

City of Palm Coast, Florida

Agenda Item

Agenda Date: 01/16/2018

Department	FIBER AND CELL TOWER TEAM	Amount
Item Key		Account
		#
Subject	RESOLUTION 2018-XX APPROVING A CITY-WIDE WIRELESS MASTER PLAN	
Background : <u>UPDATE FROM THE JANUARY 9, 2018 WORKSHOP</u> This item was heard by City Council at their January 9, 2018 Workshop. There were no changes suggested to this item.		
<u>ORIGINAL BACKGROUND FROM THE JANUARY 9, 2018 WORKSHOP</u> In order to create a comprehensive solution to improve the City’s wireless infrastructure, Diamond Communications, in partnership with the City, has prepared a proposed Wireless Master Plan. The proposed Wireless Master Plan is designed to work in conjunction with the proposed Telecommunications Ordinance to: <ul style="list-style-type: none">• Improve service for City residents and businesses by reducing coverage gaps;• Enhance the capacity of wireless networks within in the City;• Optimize deployment of equipment and technologies;• Encourage towers on suitable publicly owned sites. <p>To create the Master Plan, the City’s consultant, Diamond Communications, analyzed the City’s current wireless infrastructure using a radio frequency (“RF”) and real estate analysis of wireless infrastructure throughout the City. The analysis identified areas of inadequate wireless service and potential solutions to enhance the Wireless experience in Palm Coast. The analysis assessed the signal strength given different factors. The results were mapped to identify coverage gaps and areas in need of service improvement.</p> <p>Based on the results of this effort, Diamond Communications is recommending up to ten towers on City or public property to improve network coverage and quality. City staff reviewed property owned by the City of Palm Coast along with other public sites within the deficit areas to determine the most suitable parcels from a land use, environmental and feasibility perspective.</p> <p>From a list of over ninety potential sites, twenty-nine publicly owned “fill in” sites were identified as the most appropriate locations for the future siting of wireless towers. These sites are shown in the proposed Wireless Master Plan and are strategic aspect of the proposed Telecommunications Ordinance. The approved Master Plan sites can be administratively approved as an incentive to create a predictable and known review process.</p>		
Recommended Action : Adopt Resolution 2018-XX approving a City-wide Wireless Master Plan.		

RESOLUTION 2018-____
WIRELESS MASTER PLAN

**A RESOLUTION BY THE CITY COUNCIL OF THE
CITY OF PALM COAST, FLORIDA, APPROVING A
CITY-WIDE WIRELESS MASTER PLAN FROM
DIAMOND COMMUNICATIONS; PROVIDING FOR
CONFLICTS; PROVIDING FOR SEVERABILITY;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, City Council entered into a contract with Diamond Communications to assist the City with a comprehensive solution to improve the City's wireless infrastructure; and

WHEREAS, Diamond Communications has developed a City-wide Wireless Master Plan for the City; and

WHEREAS, City Council desires to accept the Wireless Master Plan.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY OF
PALM COAST, FLORIDA:**

SECTION 1. APPROVAL OF A WIRELESS MASTER PLAN. The City Council of the City of Palm Coast hereby approves the City-wide Wireless Master Plan, as attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 2. CONFLICTS. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution.

SECTION 4. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, this 16th day of January 2018.

CITY OF PALM COAST, FLORIDA

ATTEST:

Milissa Holland, Mayor

Virginia A. Smith, City Clerk

Attachment: Exhibit A - City-wide Wireless Master Plan

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney



Wireless Master Plan

City of Palm Coast, Florida

January 9, 2017



The City of Palm Coast and Diamond Communications have entered into a collaborative partnership to create infrastructure that improve wireless service for the residents and businesses of Palm Coast

Executive Summary

The Wireless Master Plan is a City-wide strategy to facilitate the improvement of wireless communications infrastructure in an efficient and organized manner. Wireless communications is rapidly becoming an essential piece of our society. The ability to, wherever you are, connect with relatives, colleagues, friends and services (**including emergency services**) is no longer a luxury, but depended upon by nearly everyone. High quality wireless service requires a robust carrier network with sufficient infrastructure to meet all users' needs. Palm Coast's existing towers and infrastructure are not sufficient to provide adequate service to all residents and businesses. The City and Diamond's shared goal is to develop infrastructure that enables carriers to provide high quality wireless service to Palm Coast residents and businesses while maintaining control over the proliferation of cell sites throughout the City.

Following a review of the City's current ordinance and an assessment of existing wireless infrastructure in Palm Coast, Diamond and City staff collectively determined that the City's current treatment of wireless development in the ordinance presents a significant obstacle to wireless carriers trying to improve their network quality in the city. Given constraints on carrier budgets and the widespread need for additional cellular sites, an ordinance with onerous and costly requirements and highly uncertain outcomes can encourage carriers to focus their priorities and resources on alternative areas with lower resistance. This can result in cities with difficult ordinances being left behind in network quality and development. **The goal of the Wireless Master Plan is to:**

- **Create a pathway to better wireless infrastructure and set the stage for 5G connectivity in Palm Coast.**
- **Preserve the City's control of new wireless infrastructure development**
- **Provide additional long-term revenue to support other City projects**

What is the Wireless Master Plan? The Wireless Master Plan focuses on a select group of City-owned properties that are well positioned to accommodate wireless infrastructure in the areas of the City most in need of improved service. Selected properties will be granted a streamlined track for carriers to deploy infrastructure that bring the residents and businesses of Palm Coast the connectivity they desire.

The City's appointed Fiber and Cell Tower ("FACT") team and Diamond have worked closely to develop a strategy that optimizes wireless infrastructure development for Palm Coast. We appreciate interest, input and questions from all City officials and citizens.



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1. Background

In November, 2015, the City released a Request for Proposals for wireless consultation services. The RFP sought qualified wireless infrastructure companies to assist the City in finding a solution for the marginal service experienced by many of its residents. The City selected Diamond in May of 2017 to:

- Review the City's existing ordinance and assist in creating a more efficient process around wireless development
- Market the City's existing towers and properties to wireless carriers for the deployment of their networks
- Coordinate wireless development activities on City properties
- Provide administrative support on leasing, approvals, billing and collection and maintenance

Diamond, with input and assistance from City staff, developed a draft Wireless Master Plan that identified areas of the City most in need of improved wireless service and suggested revisions to the Ordinance to facilitate network deployment.

Diamond met with the City Manager, the FACT team and other City employees in September, 2017 to discuss its analysis and make recommendations as to how the City could create a path toward better connectivity. The City and Diamond discussed the recommendations and together developed a plan to move forward, including proposed revisions to the Ordinance and a City analysis on select properties in areas which would benefit from additional wireless infrastructure. Over the past three months, the City and Diamond have worked together to create a Wireless Master Plan that both parties feel represent the best interests of Palm Coast.





2. Who is Diamond Communications?



Diamond Communications is a leading owner, developer and manager of wireless infrastructure in the U.S. We are headquartered in New Jersey, with offices in nine states. We employ over 40 individuals including experienced engineering, construction, sales, administrative, legal and business professionals with a broad collective knowledge of the wireless industry.

Highly Experienced Team – A number of Diamond’s key executives and professionals have been in the wireless industry since its inception in the early 1990s. As a company, we have overseen the deployment of thousands of cell sites across a wide variety of assets. Our employees and executives have held key positions at both wireless carriers and infrastructure providers. We have built hundreds of towers across the Nation and own and manage numerous towers in Florida.

Accomplished Site Manager - We market over 200,000 assets nationwide, including 3,300 in Florida, and have established a track record for successfully increasing wireless infrastructure deployment and revenue on our clients’ assets in a manner that complements their core objectives. Our larger clients include:

- **FirstEnergy** – a diversified energy company with 10 subsidiaries and infrastructure stretching from the Indiana-Ohio border through to the New Jersey shoreline
- **OUTFRONT Media Inc.** – A leading out-of-home advertising company with 26,000 billboards across the country including over 2,400 in Florida
- **The United Methodist Church** – One of the largest denominations in the U.S. with over 28,000 church properties nationwide
- **Canadian Pacific Railway** – A Class I railroad with over 3,100 miles of track in the northern U.S.
- **The Ohio Turnpike and Infrastructure Commission** – A public commission overseeing the management of the Ohio Turnpike, a 241-mile highway across Northern Ohio

Strong Carrier Relationships - We have strong relationships at both the regional and national levels of wireless carrier organizations including key personnel in the North-Central Florida network planning offices. Diamond has also established a significant presence in the market for new wireless technologies including outdoor Wifi, small cells and Internet of Things (“IoT”) deployments.

Diamond is management controlled with additional financing provided by both individual and institutional sources, including Goldman Sachs Group (NYSE: GS) and Och-Ziff Real Estate, an affiliate of Och-Ziff Capital Management (NYSE: OZM).

Diamond’s resources, relationships, people-focused approach, industry knowledge and experience provide Palm Coast with a fully-integrated team of wireless infrastructure development and operational professionals.



3. The Wireless Industry – A Brief History and Overview

In the past twenty years, the number of wireless subscriptions in the United States has grown from 55 to 416 million. Cell phones and tablets have evolved from an exclusive, niche product into a staple of our everyday lives and an essential piece of our personal, public and professional communities. Additionally, first responders, transport (connected cars), home management service providers and industrial companies are increasingly utilizing wireless communications technology as part of their core operations.

Consumption and demand for wireless services is increasing (expected to grow 330% by 2021) as wireless technology and available content provides customers with a consistently improving user experience. The type of consumption of wireless services has evolved from the simple (texts and calls) to the highly complex data demands of today (GPS, video, social networking, applications, gaming, etc.). These services require significantly more bandwidth from provider networks and, compounded with the general increase in mobile use and increased availability of “unlimited” data plans, place heavy strain on network capacity – the ability of the carriers’ existing network to provide wireless services to its customers at the quality level expected by those customers. Maintaining a robust network and keeping pace with the network requirements of evolving wireless technology (4G, LTE and soon 5G) is mission critical for wireless carriers.

A major component in network infrastructure investment is the acquiring of spectrum licenses from the federal government – additional spectrum creates more bandwidth for customers. To incorporate new spectrum into their networks, carriers require further investment in their existing sites (typically the addition or replacement of antennas and installation of tower mounted radio units) and the development of new sites. There have been a number of recent, highly publicized spectrum auctions, which will likely motivate carriers to perform significant national upgrades to their existing sites and invest in network expansion.

In addition to personal consumption of wireless data, high quality wireless services are becoming essential in other applications, including emergency services and the Internet of Things (“IoT”). **The U.S. government is investing \$7 billion in a national cellular network for first responders, known as FirstNet.** All 50 States have opted into the service, which will require the deployment/upgrade (operated and managed by AT&T) of thousands of traditional macro sites across the U.S.



IoT is the rapidly emerging industry of connected objects – objects that can be monitored or controlled remotely or provide data to users/operators. The IoT market is expected to grow from 6 billion to 20 billion devices by 2020. Examples of IoT applications include smart city applications (street lights, traffic monitoring, etc.) and smart homes (smart thermostats, air conditioning units, lights, etc.). IoT networks are being actively deployed across the U.S. by both established wireless carriers and well-capitalized new entrants that use both licensed and unlicensed spectrum.



