traffic and traffic safety, and the impact upon existing facilities in the public rights-of-way.

(y) *City Not Liable.* Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law, neither the City nor its officials, boards, commissions, consultants, agents, employees or independent contractors shall have any liability to the communications services provider for any claims for any damages, costs, expenses or losses resulting from the City's breakage, removal, alteration or relocation of any facilities of any communications services provider which arose out of or in connection with any emergency or disaster situation or was, in the sole discretion of the City Engineer, deemed necessary to facilitate any public works project, public improvement, alteration of a City structure, change in the grade or line of any public rights-of-way, or the elimination, abandonment or closure of any public rights-of-way or was found by City Commission to be in the best interest of the health, safety or general welfare of the public; nor shall any charge be made by the communications services provider against the City for any related damages, costs, expenses or losses.

(z) *No Exemption from Permits.* Except as provided herein, nothing in this article shall exempt any communications Services provider from obtaining permits for work done within the public rights-of-way.

(aa) *Subject to Police Powers.* The rights of the communications services provider shall be subject to all lawful exercise of police power by the City, and to such other reasonable regulation of the public rights-of-way as the City shall hereafter by resolution or ordinance provide in the interest of the health, safety and general welfare of the public. Any inconsistency or ambiguity between the provisions of this article and any lawful exercise of the City's police power shall be resolved in favor of the latter.

(bb) *City Inspection.* The City shall have the right to make such inspections of a communications system or facilities placed or maintained in the public rights-of-way as it finds necessary to ensure compliance with this article. This article shall not be construed to create or hold the City responsible or liable for any damage to persons or property by reason of any inspection by the City of the placement or maintenance of a communications system or facility as authorized herein or failure by the City to so inspect.

(cc) *Access to Manholes.* The City, in the proper exercise of its municipal powers and duties with respect to the public rights-of-way, shall have access at any time to all hand holes and manholes in the City belonging to a communications services provider. Before accessing any manhole, the City will make a reasonable good faith effort to provide the communications services provider prior notice to afford an opportunity to have trained personnel present, unless determined by the City to be an emergency situation.

(dd) *Compatibility, Capacity and Interference Issues.* To properly manage and control the use of the public rights-of-way, and to protect the health, safety and general welfare of the public, the City, in its legislative and regulatory role, shall be the final authority on permitting a communications system or facility to be placed in the public rights-of-way and shall exercise such authority in a non-discriminatory manner. It shall be in the sole discretion of the City Attorney whether an easement is compatible with or allows for its use by a communications system or facility. It shall be in the sole discretion of the City Engineer, based on the nature, design, size, configuration or proposed location of any communications system or facility, whether there is sufficient capacity in a particular section of the public rights-of-way or whether such system or facility will interfere with the facilities or equipment of any municipality, county, public utility, cable operator, or other communications services provider.

(ee) *No Warranty of Fitness or Suitability.* The City makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the public rights-of-way for any communications system or facility or its right to authorize the placement or maintenance of any communications system or facility in the public rights-of-way. Any performance of work, costs incurred or services rendered by a communications services provider shall be at such provider's sole risk. Nothing in this article shall affect the City's authority to acquire or add public rights-of-way, or to vacate or abandon public rights-of-way as provided for in the City Code or applicable law. The City makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated or abandoned public rights-of-way for a communications system or facility.

(ff) *Taxes.* A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's small wireless facility, micro wireless facility, or utility pole for collocation of a small wireless facility placed or maintained in the public rights-of-way or on the City's property including a City utility pole as a result of registrant's collocation on a City utility pole. A registrant shall reimburse the City for taxes paid by the City as a result of registrant's facilities being placed or maintained in the public rights-of-way or on a City owned utility pole.

(gg) *Airport Airspace.* A structure granted a permit and installed pursuant to this article shall comply with Chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protections.

(hh) *Tree Protection.* Trees may not be damaged or removed during placement or maintenance of small wireless facilities, utility poles, or wireless support structures in the public rights-of-way. Tree removal is not permitted within the public rights-of-way to increase signal strength or provide a line-of-sight. Landscaping may only be damaged or removed pursuant to a City permit during placement or maintenance of small wireless facilities, utility poles, or wireless support structures. The City will require that any landscaping so removed be replaced in accordance with the approved restoration plan.