New Developments – The Advanced Wireless Infrastructure Deployment Act

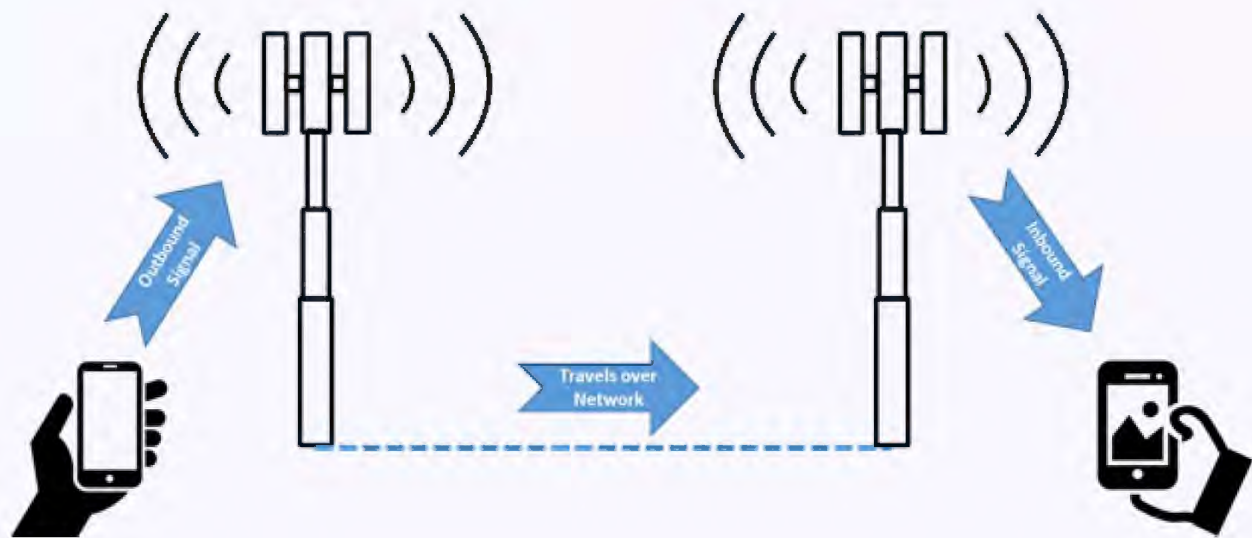
With wireless data demand at an all-time high and increasing exponentially, carriers are scrambling to develop networks that can accommodate such heavy traffic. A key planned solution is, deploying possibly over a million mini-antennas (small cells – described in the next section) predominately in urban areas across the country to supplement the existing macro-site network. However, the scale of this deployment presents both an enormous operational challenge and cost to the carriers. Carriers are lobbying across the country for the right to use public-rights-of-way and utility poles for these deployments with significantly reduced local zoning and other permitting processes. The implications of such legislation is particularly impactful to homeowners who in many areas are concerned that their streets and neighborhoods could be inundated with new antennas and support structures and municipal governments, which would have reduced control over developments in their jurisdictions. A number of States, including Florida, have taken measures to enable such deployments.

Despite significant objections from Florida municipalities and the Florida League of Cities, the Advanced Wireless Infrastructure Deployment Act became effective on July 1, 2017. The statute puts significant restrictions on a municipality's ability to regulate the deployment of equipment designated as "small cell", including the municipalities' ability to restrict carriers from (i) erecting poles in the right-of-way, (ii) attaching antennas to existing poles, (iii) adding supporting equipment cabinets (see right) below existing and new poles or (iv) charge a competitive market rate for using the right-of-way. This may facilitate proliferation of small cell deployments across Florida particularly in areas of high user density.



4. What Is Wireless Infrastructure?

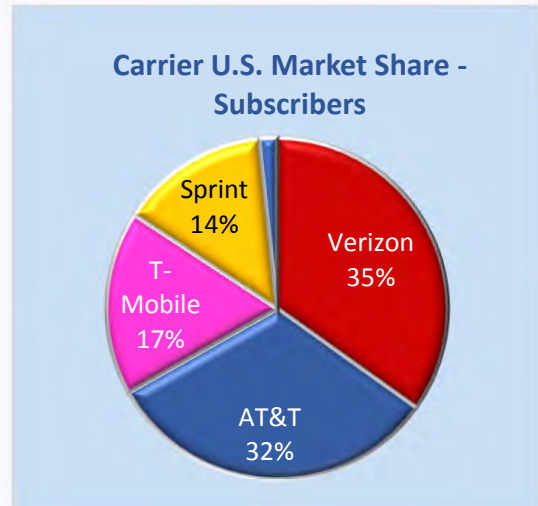
Wireless Infrastructure is a broad phrase describing the physical components of a wireless network - including antennas, radio base stations, cell towers and fiber routes – that support wireless communication between individuals, businesses, governments and objects. Signals carrying information originate from individual sources and travel through the network to their intended recipient(s).



There are many types of wireless communications including personal communication (cell phones), WiFi, AM and FM radio, machine to machine/IoT and a growing number of others. The primary goal of the Wireless Master Plan is to improve personal communications service in Palm Coast, although the plan may result in ancillary improvements in the provision of other wireless services.



Personal communications services in the U.S. are provided predominantly by four wireless carriers – Verizon, AT&T, T-Mobile and Sprint (see user distribution chart right). The carriers hold licenses to spectrum (airwaves or frequencies) that give them the exclusive right in certain markets to broadcast their customers' phone calls, messages, information requests and data across those airwaves. To do this, each carrier operates a national network comprised of tens of thousands of cell sites, with that number expected to approach a million (each), including small cells over the next few years.



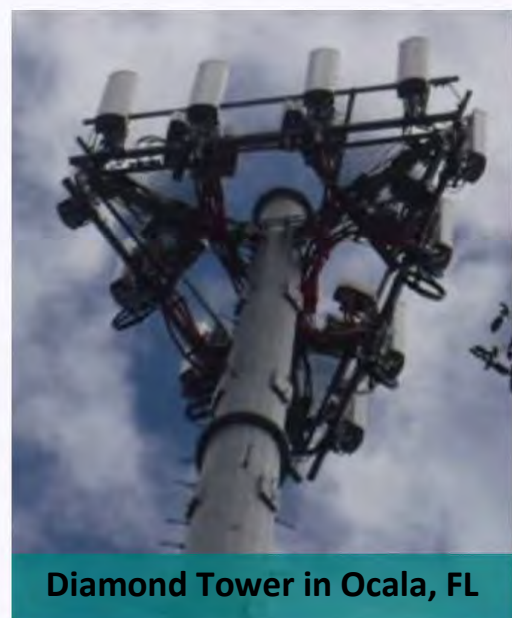
Carrier network engineers have two related primary goals: providing coverage and capacity. **Coverage** is the provision of wireless connectivity in a given area. **Capacity** is the network's ability to host simultaneous users and types of data use – e.g. texts vs. video messaging. Capacity constraints (many simultaneous users) can have the effect of “shrinking” a site's coverage area often meaning that carriers need more sites than their original network deployments provided.

There are three key types of cell sites typically deployed by the carriers to support their networks:

Macro Cells

Description

Traditional antennas used for personal wireless communications. A macro cell can cover a radius anywhere from a quarter of a mile to five miles depending on numerous factors including user density, antenna height and topography. They remain the most effective coverage and capacity technology – a single macro cell can achieve the same coverage objective as up to 12 small cells (described below) – and are expected to remain the core of wireless networks. A macro cell deployment typically consists of six to twelve panel antennas (from three to six feet in length) mounted in a triangular pattern and a radio base station housed in a small shelter or shed at the base of the tower or roof. A key near-term area of macro cell growth is the deployment of FirstNet by AT&T, a national first



Diamond Tower in Ocala, FL



responder network utilizing 4G LTE quality service described in Section 3 above.

Typical Infrastructure

Macro cells are primarily deployed on **cell towers and rooftops** with first preference to cell towers as they are deliberately constructed to support the carriers' operational needs. There are numerous tower types which each present advantages and disadvantages. A key differentiator is non-concealed and concealed towers.

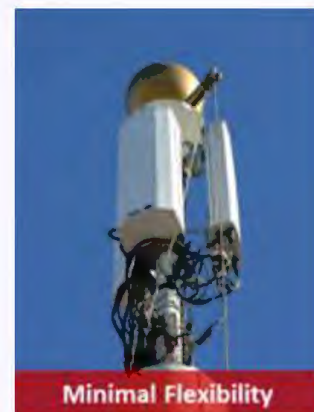
Non-Concealed – Traditional cell towers including monopoles, lattice and guyed towers that are not designed to blend in with natural surroundings. Non-concealed is the preferred solution for network deployment for numerous reasons including:

- **High flexibility for collocating, upgrading and modifying equipment** –the ease of adding/modifying equipment is increasingly important as capacity constraints and technological changes necessitate more frequent upgrades. Flexible solutions better enable the carriers to meet their subscribers' changing needs.
- **More cost effective** – concealment of antennas often requires design specialists that increase the cost of deployment and may deter carriers from installing or upgrading equipment.
- **Easier and safer for crews to work on** – fewer components to work around (e.g. artificial branches, fiberglass pole coverings, flags, halyards, etc.).



Concealed – Cell towers designed to either blend in with surroundings or be aesthetically pleasing to the surrounding community. Designs include pine trees (monopines), flagpoles, silos and clock towers. While carriers and tower developers will develop and collocate on concealed structures when zoning authorities or landlords demand it, stealth is not a preferred solution because:

- **Many designs constrain carriers' ability to collocate and upgrade their equipment**
 - Certain designs (particularly flagpoles) restrict the carriers' current and future ability to add/modify the equipment necessary to meet their customers' connectivity demands – this is an active issue for carriers upgrading equipment on Palm Coast flagpole sites.
 - This constraint deters carrier investment as the value of deploying its expensive equipment is significantly diminished by the increased risk of being unable to upgrade the equipment in the future.



- **More costly** – concealment of antennas and ongoing modifications often require specialists that come at a high price and may deter carriers from installing or upgrading equipment.
- **More obstacles and safety issues for crews** – Many concealment techniques have additional components that crews have to either dismantle or work around, which can mean more time “in the air” performing more complex tasks.

Non-Concealed Designs

Monopole

Pros

- *Operationally ideal for providing high-quality service*
- *Highly flexible for modifications and new colocations*
- *Easily meets carriers current and future network needs*
- *Cost effective*
- *Can run cabling on inside – single sleek structure*

Cons

- Does not blend in with natural surroundings



Notes

The Wireless Master Plan encourages the application of monopoles as solutions for Palm Coast because as a whole they are the most practical long term solution for carriers and simply designed for a lower visual impact than self-support towers

Self Support / Lattice

Pros

- *Operationally, ideal for providing high-quality service*
- *Most flexible for modifications and new colocations*
- *Easily meets carriers current and future network needs*
- *Cost effective*

Cons

- Does not blend in with natural surroundings
- Many visible components (wiring, broad complex structure, etc.)



Notes

The Wireless Master Plan will not permit the development of lattice towers as monopoles can achieve substantially the same goals with lower visual impact.



Small Cells

Description – Small cells provide more bandwidth and higher data speeds in targeted areas. Small cells are expected to comprise a significant role in the preparation of carrier networks for 5G connectivity with some analysts estimating over a million deployments per carrier in the next five years. Minimal spatial requirements mean small cells can be deployed on a large variety of existing structures. **Importantly, small cells are generally not considered to be a substitute for macro cells but rather constitute complementary infrastructure that amplifies wireless service in areas of need.**

Palm Coast's current infrastructure does not appear to be at a point where small cells could provide a holistic solution for wireless service. With further macro site development, small cells may become a suitable option to bolster service quality in high density areas of Palm Coast.



Distributed Antenna Systems (DAS) and WiFi

DAS and WiFi provide coverage and capacity in confined areas, primarily inside medium to large sized buildings, where outdoor networks have difficulty penetrating. DAS and WiFi objectives can often also be accomplished with small cells. DAS is usually the best solution for high capacity venues/locations such as stadiums, malls, airports, and college campuses.



FirstNet


FirstNet's initial roll out will predominantly be over AT&T's macro site network. AT&T will add antennas to its existing sites and deploy new sites that transmit FirstNet's exclusive spectrum band – 700 MHz – to as many citizens as it can reasonably accommodate. This means that AT&T will not only require additional sites, but towers and infrastructure with the capacity for the upgrades/changes necessary to accommodate FirstNet.

The Wireless Master Plan will encourage monopolies as the optimal solution to improve Palm Coast's wireless service. The Wireless Master Plan is designed to optimize the development of new cellular infrastructure in the City and reliable, high quality monopolies will best enable all four carriers' to meet Palm Coast's long term wireless needs with the fewest number of new wireless sites.



5. Industry Best Practices

As Palm Coast’s partner and an expert in the wireless field, Diamond will apply industry best practices to all its infrastructure projects and hold the carriers and other wireless infrastructure developers to the same standard.

Key Regulatory and Industry Entities	
 Federal Communications Commission	An independent government agency overseen by Congress that is the U.S.’s primary authority for communications law, regulation and technical innovation. Set the legal standards for deployment and operation of communications equipment and safety.
Federal Aviation Administration (FAA)	National authority on aviation – set certain standards and operational requirements related to tower height and location
Telecommunications Industry Association (TIA)	Accredited by the National Standards Institute to develop voluntary, consensus based industry standards including cell towers and other components of wireless networks
Wireless Infrastructure Association (WIA)	Leading Trade Association for wireless providers and infrastructure developers. The WIA is headed by former FCC Chairman, Johnathan Adelstein, and advocates for the delivery of high quality wireless service to all citizens and communities. Diamond’s CEO, Ed Farscht, currently sits on the board

What are “Best Practices” in the wireless infrastructure industry?

When deploying a new site, a carrier or wireless infrastructure owner must conduct...

- Engineered tower foundation & tower structural design taking into account the tower type, design loading (usually contemplating a full antenna array from all four carriers), the results of the geotechnical study and wind loading as set forth in the then-current Electronic Industries Alliance / Telecommunication Industries Association (“EIA/TIA”) standard included in the current version of the International Building Code adopted by the State of Florida, Flagler County or the City of Palm Coast
- Ensure that all relevant engineering analyses reflect wind/storm possibilities in the region.
- Geotechnical investigation of the condition of the soils at the tower site
- Engineered compound and site design including drainage plan if needed



- Completion of a **National Environmental Policy Act Checklist** by a qualified environmental scientist which includes completion of an acceptable Environmental Site Assessment under the then-current standard (Phase I and if necessary Phase II) and a review of the parcel to ensure:
 - It is not located in an officially designated wilderness area or preserve
 - Development of the tower does not affect listed threatened or endangered species or designated critical inhabitants
 - Development of the tower would not affect districts, sites, buildings, structures or objects significant in American history, architecture, archeology, engineering or culture that are listed or are eligible for listing in the National Register of Historic Places
- Review of the parcel to ensure development of the tower would not affect Indian religious sites
- Review of the parcel to ensure it is not located in a flood plain
- Review of the parcel to ensure development of the tower will not involve significant change in surface features (e.g., wetland fill, deforestation or water diversion)
- Review of the parcel to ensure that development of the tower will not cause human exposure to levels of radiofrequency radiation in excess of FCC adopted guidelines

When constructing or overseeing the deployment of a new site, Diamond will...

- Use licensed contractors with proven capability to complete the tower construction tasks and insurance policies in industry appropriate amounts to cover potential liability in the unlikely event of accidents
- Review the close-out package provided by the contractor to ensure the engineered design has been followed
- Visit each tower 4 times per year to mitigate vegetation in the compound, ensure proper safety signage is located at the tower site and visually inspect for damage to the compound, grounding of the tower and compound fence
- Commission a EIA/TIA inspection by a professional engineering firm as required under current EIA/TIA guidelines (currently every 5 years for a monopole or self-support towers or every 3 years for a guyed tower)
- Work to correct any deficiencies found in the EIA/TIA inspections



6. The Analysis

Diamond performed a radio frequency (“RF”) and real estate analysis of wireless infrastructure in and around Palm Coast to identify areas of inadequate wireless service and develop efficient possible solutions to enhance the wireless experience of the City. The analysis was structured with the following steps:

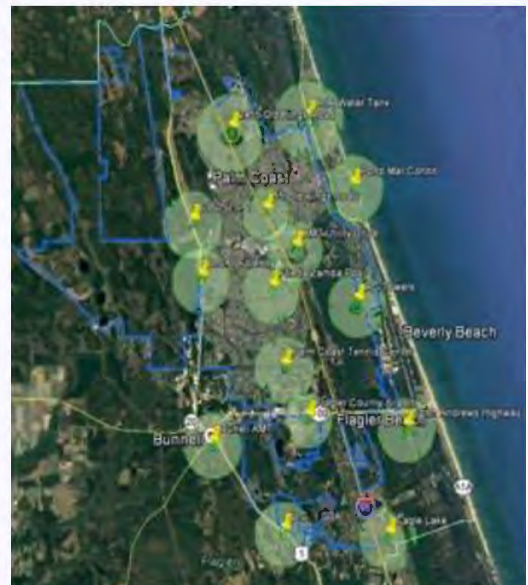
1. Consolidate all available information on existing wireless infrastructure in the City including information gathered by Diamond on site visits and in its review of lease agreements and permitting documents
2. Identify each carrier’s antenna placements and heights in and around the City
3. Run a RF signal propagation – model the area covered by each cell site – to determine each carriers’ potential existing service area
4. Identify possible existing service gaps
5. Identify existing infrastructure (towers) where carriers could collocate to mitigate the identified existing service gaps
6. Identify areas where new infrastructure would be required to mitigate identified service gaps
7. Identify properties within those areas suitable to accommodate new wireless infrastructure
8. Run RF signal propagation on those properties to confirm network compatibility
9. Identify alternative properties
10. Provide findings to FACT Team
11. FACT Team and other Palm Coast officials assess feasibility of suggested properties
12. FACT Team and Diamond establish Wireless Master Plan list for City Council approval

What is RF Propagation?

The RF Propagation assesses the area a signal can reach while maintaining a certain consistency that enables modern cellular capabilities (GPS, picture messaging, clear voice calls, etc.) given key factors including:

- **Frequency in use** – higher frequencies can transmit information more rapidly, but dissipate more quickly over distance: think Bluetooth vs. Cellular. FirstNet will use the 700 MHz band, similar to that of your carrier.
- **Topography and land characteristics** – hills and trees can block or disrupt signals, limiting the propagation area

Note: Carriers’ network planning decisions are based on numerous factors including those listed above, budgets, corporate priorities, user base, environmental considerations, zoning and permitting restrictions among and others. The analysis performed is intended to be only indicative of carrier coverage needs in Palm Coast.



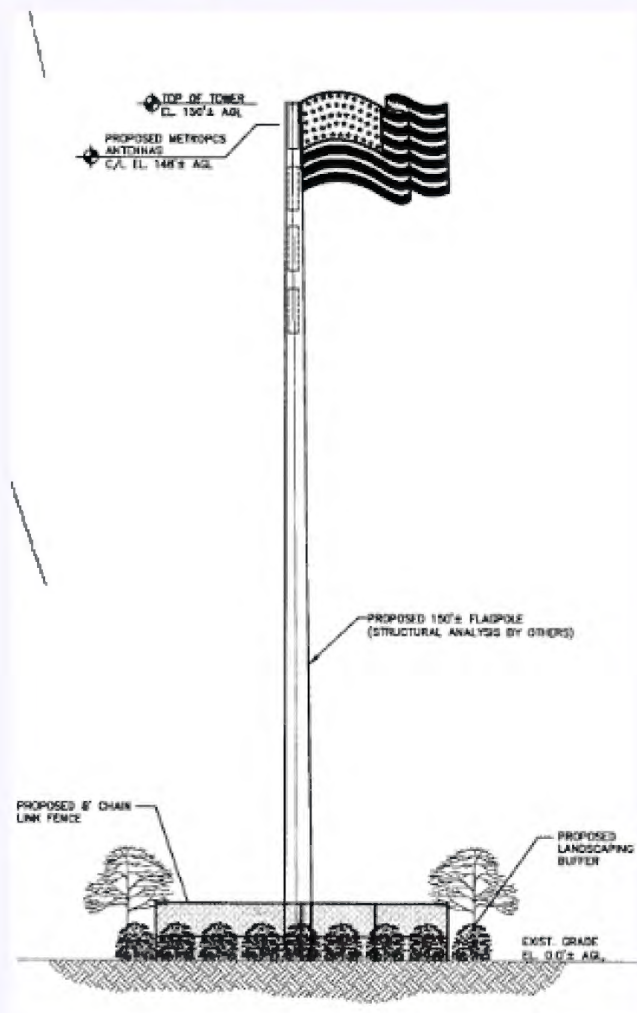
Steps 1-3 - Identify carrier coverage patterns:



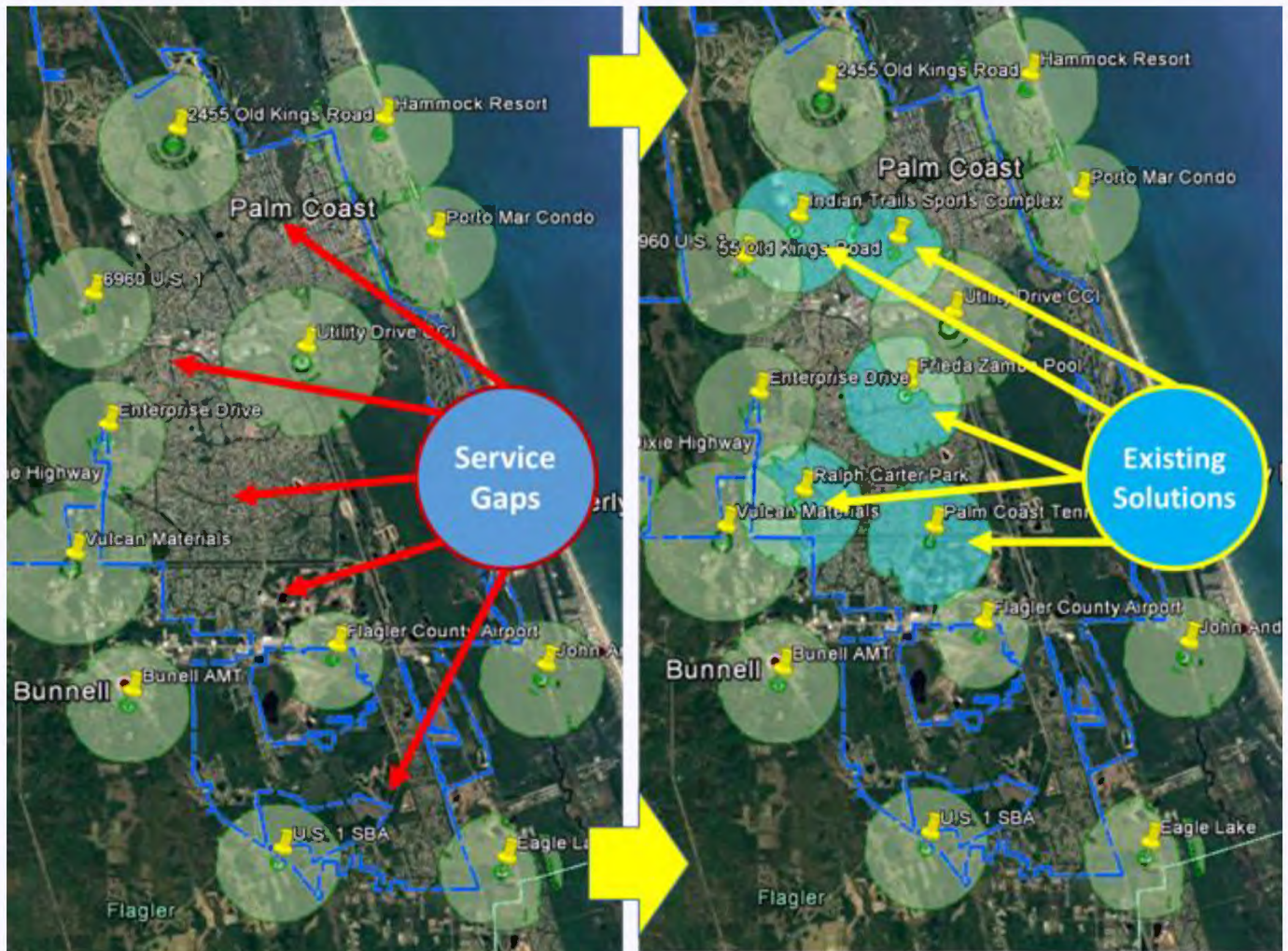
Diamond consolidated a list of all towers and rooftop installations in and around the City using available permitting information (local, FCC, FAA), leases and construction drawings. In addition, we performed a desktop analysis, comparing carrier coverage maps with identified sites and a boots-on-the ground analysis to confirm our findings. We then began our individual carrier analysis which included confirming:

- Which structures each carrier was collocated on
- The height of the collocation
- The likely frequency band the carrier is operating on

Once we collected this information, we ran a propagation analysis to map the possible existing network service pattern of each major carrier in the City.

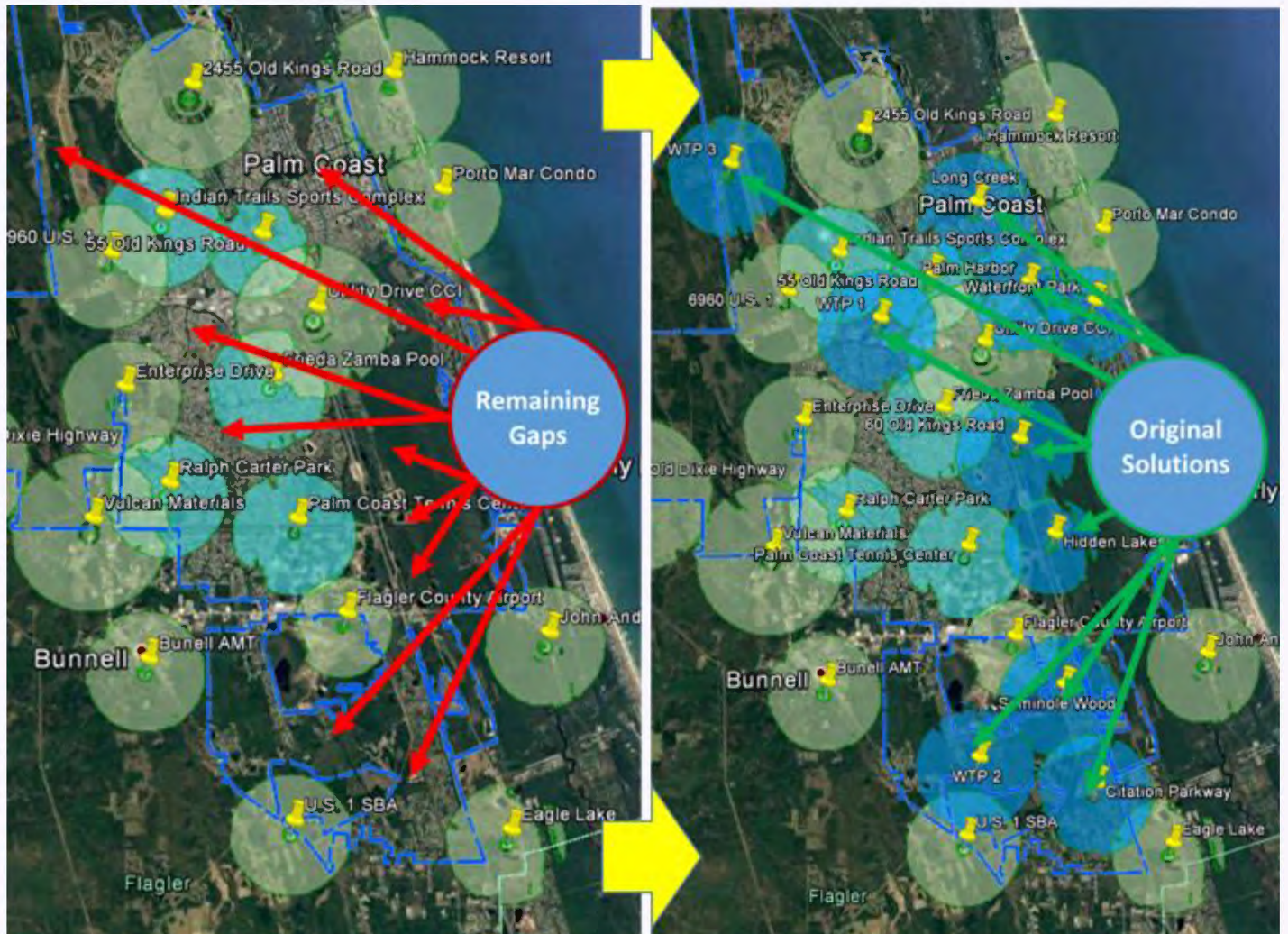


Steps 4-5 – Identify Possible Existing Coverage Gaps and Existing Infrastructure Solutions



By running a propagation model for each of the four carriers' locations, we were able to create a rudimentary mapping of their service areas in the City. After identifying likely gaps in service quality ("Service Gaps" above), we overlaid existing tower locations and identified towers with the optimal location to mitigate those drops in service quality ("Existing Solutions" above). We assessed the highest available space the carrier could place its equipment on these towers, then ran a propagation model to map the theoretical impact of such a collocation.

Steps 6-10 – Identify Remaining Gaps and Possible Solutions, Model New Tower Propagation and Provide Findings to FACT Team



After modeling the maximum improvement in service the carriers can achieve by utilizing existing sites, we reassessed the remaining service gaps (“Remaining Gaps” above). Diamond identified City owned properties within these coverage gaps on which i) a new tower could optimally mitigate the poor service quality and ii) there is sufficient/suitable space for the placement of such a new tower. We then modeled the service impact of adding towers to these locations (“Original Solutions” above). Diamond identified 10 “core” sites with 74 possible alternatives. Diamond presented its analysis to the FACT Team in September 2017 for review.



Step 11 – FACT Team and other City employees assess the feasibility of Diamond’s identified properties



The FACT Team worked closely with the GIS and Planning departments to analyze Diamond’s suggested properties and assess their feasibility for new tower builds. The City assessed:

- **Proximity to homes** – properties selected would provide wireless service to homes with appropriate separation and minimal visual impact of new infrastructure.
- **Future development plans** – Tower sites could not interfere with future/existing plans for developing parcels
- **Environmental considerations** – Whether the site was in a floodplain or in too close proximity to an existing or planned body of water.
- **Other characteristics** – Nature preserves, utility use, etc.

After careful analysis and consultation with Diamond, the FACT Team produced a list of 29 properties for inclusion in the Master Plan. **The list of 29 properties includes:**

- **25 City-Owned Properties** – Municipal properties that match service needs and are capable of accommodating towers per the parameters described above.
- **4 Other Public Properties** – Properties that would be explored as options for development if a City-Owned location is unsuitable to either the City or the carriers’ network plans.

Why are there more properties in the Wireless Master Plan than required towers?

- Carrier network structures are very complex
- Sites that may appear to fill coverage gaps could interfere with the intricate mesh of the network plan in a given area
- Small location adjustments, i.e. placing a tower on a neighboring parcel, can make an **infeasible** site **feasible**

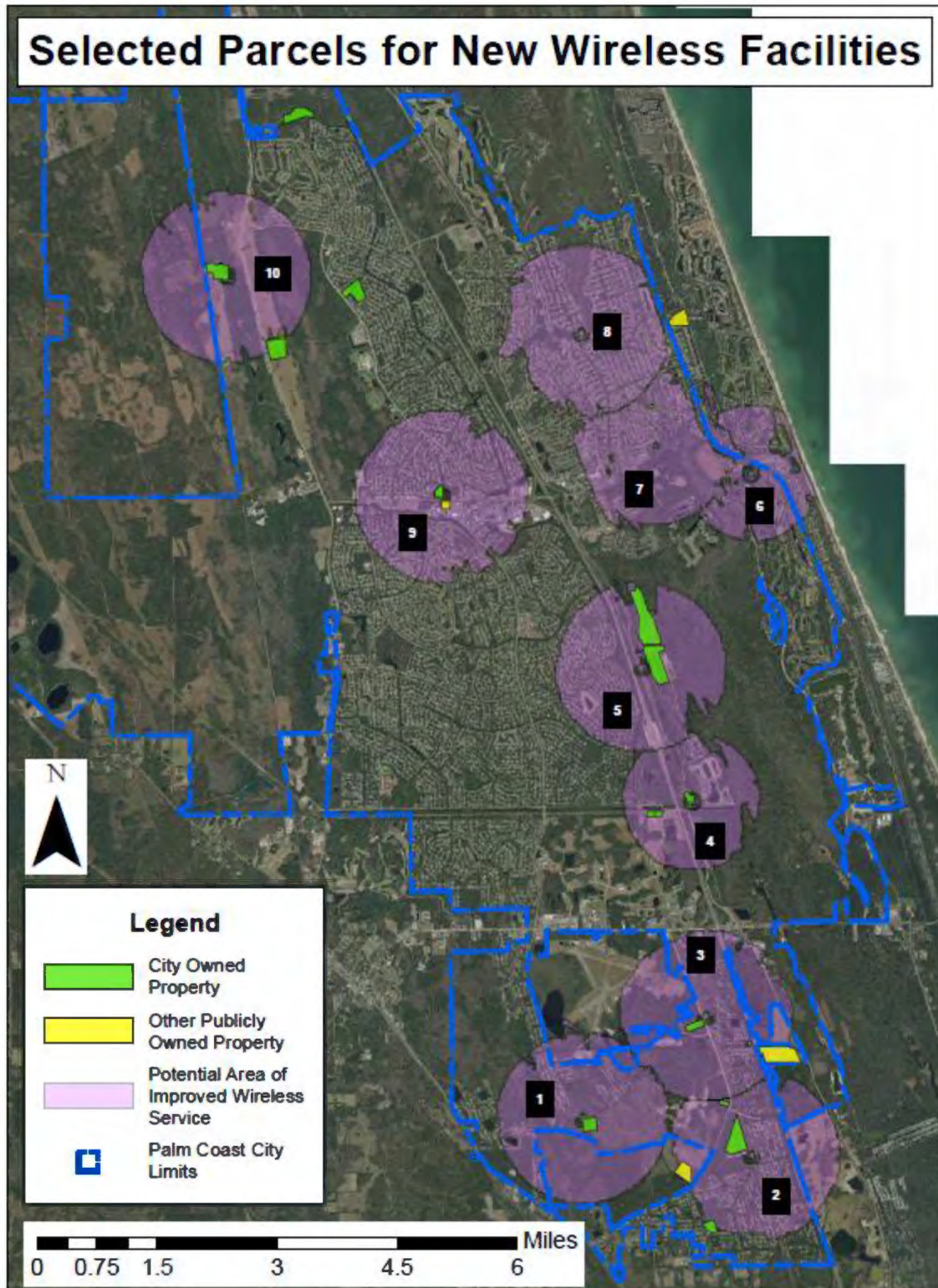
Maintaining, where possible, some location optionality will maximize the Plan’s chance for success – our analysis is indicative of carrier coverage gaps and not intended to be a precise summary of carrier needs.