Sec. 68-160. Placement of New Utility Poles or Wireless Support Structure.

(a) The placing of any new utility pole, wireless support structure, or other above-ground structure for the collocation of a small wireless facility or micro wireless facility is subject to the approval of the City Engineer and these structures shall be erected under the supervision of the City Engineer or his designee. No new utility pole, wireless support structure, or other above-ground structure shall be allowed in the public rights-of-way unless the applicant demonstrates and the City Engineer determines that no existing structure, or alternative technology (that does not require the placement of a new structure in a public rights-of-way) can accommodate the applicant's proposed antenna or other communication facility. Such a demonstration by the applicant shall not give rise to a right to locate the proposed facility within the public rights-of-way or in any way guarantee City approval of such. An applicant shall submit information requested by the City Engineer 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 Engineer:

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

(2) Existing structures are not of sufficient height to meet applicant's engineering requirements, which shall be demonstrated by, at minimum, propagation and coverage maps.

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

(4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing structures, or the antenna on the existing structures would cause interference with the applicant's proposed antenna.

(5) The fees, costs, or contractual provisions required by the owner in order to share an existing structure or to adapt an existing structure for sharing are unreasonable.

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

(7) The applicant demonstrates that an alternative technology that does not require the use of new structures, such as cable microcell network using multiple low-powered transmitters/receivers attached to 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.

(b) If approved, no such utility pole or other above-ground structure shall be placed in any gutter or drainage area and must be located behind the curb. In areas of the City where either electric utility wires or other communications facilities are above ground and such facilities are moved, either voluntarily or at the direction of the City, to a new utility pole or other above-ground structure, the communications services provider or wireless infrastructure provider shall likewise move all its above-ground facilities on such utility poles or structures to such new utility pole or structure within thirty (30) days after receipt of written notice from either the City or the owner of the new utility pole or structure, without cost to the City.

Sec. 68-161. - Notice of transfer, sale or assignment of assets in public rights-of-way.

If a communications services provider transfers, sells or assigns its assets located in the public rights-of-way incident to a transfer, sale or assignment of the communications services provider's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article. Written notice of any such transfer, sale or assignment shall be provided by such communications services provider to the City within thirty (30) days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in Section 68-155 within sixty (60) days of the transfer, sale or assignment. If any applications for a permit are pending under the communications services provider's name as of the date the City receives written notice of the transfer, sale, or assignment, then the City shall consider the transferee, buyer or assignee as the new applicant unless otherwise notified by the communications services provider. If any permit applications are pending under the

registrant's name as of the date the City receives written notice of the transfer, sale, or assignment, then the City shall consider the transferee, buyer or assignee as the new applicant unless otherwise notified by the registrant.

Sec. 68-162. - Duty to Notify City of Resellers; Conditional Use of Public Rights-of-Way.

Within thirty (30) days of any registered communications services provider using its facilities to carry the communication services of any reseller, such communications services provider shall notify the City of the name and address of such reseller. A reseller's lease, interconnection or other use of facilities belonging to a communications services provider duly registered in accordance with Section 68-155 and properly permitted to place or maintain its facilities in the public rights-of-way, does not, and shall not, afford such reseller any right, claim or cause of action to impede the lawful exercise of the City's rights or police powers, including, but not limited to, requiring the registered communications services provider to remove such facilities from the public rights-of-way.

Sec. 68-163. –Suspension of permits.

The City may suspend a permit for work in the public rights-of-way for one or more of the following reasons subject to Section 68-164 of this Article:

- (1) Violation of permit conditions, including conditions set forth in the permit, this Article or other applicable City ordinances, codes or regulations governing placement or maintenance of Communications Facilities in Public Rights-of-Way;
- (2) Misrepresentation or fraud by the communications services provider in a registration or permit application to the City; or
- (3) Failure to properly renew or ineffectiveness of registration;
- (4) Failure to relocate or remove facilities as may be lawfully required by the City pursuant to this article.

The City shall provide notice and an opportunity to cure any violation of (1) through (4) above, each of which shall be reasonable under the circumstances.

Sec. 68-164. - Appeals.

Final, written decisions of the City Manager or City Engineer, or designee, denying, or suspending a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the City Clerk within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not filed in a timely manner shall be waived. The City Commission shall hear the appeal as set forth in the City Code. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave

rise to a suspension or denial, the suspension or denial shall be lifted (the same does not apply to the revocation of a permit).

Sec. 68-165. - Involuntary termination of registration.

(a) The City may terminate a registration if:

(1) A federal or Florida authority suspends, denies, or revokes a registrant's certification or license to provide Communications Services;

(2) The registrant's placement or maintenance of a Communications Facility in the Public Rights-of-Way presents an extraordinary danger to the general public or other users of the Public Rights-of-Way and the registrant fails to remedy the danger promptly after receipt of written notice; or

(3) The registrant ceases to use all of its Communications Facilities in Public Rights-of-Way and has not complied with Section 68-173 of this Article.

(4) The communications services provider fails to comply with any of the rules, regulations or general conditions set forth in herein.

(b) Prior to termination of a registration, the registrant shall be notified by the City Engineer in writing, setting forth all matters pertinent to the proposed termination action, including which of (1) through (4) above is applicable as the reason therefore, and describing the proposed action of the City with respect thereto. The registrant shall have thirty (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 Engineer, to accomplish the same. If not eliminated or if the plan is rejected, the City Engineer shall provide written notice of such rejection to the registrant within 15 days of receipt of the plan. A registrant shall be notified by written notice of any decision by the City Manager or designee to terminate registration. Such written notice shall be sent within seven days after the decision. A final determination to terminate may be appealed in accordance with the procedures set forth in Section 68-164.

(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 communications services provider's communications facilities in public rights-of-way; or (b) provide the City with an acceptable plan for disposition of its communications facilities in the public rights-of-way. If a communications services provider fails to comply with this subsection (c), which determination of non-compliance is subject to appeal as provided in Section 68-164, 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 communications services provider within 90 days of the termination, or such longer period as may be agreed to by the communications services provider, to remove some or all of

the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal.

(d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.

(e) In the event of termination of a registration, this section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and who is registered with the City, if required.

(f) The City's right to terminate a registration shall be in addition to all other rights of the City, whether reserved in this article, or authorized by other law. No action, proceeding or exercise of the right to terminate registration will affect or preclude any other right the City may have.

Sec. 68-166. - Existing communications facilities in public rights-of-way.

A communications services provider with an existing communications facility in the public rights-of-way has sixty (60) days from the effective date of the ordinance from which this article derives to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

Sec. 68-167. - Insurance.

(a) At all times during the use or occupancy of the public rights-of-way, including any time during placement or maintenance of communications facilities, the communications services Provider shall provide, pay for and maintain satisfactory to the City the following types of insurance described herein. The limits of coverage of insurance required shall be not less than the following:

(1) Worker's Compensation. Policy limit shall be in an amount not less than the statutory limit for worker's compensation.

(2) Employer's Liability Insurance. Policy limit in an amount not less than \$500,000.00—limit per each accident per each employee.

(3) Comprehensive General Liability, including contractual liability and products completed operations liability coverage on an occurrence basis. Policy limit in an amount not less than \$1,000,000.00 per occurrence, combined single limit, for bodily injury, personal injury or death, or property damage and in an amount not less than \$3,000,000 policy aggregate for each personal injury liability, broad form property damage (without exclusions), contractual liability and products-completed operations liability.

(4) Business Automobile Liability. Policy limit in an amount not less than \$1,000,000.00 combined single limit, including bodily injury and property damage covering owned, leased, hired and non-owner vehicles.