Step 12 – FACT Team Confirms List of Properties for Master Plan

The below listed and mapped properties were carefully selected by the FACT team and other Palm Coast employees. See Appendices for more information on the selected parcels.

Master Plan Name	New Development Area #	Parcel Owner	Acreage	Location
1A	1	Palm Coast	1.0	Southern Palm Coast
1B	1	Palm Coast	18.1	Southern Palm Coast
2A	2	Palm Coast	12.4	Southern Palm Coast
2B	2	Flagler Schools	22.6	Southern Palm Coast
2C	2	Palm Coast	46.4	Southern Palm Coast
2D	2	Palm Coast	4.1	Southern Palm Coast
3A	3	Flagler County	52.3	Southern Palm Coast
3B	3	Palm Coast	13.0	Southern Palm Coast
3C	3	Palm Coast	1.5	Southern Palm Coast
4A	4	Palm Coast	4.4	East-Central Palm Coast (I-95)
4B	4	Palm Coast	4.0	East-Central Palm Coast (I-95)
4C	4	Palm Coast	1.3	East-Central Palm Coast (I-95)
4D	4	Palm Coast	7.6	East-Central Palm Coast (I-95)
4E	4	Palm Coast	1.6	East-Central Palm Coast (I-95)
4F	4	Palm Coast	4.1	East-Central Palm Coast (I-95)
5A	5	Palm Coast	54.7	East-Central Palm Coast (I-95)
5B	5	Palm Coast	83.3	East-Central Palm Coast (I-95)
6A	6	Palm Coast	1.2	Northeastern Palm Coast
7A	7	Palm Coast	1.9	Northeastern Palm Coast
8B	8	Palm Coast	1.0	Northeastern Palm Coast
8C	8	Palm Coast	2.3	Northeastern Palm Coast
9A	9	Palm Coast	9.6	Downtown Palm Coast
9B	9	Flagler Schools	7.1	Downtown Palm Coast
10A	10	Palm Coast	34.4	Northwestern Palm Coast
10B	10	Palm Coast	3.3	Northwestern Palm Coast
10C	10	Palm Coast	30.2	Northwestern Palm Coast
10D	10	Palm Coast	28.7	Northwestern Palm Coast
10E	10	Palm Coast	27.5	Northwestern Palm Coast



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Map Provided by the GIS Division

Date: 1/4/2018



7. The Master Plan in the Ordinance

How will Master Plan properties be treated in the City Ordinance?

- **City-Owned Master Plan properties will occupy the highest place in the siting hierarchy** – If a carrier elects to develop on a Master Plan property, it will not have to prove the properties' suitability in comparison with other properties. This saves the carrier both time and resources required to build a case that another property, considered less viable by the City, is necessary. It will also save City resources as the properties have already been analyzed.
- **The development will be subject only to administrative review** – The development of towers on the Master Plan properties has already been contemplated.
- **The City may waive application requirements for Master Plan sites** – Given that the properties are known quantities to the City, removing certain non-critical application steps will reduce the resource burden on both Palm Coast and the carriers, while preserving the necessary integrity of the review.
- **The Master Plan properties will be permitted to host monopoles up to 150 ft.** – As described earlier, monopoles enable carriers to develop quality, lasting network infrastructure as a preferred alternative to a lattice tower of a lattice tower. By best enabling future upgrades (i.e. building monopoles) Palm Coast may limit the need for significant future proliferation of cell towers to provide infrastructure to its growing population while setting the stage for 5G connectivity in the City.

Any development on a City owned property will require the execution of a lease approved by City Council. This means that effectively, the City has final say and maximum control over all tower development including placement, design and footprint. While the Master Plan presents a streamlined approach to developing towers in the City, if the plan is successful, the City will retain significant control and input on the development and operation of wireless infrastructure.



8. Marketing Plan

With the confirmation and approval of the Wireless Master Plan, Diamond will initiate a holistic marketing strategy to encourage carriers to improve their networks in Palm Coast. The marketing plan is as follows

1. Diamond will distribute a Press Release to relevant industry outlets announcing the passage of the Wireless Master Plan and updated Ordinance.
2. Diamond will update marketing materials for the overall relationship, Palm Coast's existing towers and each property in the Wireless Master Plan.
3. Diamond will distribute these marketing materials to the local (North/Central Florida) carrier offices and set up individual meetings to discuss Palm Coast's wireless service needs.
4. Diamond management will notify its corporate contacts at each major carrier of the opportunity.
5. Diamond will arrange a meeting with the carriers and the FACT team ("carrier summits") to create a plan to improve Palm Coast's wireless service quality. The objectives will include:
 - Identifying City owned towers with available space for new carrier installations. While the Ordinance, the City and Diamond would encourage collocation on non-City owned towers, the ultimate leasing decisions lie with the carriers and tower owners.



Tower Name	Location	Current Tenants	Possible Tenants
Palm Coast Tennis Center	1290 Belle Terre Parkway	Verizon, T-Mobile	AT&T, Sprint
Ralph Carter Park	1385 Rymfire Drive	T-Mobile	Verizon, AT&T and Sprint
A1A Water Tank	North Ocean Shore Boulevard	Verizon, T-Mobile, Sprint	AT&T
Utility Drive	22 Utility Drive	None	Unlikely – All four major carriers on towers directly adjacent on Utility Drive



- Defining locations for new towers, including, if necessary, revisiting the property list in the Wireless Master Plan, required to “complete” the macro-layer of carrier networks in Palm Coast.
 - Establish a development timeline and prioritization.
6. Execute leases and installations on City owned towers – these may require modifications as current flagpole towers may lack the structural capacity for additional carrier collocation.
 7. Execute options on selected City properties for tower builds. This will require the City’s approval of all final design, location and footprint specifications.

Why are the FACT Team and Diamond confident that this strategy will be effective?

- **Demonstrating Palm Coast’s commitment to improving wireless infrastructure will motivate carrier commitment to deploying it.** Carriers are wary of investing capital and planning resources on municipalities where acquiring necessary zoning and permitting is costly, time consuming and unpredictable – “time to deployment” is a key assessment made in any discussion of spending/budget priorities. Involving City personnel at early stages of development discussions will provide carriers with the confidence required to invest in improved infrastructure in Palm Coast.
- **The Wireless Master Plan will expedite improved networks coming online.** By establishing a faster, streamlined approval process for sites that are critical to fill voids in the carriers’ networks, Palm Coast residents and businesses can expect near term 4G connectivity AND sooner access to 5G technologies, as carriers will be better positioned to include the City in their near term deployments and upgrades.
- **The Wireless Master Plan could significantly mitigate carrier planning costs.** A sizeable component of carrier resources and budgets are dedicated to “site-acquisition” – identifying properties that suit the coverage objective, can host wireless equipment and have a landlord willing to lease space and work harmoniously with the carriers throughout the life of the lease. By presenting properties up front that meet these described qualities, the Master Plan should significantly reduce these associated costs.



Appendix

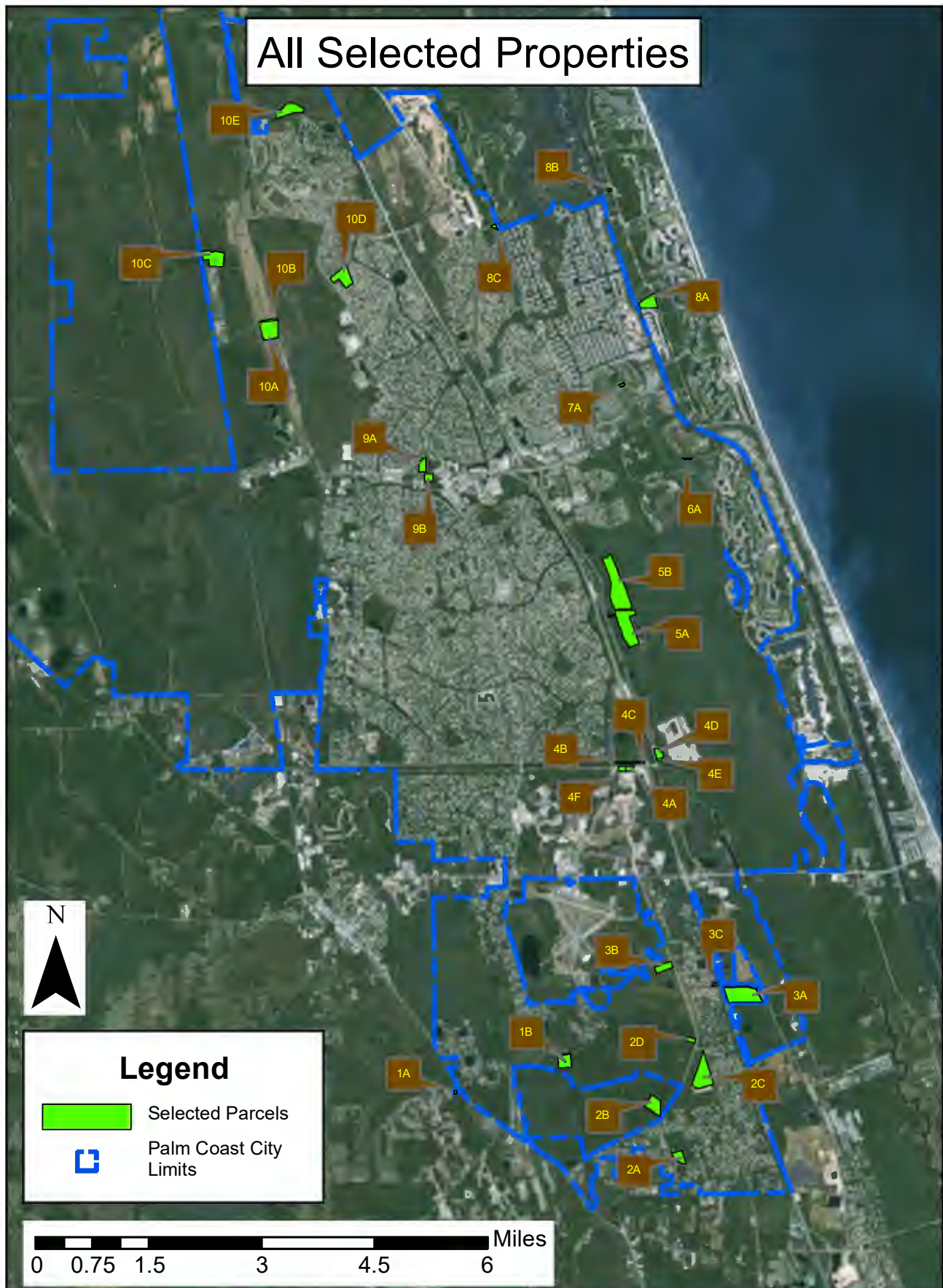
<i>Parcel Nu</i>	<i>Parcel Number</i>	<i>Owner Name</i>	<i>Use Description</i>	<i>Primary or Secondary</i>	<i>Area (in acres)</i>	<i>Zoning</i>
1A	2512301500001300000	CITY OF PALM COAST	MUNICIPAL	Secondary		1.005 PSP
1B	1912310650000C00020	CITY OF PALM COAST	MUNICIPAL	Primary	18.100	PSP
2A	0711317059PDM50010	CITY OF PALM COAST	MUNICIPAL	Primary		12.398 P&G
2B *	2912310000010100030	SCHOOL BOARD OF FLAGLER COUNTY	SCHOOL OWN	Secondary	22.620	No info, not in city limits
2C	0711317059000RP0050	CITY OF PALM COAST	MUNICIPAL	Primary		46.384 MPD
2D	2112310000010200010	CITY OF PALM COAST	MUNICIPAL	Primary	4.130	PSP
3A *	2112310000010400000	BOARD OF COUNTY COMMISSIONERS	COUNTY	Secondary	52.330	No info, not in city limits
3B	1612310000010100040	CITY OF PALM COAST	MUNICIPAL	Primary	13.000	PSP
3C	0711317057000000011 (smaller square in the middle of selected parcel area)/071131705700RP000B2 (central portion of the en	CITY OF PALM COAST (both are)	MUNICIPAL	Primary	0.037/1.522	PSP
4A	0612315815000000300 (east half of parcel)	CITY OF PALM COAST	MUNICIPAL	Secondary		4.372 MPD
4B	3211310000030400012	CITY OF PALM COAST	MUNICIPAL	Secondary	3.970	MPD
4C	3211310000030400013	CITY OF PALM COAST	MUNICIPAL	Secondary	1.310	MPD
4D	331131306000000000H0 (larger northern part of parcel)	CITY OF PALM COAST	MUNICIPAL	Secondary		7.552 MPD
4E	331131306000000000H0 (smaller southern square portion of parcel)	CITY OF PALM COAST	MUNICIPAL	Primary		1.607 MPD
4F	0612315815000000300 (west half of parcel)	CITY OF PALM COAST	MUNICIPAL	Primary	4.130	MPD
5A	2911310000010100010	CITY OF PALM COAST	MUNICIPAL	Primary	54.720	PSP
5B	2011310000010100010	CITY OF PALM COAST	MUNICIPAL	Primary	83.300	PSP
6A	16113112600000000M0	CITY OF PALM COAST	MUNICIPAL	Primary	1.210	MPD
7A	0711317008000A00010 (small central portion of parcel, includes maintenance building)	CITY OF PALM COAST	MUNICIPAL	Primary		1.885 MPD
8A *	0711317085001700000	SCHOOL BOARD OF FLAGLER	SCHOOL OWN	Secondary	20.000	No info, not in city limits
8B **	4010313150000000460	CITY OF PALM COAST	MUNICIPAL	Secondary		0.999 No info, not in city limits
8C	0711317010RP0A00020	CITY OF PALM COAST	MUNICIPAL	Primary	2.260	COM-1
9A	0711317013000000300	CITY OF PALM COAST	MUNICIPAL	Primary	9.610	PSP
9B	1411300000010100020	SCHOOL BOARD OF FLAGLER	SCHOOL OWN	Secondary	7.110	COM-2
10A	04113000000101000A5	CITY OF PALM COAST	MUNICIPAL	Primary	34.380	MPD
10B	04113000000101000A4	CITY OF PALM COAST	MUNICIPAL	Primary	3.270	MPD
10C	33103000000103000B4	CITY OF PALM COAST	MUNICIPAL	Primary	30.230	PSP
10D	0711317035RP0L30010	CITY OF PALM COAST	MUNICIPAL	Secondary	28.710	PSP
10E	2210300000010300010 (western half of parcel, does not include the skinny eastern tail)	CITY OF PALM COAST	MUNICIPAL	Secondary		27.476 PSP