(b) All insurance providers used shall be admitted and duly authorized to do business in the State of Florida and shall have assigned by A.M. Best Company, a minimum Financial Strength Rating of "A" and a minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000 to \$500,000,000 based on capital, surplus, and conditional reserve funds). All liability policies shall name the City, its commissioners, officers, and employees as additional insureds with respect to any covered liability arising out of the placement or maintenance of communications facilities in the public rights-of-way or other activities under this article. All liability coverage must be in occurrence form and in accordance with the limits specified. Claims made policies are not acceptable. The required coverages must be evidenced by properly executed certificate(s) of insurance forms. The Certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty days' advance written notice by registered, certified or regular mail or facsimile as determined by the City must be given to the City of any cancellation, intent not to renew or reduction in the policy coverages. The communications services provider shall be responsible for notifying the City of such cancellation, intent not to renew, or reduction of coverage. All certificates(s) of insurance, including all endorsements and riders, evidencing insurance coverage shall be submitted to the City within thirty (30) days after the date of registration with the City in order for the communications services provider to obtain a permit required for the construction in the public rights-of-way. Each communications services provider shall, in the event of any such notice described above, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City of the communications services provider of such notice.

(c) The certificate(s) of insurance forms must be properly executed by the authorized representative of the insurance provider and must include all endorsements, riders and notices. Each communications services provider shall file and maintain with the City on an annual basis the required certificate(s) of insurance. The certificate(s) of insurance must indicate the following:

- (1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; that the policy coverage "pertains to the requirements of Section 68-167 of the City of Casselberry Communications Right-of-Way Ordinance;" policy expiration date; and specific coverage amounts; and
- (2) any applicable deductibles or self-insured retentions; and
- (3) that the City, its commissioners, officers and employees are additional insureds; and

(4) that the City shall receive thirty (30) days' advance written notice of cancellation, intent not to renew or reduction in coverage; and

(5) that the commercial general liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

(d) Under extraordinary circumstances a communications services provider may satisfy the insurance requirements of this article by providing documentation of self-insurance that, in the sole discretion of the City Manager or designee, demonstrates incontrovertibly the adequacy to defend and cover claims of any nature that might arise from the placement and maintenance of facilities in the public rights-of-way. The communications services provider must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

Sec. 68-168. - Indemnification.

(a) A communications services provider 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 or in connection with the placement or maintenance of its communications system or facilities in public rights-of-way by the communications services provider or its agent or hired contractor, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that the communications services provider's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This indemnification provision includes, but is not be limited to, such damages and penalties arising out of claims (1) by any Person whatsoever on account of (i) bodily injury to a person or persons, (ii) death of a person or persons or (iii) property damage, where any of the foregoing is occasioned by the operations of the communications services provider, or alleged to have been so caused or occurred or (2) involving the communications services provider's violation of any easement or private property rights.

(b) Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket expenses and reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings, and shall also include the reasonable value of any services rendered by the City Attorney or any consultants, agents, and employees of the City. The City agrees to notify the communications services provider, in writing, within a reasonable time of the City receiving notice, of any issue it determines may require indemnification.

(c) 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 conflict.

(d) Nothing in this section shall be construed or interpreted as (a) denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, F.S., as it may be amended.

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

Sec. 68-169. - Construction bond.

(a) Prior to the City issuing a permit where the work under the permit will require restoration of public rights-of-way, the communications services provider or the contractor performing such work on its behalf must obtain, pay for and file with the City a construction bond. The construction bond must serve to guarantee the timeliness and quality of the construction and restoration work, and secure and enable the City to recover, all costs related to the restoration of the public rights-of-way in the event the communications services provider or its contractor fails to make such restoration to the City's satisfaction or causes damage to the public rights-of-way during construction. The construction bond must name the City as obligee and be in the face amount of Fifteen Thousand Dollars (\$15,000) conditioned upon the full and faithful completion of construction and restoration of the public rights-of-way to its original condition. Six (6) months following completion and inspection of the restoration of the public rights-of-way satisfactory to the City Engineer, the communications services provider or its contractor, as the case may be, may reduce the face amount of the construction bond to Five Thousand Dollars (\$5,000) and, thereafter, may allow the bond to lapse in accordance with its terms. However, for any subsequent work in the public rights-of-way, the communications services provider or its contractor will be required to replenish any existing construction bond or provide a new construction bond in the face amount of Fifteen Thousand Dollars (\$15,000). The construction bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Engineer and authorized by the Florida Department of Insurance to issue surety bonds in this State. Notwithstanding the foregoing, a construction bond hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the Security Fund as provided in Section 68-170.

(b) The construction bond must be issued as non-cancelable and be for a term of not less than twelve (12) months. In the event the term of any construction bond expires, or is reasonably expected to expire, prior to the completion of construction, restoration and City inspection, the communications services provider, or the contractor acting on its behalf, shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a construction bond is not in lieu of any additional bonds that may be required under this Article or through the permitting

process. The City's right to recover under the construction bond shall be in addition to all other rights of the City, whether reserved in this article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect or preclude any other right the City may have.

Sec. 68-170. - Security Fund.

At or prior to the time a communications services provider receives its first permit to place or maintain a communications facility in public rights-of-way after the effective date of this article, every communications services provider shall make a Twenty-Five Thousand Dollar (\$25,000) cash deposit, or shall file with the City an irrevocable letter of credit or acceptable equivalent in the same amount, which shall serve, and be referred to, as the "Security Fund." The Security Fund shall be conditioned upon the full and faithful compliance with and performance by the communications services provider of all requirements, duties and obligations imposed by the provisions of the City of Casselberry Communications Right-of-Way Ordinance at all times. The letter of credit shall be in a form and issued by an institution acceptable to the City's Chief Financial Officer. Should the City draw upon the Security Fund, it shall promptly notify the communications services provider, and the communications Services Provider shall promptly restore the cash deposit or letter of credit to the full amount. The Security Fund shall be maintained until the later of (a) the effective date of transfer, sale or assignment by the communications services provider of all its facilities in the public rights-of-way, (b) twelve (12) months after the removal or abandonment by the communications services provider of all of its facilities in the public rights-of-way or (c) six (6) months after the termination of registration, including any appeals undertaken pursuant to Section 68-164 herein. Upon the later of these events the cash deposit will be returned without interest or the letter of credit may be cancelled. In the event a communications services provider fails to perform any requirement, duty or obligation imposed upon it by the provisions of this article, there shall be recoverable, jointly and severally from the Security Fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities in the public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the Security Fund.

Sec. 68-171. – Performance Bond

(a) Before any communications services provider is permitted to begin the placement or maintenance of an initial build, any substantial rebuild, upgrade or extension of its communications system, or when construction plans show that there would be at least one thousand (1,000) feet of open trenching in the public rights-of-way at any given time, the communications services provider is required to obtain, pay for, and file with the City a performance bond. The performance bond must name the City as obligee and be in the face amount of Two Hundred Fifty Thousand Dollars (\$250,000) conditioned upon the full and faithful compliance by the communications services provider with all requirements, duties and

obligations imposed by the provisions of the City of Casselberry Communications Rights-of-Way Ordinance, during, and through completion of, the placement or maintenance project. The performance bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Engineer and authorized by the Florida Department of Insurance to issue performance bonds in the State of Florida.

(b) The performance bond must be issued as non-cancelable and be for a term consistent with the reasonably expected duration of the particular placement or maintenance project (including restoration and City inspection), but in no event less than eighteen (18) months. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to the completion of such placement or maintenance project, including restoration and City inspection, the communications services provider shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a performance bond is not in lieu of any additional bonds that may be required under this article or through the permitting process. The City's right to recover under the performance bond shall be in addition to all other rights of the City, whether reserved in this article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect or preclude any other right the City may have. Any proceeds recovered under the performance bond may be used to reimburse the City for such additional expenses as may be incurred by the City as a result of the communications services provider's failure to comply with the responsibilities imposed by this article, including, but not limited to, attorney's fees and costs of any action or proceeding, and the cost of removal or abandonment of any property.

Sec. 68-172. - Enforcement remedies.

(a) A communications services provider's failure to comply with provisions of this article shall constitute a violation of this article and shall subject the communications services provider to the code enforcement provisions and procedures as provided in Article III, of Chapter 2 of the City's Code of Ordinances. In addition, violation of this article may be punishable as provided in Section 162.22, F.S.

(b) No provision of this article shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this article, the registration provisions, or any rule, regulation, or general condition provided for hereunder, whether administratively, judicially or both. Neither the existence of other remedies identified in this article nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties, or monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the communications services provider. The remedies available to the City shall be cumulative and in addition to any other remedies provided by law or equity. The laws of the State of Florida shall govern with

respect to any proceeding in law or equity pertaining to the enforcement of this article or any cause or action arising out of or in connection herewith.