Parcel numbers 3C, 4A & 4F, 4D & 4E, 7A, and 10E acreage areas were estimated using the ArcGIS Desktop Measurement tool. These areas were estimated with this tool because they are smaller segments of larger official Flagler County parcels. The other Parcel number acreage areas were taken directly from Flaglaerpa.com (Flagler County Property Appraiser website) using the Property Record Search web app tool.

* These parcels are for marketing purposes only because located outside of city limits and NOT owned by city

** This parcel is city owned and located outside of city limits

*** Document updated 1/4/2018

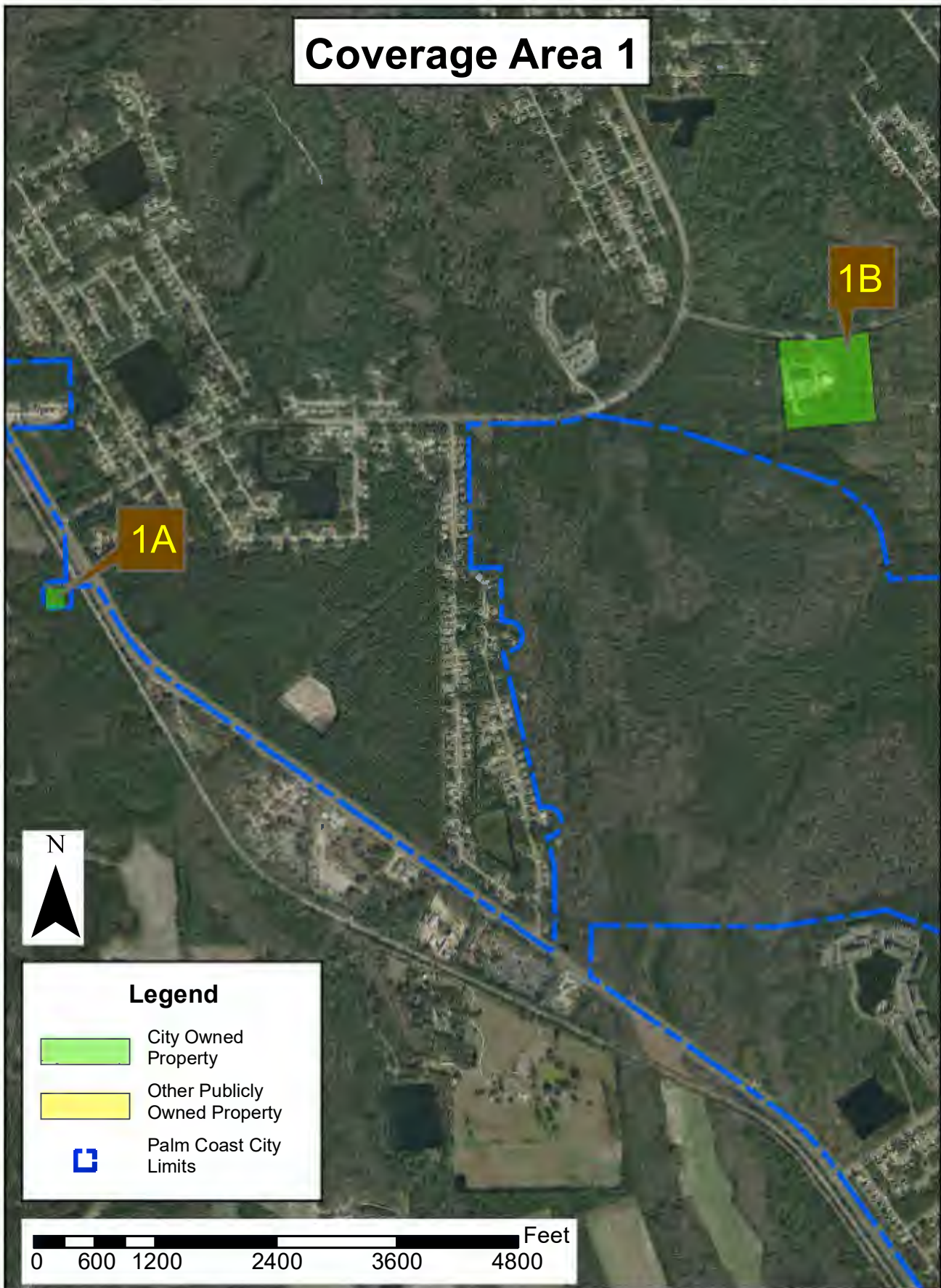


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Map Provided by the GIS Division