(c) In any proceeding before the City Commission where there exists an issue with respect to a communications services provider's performance of its obligations pursuant to this article, the communications services provider shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this article. The City may find a communications services provider that does not demonstrate compliance with the terms and conditions of this article in default and apply any appropriate remedy or remedies as authorized by this article. In determining which remedy is appropriate, the City Commission shall take into consideration the nature of the violation, the person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City Commission determines are appropriate to the public interest.

(d) Failure of the City to enforce any requirements of this article shall not constitute a waiver of the City right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 68-173. - Abandonment of a communications facility.

(a) Upon abandonment of a communications facility owned by a communications services provider in the public rights-of-way, the communications services provider shall notify the City within sixty (60) days.

(b) The City may direct the communications services provider, by written notice, to remove all or any portion of such abandoned facility at the communications services provider'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; (2) compromises the safety of other persons performing placement or maintenance of communications facilities in the public rights-of-way; (3) 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; or (4) creates a maintenance condition that is disruptive to the use of the public rights-of-way's use. In the event of (2), the City may require the third Person to coordinate with the communications services provider that owns the existing facility for joint removal and placement, where agreed to by the registrant.

(c) In the event that the City does not direct the removal of the abandoned facility, the communications services provider, 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 communications services provider fails to remove all or any portion of an abandoned facility as directed by the City within the timer period specified in the written notice, which time period must be reasonable under the

circumstances, the City may perform such removal and charge the cost of the removal against the communications services provider.

Sec. 68-174. - Force majeure.

In the event a communications services provider's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the communications services provider'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 communications services provider 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 communications services provider'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. Causes or events within communications services Provider's control, and thus not falling within this Section, shall include, without limitation, Communications Services Provider's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Communications Services Provider's directors, officers, employees, contractors or agents.

Sec. 68-175. – Fees Applicable to Those Not Subject to Communications Services Tax.

While the Florida Legislature has prohibited municipalities from requiring providers of communications services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to placing or maintaining communications facilities in the public rights-of-way, the City expressly reserves the right to require the payment of consideration or regulatory fees by persons using or occupying the public rights-of-way in other capacities. The City reserves the right to require such payments based on the type of user and to the extent as follows:

(a) Dealer. Except as provided elsewhere, a communications services provider who meets the definition of Dealer as set forth in this article and who has registered in accordance with Section 68-155 is not required to enter into a franchise agreement or license arrangement with the City as a condition to placing or maintaining communications facilities in the public rights-of-way, nor is a dealer required to make payment of any franchise fees, license fees or other user fees to the City as consideration for the use or occupancy of the public rights-of-way for the provision of communication services.

(b) Pass-Through Provider and Pass-Through Facilities. A communications services provider who meets the definition of pass-through provider as set forth in this article and who is not subject to the City of Casselberry's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, F.S. shall pay the City the maximum annual amount allowed under Section 337.401(6)(b), F.S., as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a

pass-through provider for purposes of supporting antennas for other over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate communications facility subject to assessment of a separate permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under Section 337.401(6)(b), F.S., whichever is higher. The annual amount referred to above shall be due and payable on October 1 of every year beginning on October 1, 2017. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgment 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 or authorization to install any facilities in the public rights-of-way.

(c) Other Persons. All other persons, except government, are required to pay the City, as consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, an amount based on and in accordance with the City Code.

(d) Government. A government is not required to pay the City consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, unless such facilities are being used by such government or a communications services provider, including resellers, to offer or provide communication services other than for such government's internal non-commercial use, in which event the government, where not subject to the City of Casselberry's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, F.S., is required to pay the City, as consideration for the use or occupancy of the public rights-of-way by or through its facilities an amount based on and in accordance with the City Code or such other amount or rate of compensation as mutually agreed to in writing by the government and the City.

Sec. 68-176. - Reservation of rights and remedies.