Date: 1/10/2018

Coverage Area 1

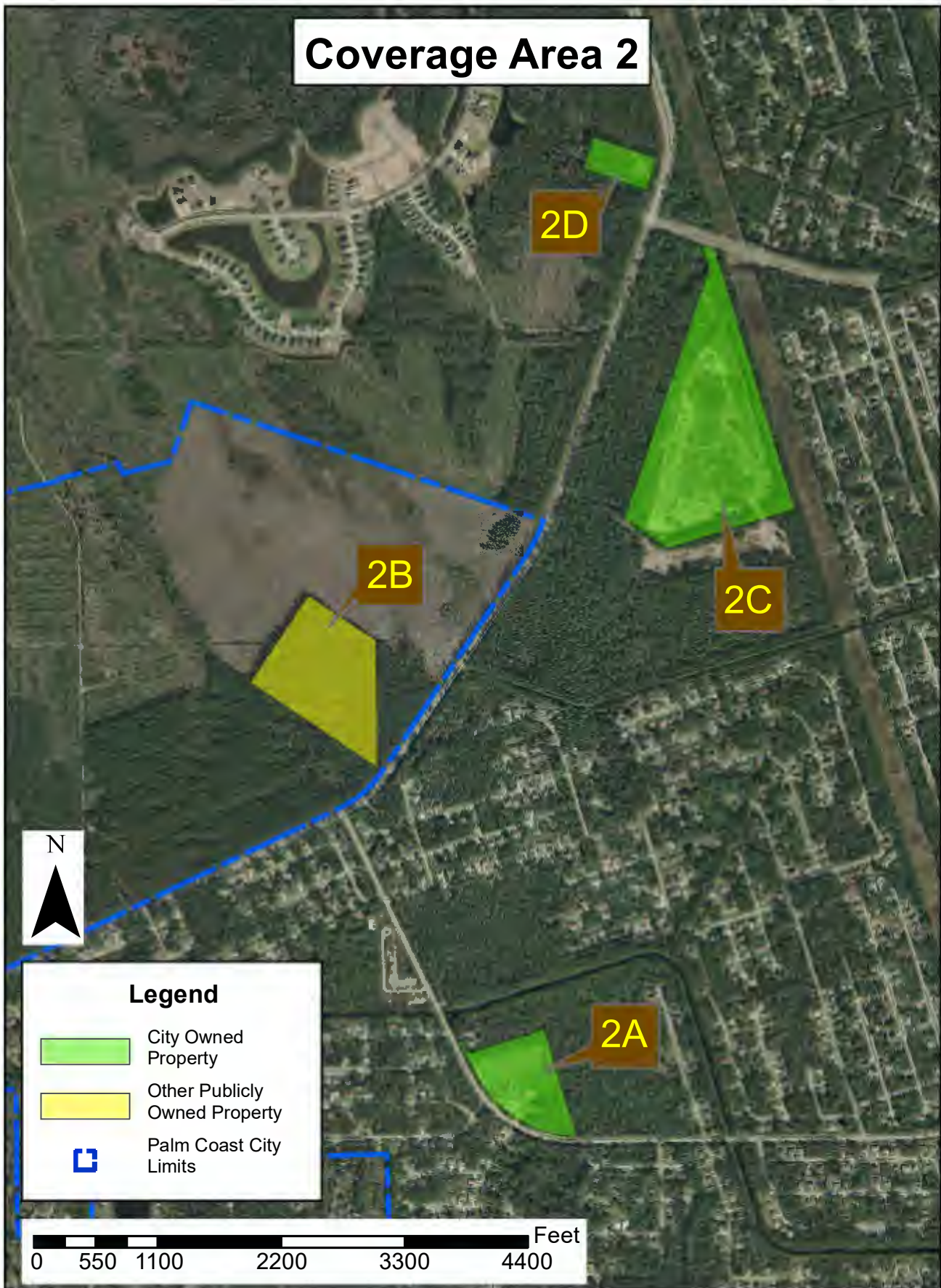


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Date: 1/4/2018

Coverage Area 2

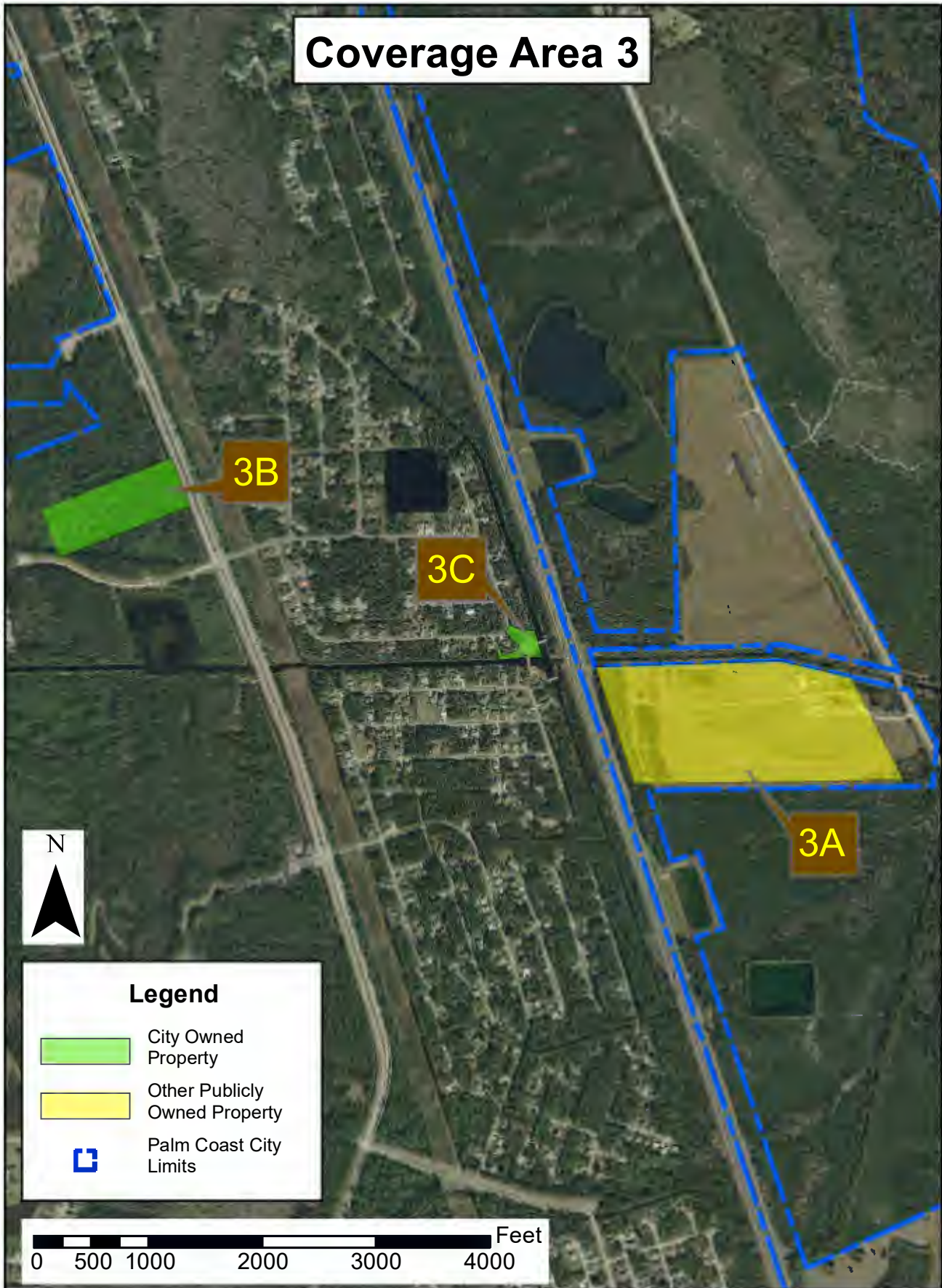


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Date: 1/4/2018

Coverage Area 3



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Date: 1/4/2018

Coverage Area 4



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Map Provided by the GIS Division

Date: 1/4/2018

Coverage Area 5



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Map Provided by the GIS Division

Date: 1/4/2018

Coverage Area 6

6A



Legend

-  City Owned Property
-  Other Publicly Owned Property
-  Palm Coast City Limits

0 62.5 125 250 375 500 Feet

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Map Provided by the GIS Division

Date: 1/4/2018

Coverage Area 7

7A



Legend

-  City Owned Property
-  Other Publicly Owned Property
-  Palm Coast City Limits

0 55 110 220 330 440 Feet

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Map Provided by the GIS Division

Date: 1/4/2018

Coverage Area 8



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Date: 1/4/2018

Coverage Area 9



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Date: 1/4/2018

Coverage Area 10



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Map Provided by the GIS Division

Date: 1/4/2018

City of Palm Coast, Florida

Agenda Item

Agenda Date : 01/16/2018

Department	CITY CLERK	Amount
Item Key		Account
		#
Subject	ORDINANCE 2018-XX REPEALING CHAPTER 54 WIRELESS TELECOMMUNICATIONS OF THE CITY'S CODE OF ORDINANCES AND AMEND CHAPTER 4 WIRELESS COMMUNICATION FACILITIES OF THE UNIFIED LAND DEVELOPMENT CODE	
Background : <u>UPDATE FROM THE JANUARY 9, 2018 WORKSHOP</u> This item was heard by City Council at their January 9, 2018 Workshop. There were no changes suggested to this item. However, there were some final legal revisions made to the Ordinance, which are highlighted in yellow.		
<u>ORIGINAL BACKGROUND FROM THE JANUARY 9, 2018 WORKSHOP</u> The wireless communications project under consideration consists of three components: a revised Wireless Communication Facilities Ordinance in the City's Land Development Code, proposed amendments to the City's ROW Ordinance to regulate small cell facilities in the ROW, and a proposed Wireless Master Plan. This item is to repeal Chapter 54 "Wireless Telecommunications" of the Code of Ordinances and amend Section 4-20, "Wireless Communication Facilities" of Chapter 4, "Conditions for limited specific uses and activities" in the City's Unified Land Development Code. The proposed revisions to Section 4.20 of the City's Unified Land Development Code includes the following changes: 1) Allowance for administrative review for specified applications, included recommended sites within the City's proposed Wireless Master Plan (WMP); 2) Promote publically-owned properties identified in the WMP as the most suitable for siting telecommunication facilities and create incentives for their use; 3) Provide renewed guidance and assistance to telecommunication applicants in the siting and design of proposed facilities.		
Recommended Action : Adopt Ordinance 2018-XX repealing Chapter 54 Wireless Telecommunications of the City's Code of Ordinances and amend Chapter 4 Wireless Communication Facilities of the Unified Land Development Code.		

ORDINANCE 2018-_____
AMENDING THE UNIFIED LAND DEVELOPMENT CODE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA REPEALING CHAPTER 54 “WIRELESS TELECOMMUNICATIONS” OF THE CODE OF ORDINANCES OF THE CITY OF PALM COAST; AMENDING THE UNIFIED LAND DEVELOPMENT CODE OF THE CITY OF PALM COAST BY AMENDING CHAPTER 3, “ZONING, USES, AND DIMENSIONAL STANDARDS”, SECTION 3.02.01 “RESIDENTIAL ZONING DISTRICTS”, TABLE 3-2, TO CROSS REFERENCE SECTION 4.20 RELATING TO WIRELESS COMMUNICATION FACILITIES; AND AMENDING SECTION 3.03.02 “NONRESIDENTIAL AND MIXED USE DISTRICTS – ALLOWABLE USES”, TABLE 3-4, TO CROSS REFERENCE SECTION 4.20 RELATING TO WIRELESS COMMUNICATION FACILITIES; REPEALING AND REPLACING SECTION 4-20, “WIRELESS COMMUNICATION FACILITIES” OF CHAPTER 4, “CONDITIONS FOR LIMITED SPECIFIC USES AND ACTIVITIES” TO AMEND AND UPDATE REGULATIONS REGARDING COMMUNICATIONS FACILITIES CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW, AND TO RENAME SECTION 4.20 TO READ “WIRELESS TELECOMMUNICATIONS”; AMENDING SECTION 14.02, “GLOSSARY” TO UPDATE DEFINITIONS RELATING TO WIRELESS COMMUNICATION FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, advances in telecommunications infrastructure have been developed which help to meet wireless system capacity demands in dense areas through the deployment of localized networks of antennas; and

WHEREAS, the provisions of the City of Palm Coast Unified Land Development Code regulating communication towers and communication antennas require updating to address current technology and practices utilizing wireless communication facilities on real property and in the public rights-of-way; and

WHEREAS, it is in the best interests of the citizens, business, and visitors in the City of Palm Coast to ensure there is sufficient wireless communication service; and

WHEREAS, the City of Palm Coast has a substantial and significant public interest in regulating the siting of communication towers, communication antennas, and wireless communication facilities to promote the public health, safety, aesthetics, and general welfare; and

WHEREAS, the City of Palm Coast has a substantial and significant public interest in protecting residential areas and land uses from potential adverse impacts of communication towers, communication antennas, and wireless communication facilities; and

WHEREAS, the City of Palm Coast desires to avoid potential damage to adjacent properties from tower or wireless communication facility failure through engineering and careful siting; and

WHEREAS, the City of Palm Coast desires to accommodate the growing need and demand for communication services while minimizing visual and other impacts of wireless communication facilities on surrounding areas by establishing standards for location, design, landscape screening, and compatibility; and

WHEREAS, the Emergency Communications Number E911 Act, Chapter 365, Florida Statutes, (the "Act") addresses, inter alia, local governments' regulation of the placement, construction or modification of wireless communications facilities; and

WHEREAS, the Act establishes parameters for the regulation of communications facilities, and allows local governments to review any applicable land development or zoning issue, including, but not limited to, aesthetics, landscaping, land use based location priorities, structural design, and setbacks; and

WHEREAS, Section 337.401 et seq., Florida Statutes, addresses, inter alia, the authority of municipalities to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

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 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, courts applying Florida and federal law have held that a municipality may impose reasonable design limitations on communications facilities that deal directly with a concern for aesthetics and may regulate the placement of wireless facilities where such regulation does not prohibit or effectively prohibit the provision of wireless services; and

WHEREAS, the City Council of the City of Palm Coast desires to establish uniform standards and guidelines for the siting, design, and permitting of communication towers, communication antennas, and wireless communication facilities in the City of Palm Coast and to establish review procedures to ensure that applications for same are acted upon consistent with state and federal law; and

WHEREAS, at a regularly scheduled meeting on January 17, 2018, the City's Planning and Land Development Regulation Board voted in favor of the proposed revisions; and

WHEREAS, the City Council hereby finds this Ordinance consistent with the Comprehensive Plan of the City of Palm Coast, and in the best interest of the public health, safety, and welfare of the public and citizens of the City of Palm Coast, 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, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. REPEALING CHAPTER 54, WIRELESS TELECOMMUNICATIONS. That Chapter 54, Wireless Telecommunications, of the City of Palm Coast Code of Ordinances, is hereby repealed in its entirety.