(a) The City hereby expressly reserves all of the following rights:

(1) To exercise its municipal home rule powers, now or hereafter, to the fullest extent allowed by law with regard to the access, use and regulation of the public rights-of-way.

(2) To amend this article as it shall find necessary in the lawful exercise of its municipal authority and police powers.

(3) To adopt or enact by resolution or ordinance, in addition to the provisions contained herein and in any existing applicable ordinances, such additional reasonable regulations as the City Commission finds necessary in the exercise of the City's police powers.

(4) To exercise the power of eminent domain, consistent with applicable federal and state law, to acquire property that may include that property owned or leased by a communications services provider.

(5) As and when deemed necessary by the City Commission to be in the interest of the City or its residents, to abandon portions of the public rights-of-way within the proper exercise of its municipal authority and without notice to or the consent of any communications services provider. The City shall not be responsible for any costs, damages, loss or other expense to the communications services provider as a result of the City's abandonment of any public rights-of-way.

(6) 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 the public rights-of-way occupied by any communications services provider.

(7) Without limitation, to alter, change, or cause to be changed, the grading, installation, relocation, or width of any public rights-of-way within the limits of the City and within said limits as same may from time to time be altered.

(8) To require a reseller to register in accordance with Section 68-155 to the extent such reseller wants the right to place or maintain facilities in the public rights-of-way. Any person using or leasing facilities owned by a registered communications services provider is not, therefore, entitled to any rights to place or maintain communications facilities in the public rights-of-way, unless such person themselves registers with the City.

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

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

(d) Nothing in this article shall affect the remedies the City or the communications services provider has available under applicable law.

(e) Any person who uses the communications facilities of a communications services provider, other than the communications services provider 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.

(f) If provisions of this article conflict with any other provision of the City Code of Ordinances, or the Unified Land Development Regulations, the more restrictive provisions shall govern.

Sec. 68-177. - Special provisions for certain eligible facilities modifications.

Notwithstanding any other provisions of this Article, the City shall not deny any eligible facilities request for a modification to an existing tower or base station which does not substantially change the physical dimensions of such tower or base

station provided the procedure and requirements set forth in Section 2-7.36(D), of the Unified Land Development Regulations, are satisfied. Except as may otherwise be provided in this article, and not withstanding any other provisions in the City Code, the provisions of Section 2-7.36(D), of the Unified Land Development Regulations, shall be the sole and exclusive procedure for review and approval of an eligible facilities request which the applicant asserts is subject to review under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) as interpreted by the FCC Acceleration of Broadband Deployment Report & Order dated October 21, 2014. To the extent that other provisions of the City Code establish a parallel process for review and approval of a project application for a proposed eligible facilities request, the provisions of Section 2-7.26(D) shall control. In the event that an application for a project includes a proposal to modify an eligible support structure, and the applicant does not assert in the application that the proposal is subject to review under the Spectrum Act, such proposal shall not be subject to review under Section 2-7.26(D) and may be subject to review under other applicable provisions of the City Code.

Sec. 68-178. – Compliance with state and federal regulations; preemption.

In implementing this Article and the provisions set forth herein, the City shall comply with applicable state and federal regulations, and the provisions of this Article shall be given force to the maximum amount and greatest extent permissible under state and federal law. Except as authorized pursuant to state and federal law, in the event of any conflict between the terms of this article and state or federal law, state and federal law shall control. In the event any provision of this Article is specifically preempted, or judicially determined to be preempted by state or federal law, then the preempted provision shall automatically be deemed null and void and the superseding provision of state or federal law shall prevail.

Section 4. Codification. It is the intention of the City Commission of the City of Casselberry, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinance of the City of Casselberry, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

Section 5. Conflicts. All Ordinances or Resolutions, or parts of Ordinances or Resolutions in conflict with any provisions of this Ordinance are hereby repealed to the extent of the conflict.

Section 6. **Severability.** If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

Section 7. **Effective Date.** This Ordinance shall become effective ten (10) days after its passage and adoption.

FIRST READING this _____ day of _____, A.D. 2018.

SECOND READING AND ADOPTION this ____ day of _____, A.D. 2018.

ATTEST:

Donna G. Gardner, CMC
City Clerk

Charlene Glancy
Mayor/Commissioner