SECTION 3. AMENDING TABLE 3-2 OF SECTION 3.02.02. That Table 3-2, of Section 3.02.02, Residential Districts—Allowable Uses, of Chapter 3, Zoning, Uses, and Dimensional Standards, of the Unified Land Development Code of the City of Palm Coast is hereby amended to read as follows:

Table 3-2. Residential Zoning Districts—Use Table

* * *

USES	SFR-1	SFR-2	SFR-3	SFR 4 & 5	EST-1	EST-2	AGR	DPX	MFR 1 & 2	MHD	MPD
Veterinary Clinics and Services	-	-	-	-	-	S	P	-	-	-	P
Wholesale/Retail Fertilizer Sales	-	-	-	-	-	-	P	-	-	-	-
Wireless Communication Facilities (L)	P U	P U	P U	P U	P U	P U	P U	P U	P U	P U	P U

SECTION 4. AMENDING TABLE 3-4 OF SECTION 3.03.02. That Table 3-4, of Section 3.03.02, Nonresidential and Mixed Use Districts – Allowable Uses, of Chapter 3, Zoning, Uses, and Dimensional Standards, of the Unified Land Development Code of the City of Palm Coast is hereby amended to read as follows:

Ordinance 2018-_____

Table 3-4. Nonresidential and Mixed Use Zoning Districts – Use Table

* * *

Specific Use Type	COM-1	COM-2	COM-3	OFC-1	OFC-2	IND-1	IND-2	PSP	P & G	PRS	MPD 1
Wastewater Treatment Facilities	-	-	-	-	-	-	-	S	-	-	-
Water Supply Plants	-	-	-	-	-	-	-	S	-	-	P
Wireless Communication Facilities (L)	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>

* * *

SECTION 5. REPEAL AND REPLACEMENT OF SECTION 4.20, WIRELESS COMMUNICATION FACILITIES. That Section 4.20, Wireless Communication Facilities, of Chapter 4, Conditions for Limited Specific Uses and Activities, of the City of Palm Coast Unified Land Development Code is hereby repealed and reestablished as shown in Attachment “A”.

SECTION 6. AMENDMENT OF SECTION 14.02, GLOSSARY. That Section 14.02 of Chapter 14, Glossary, of the City of Palm Coast Unified Land Development Code is hereby amended as shown in Attachment “B”.

SECTION 7. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 8. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, 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 9. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 10. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this ____ day of _____ 2018.

Adopted on second reading after due public notice and hearing this ____ day of _____ 2018.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality

William E. Reischmann Jr. Esq.

ATTACHMENT "A"

SECTION 4.20 - WIRELESS TELECOMMUNICATIONS

Sec. 4.20.01. - Legislative purposes.

A. The legislative purposes of this section are to:

- (1) Promote the health, safety, and general welfare of the public by regulating the siting of wireless communication facilities.
- (2) Minimize the impacts of wireless communication facilities on surrounding areas by establishing standards for location, structural integrity and land use compatibility.
- (3) Establish standards for preferred siting, design and screening by requiring consistency with the City's Wireless Master Plan, consistent with the Telecommunications Act of 1996, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act").
- (4) Encourage the use of public lands, buildings, and structures as locations for wireless telecommunications infrastructure thereby establishing more ability to manage selected sites identified in the City's Wireless Master Plan.
- (5) Encourage coordination and collocation of antennas on existing structures to meet coverage needs and promote the efficient use of existing infrastructure.
- (6) Accommodate the growing need and demand for wireless communications services in a manner that ensures the placement, construction or modification of wireless communication facilities complies with all applicable state and federal laws.
- (7) Ensure there is sufficient wireless infrastructure to support public safety communication services throughout the City, including times of evacuation and disaster response.
- (8) Encourage providers of wireless communication facilities to locate wireless communication facilities in areas where the need is demonstrated and planned for and adverse impacts on the community is minimal.
- (9) Respond to the rational policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to prohibit or have the effect of prohibiting personal wireless services.
- (10) Ensure that land use decisions are made in consideration of, and in compatibility with, the goals, objectives and policies of the City of Palm Coast Comprehensive Plan and its land development regulations as set forth in the Land Development Code (LDC).

B. It is the intent of this section that all actions of the City be consistent with controlling federal and state law.

C. The City Council of the City of Palm Coast hereby finds and determines that this section is consistent with the goals, objectives and policies of the City of Palm Coast Comprehensive Plan and other controlling law.

Sec. 4.20.02. - Definitions.

Ancillary structure means, for the purposes of this section, any form of development associated with a WCF including, but not limited to: foundations, concrete slabs on grade, guy anchors, generators, and transmission cable supports; provided, however, specifically excluding equipment cabinets.

Anti-climbing device means a piece or pieces of equipment, which are either attached to an antenna support structure, or which are freestanding and are designed to prevent people from climbing the structure. These devices may include, but are not limited to, fine mesh wrap around structure legs, "squirrel-cones," or other approved devices, but excluding the use of barbed or razor wire.

Antenna means any apparatus designed for the transmitting and/or receiving of electromagnetic waves including, but not limited to: telephonic, radio or television communications. Types of elements include, but are not limited to: omni-directional (whip) antennas, sectionerized (panel) antennas, multi or single bay (FM and TV), yagi, or parabolic (dish) antennas.

Antenna array means a single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

Antenna element means any antenna or antenna array.

Freestanding WCF or collocations means those where the antenna or antenna array is located on towers, concealed or nonconcealed, together with the ancillary structures, feed lines, equipment shelters, and other necessary facilities, which may be located either on or in the tower.

Attached WCF means an antenna or antenna array that is secured to an existing base station with any accompanying pole or device which attaches it to the building or structure, together with transmission cables, and an equipment cabinet, which may be located either on the roof or inside/outside of the building or structure. An attached WCF is considered to be an accessory use to the existing principal use on a site.

Base Station means 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 tower as defined herein, 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.

Breakpoint technology means the engineering design of a monopole wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.

Collocation means the situation in which a second or subsequent communications services provider or a pass-through provider uses an existing structure to locate a second or subsequent antenna or wireless communication facility. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of a communication antenna.

Combined antenna means an antenna or an antenna array designed and utilized to provide services for more than one wireless provider for the same or similar type of services.

Concealed means a tower, base station, ancillary structure, or equipment compound that is not readily identifiable as a wireless communication facility, and is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site or in the neighborhood or area. There are two types of concealed facilities:

(1) Concealed base stations may include painted antenna and feed lines to match the color of a building or structure, faux parapets, windows, dormers, or other architectural features that blend with an existing or proposed structure.

(2) Concealed freestanding towers which look like something else that is common in the region such as a church steeple, bell tower, clock tower, light standard, flagpole with a flag that is proportional in size to the height and girth of the tower, or tree that grows naturally or is commonly found in the area.

Development area means the area occupied by a WCF including, but not limited to, areas inside or under the following: an antenna-support structure's framework, equipment cabinets, ancillary structures and access ways.

Eligible Facilities Request means any request for modification of an existing tower or base station 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 support structure and is requesting:

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

Eligible support structure means any tower or base station that is existing at the time the relevant application is filed with the City under this subsection.

Environmentally Sensitive Lands are as provided in Chapter 10 of the Unified Land Development Code-Environmental and Cultural Resource Protection.

Equipment cabinet means any structure above the base flood elevation including, but not limited to, cabinets, shelters, pedestals, and other similar structures. Equipment cabinets are used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

Equipment compound means the fenced area surrounding the ground-based wireless communication facility including, but not limited to, the areas inside or under the following: the tower's framework and ancillary structures such as equipment necessary to operate the antenna on the WCF that is above the base flood elevation including: cabinets, shelters, pedestals, and other similar structures.

Equipment facility means a room, cabinet, shelter, pedestal, build-out of an existing structure, building, or similar structure used to house ancillary equipment for a communication tower or antenna. Each such cabinet, shelter, or building shall be considered a separate equipment facility.

Existing means a constructed tower or base station existing for purposes of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this subsection.

Expedited collocation application means collocation applications, or portions thereof, on towers or base stations, excluding collocations on a historic building, structure, site, object, or district, that meet the criteria set forth in Section 365.172(13)(a), F.S., as amended.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Feed lines means cables used as the interconnecting media between the transmission/receiving base station and the antenna.

Flush-mounted means any antenna or antenna array attached directly to the face of the support structure or building such that no portion of the antenna extends above the height of the support structure or building. Where a maximum flush-mounting distance is given, that distance shall be measured from the outside edge of the support structure or building to the inside edge of the antenna.

Guyed structure (see tower). Guyed structures for new WCFs are prohibited within the City.

Geographic search ring means an area designated by a wireless provider or operator for a new base station, produced in accordance with generally accepted principles of wireless engineering.

Handoff candidate means a wireless communication facility that receives call transference from another wireless facility, usually located in an adjacent first "tier" surrounding the initial wireless facility.

Lattice structure (see Tower). Lattice structures for new WCFs are prohibited within the City.

Least visually obtrusive profile means the design of a wireless communication facility intended to present a visual profile that is the minimum profile necessary for the facility to properly function.

Level I refers to a wireless communication facility permit subject to administrative review and approval by the Land Use Administrator or designee, with no public hearing requirement.

Level II refers to wireless communication facility permit subject to the special exception approval process set forth in Section 2.07 of the Land Development Code, except that the application review and approval timeframes set forth in Section 4.20.10 shall apply. New towers proposed in non-Wireless Master

Plan Sites shall require Level II permits. All other installations only require Level I permits.

Micro Wireless Facility (see Section 42-103).

Modification means a modification of an existing tower or base station to increase the height, or to improve its integrity, by replacing or removing one or several tower(s) located in proximity to a proposed new tower in order to encourage compliance with this section or improve aesthetics or functionality of the overall wireless network.

Monopole structure (see Tower).

Non-concealed WCF means a wireless communication facility that is readily identifiable as such and can be either freestanding or attached.

Personal wireless service means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996.

Public safety communications equipment means all communications equipment utilized by a public entity for the purpose of ensuring the safety of the citizens of the City and operating within the frequency range of 700 MHz and 1,000 MHz and any future spectrum allocations at the direction of the FCC.

Public View means a non-amplified visual range of site from rights-of-ways, sidewalks, adjacent properties, or other publically accessible vantage points.

Radio frequency (RF) emissions means any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, antenna support structure, building, or other vertical projection.

Radio frequency (RF) propagation means wireless telecommunications signal service area as shown on maps.

Satellite Earth Station means a single or group of parabolic (or dish) antennas are mounted to a support device that may be a pole or truss assembly attached to a foundation in the ground, or in some other configuration. A satellite earth station may include, but is not limited to, the associated separate equipment cabinets necessary for the transmission or reception of wireless communications signals with satellites.

Site means for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower, and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

Small wireless facility (See Section 42-103).

Substantial Change means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be

measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

(2) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;

(4) It entails any excavation or deployment outside the current site;

(5) It would defeat the concealment elements of the eligible support structure; or

(6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in subsections (1) through (4) of this definition.

Tower means any structure built for the sole or primary purpose of supporting any FCC- licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Towers do not include any device used to attach antennas to an existing building, unless the device extends above the highest point of the building by more than 20 feet. A tower may be concealed or non-concealed. Non-concealed towers include:

(1) *Guyed structure* means a style of tower consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building. Guyed structures for new WCFs are prohibited within the City.

(2) *Lattice structure* means a self-supporting tapered style of tower that consists of vertical and horizontal supports with multiple legs and cross-bracing, and metal crossed strips or bars to support antennas. Lattice structures for new WCFs are prohibited within the City.

(3) *Monopole structure* means a style of freestanding tower consisting of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of tower is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground or on a building's roof. All feed lines shall be installed within the shaft of the structure.

Transmission Equipment means equipment that facilitates transmission for any FCC- licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with

wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

WCF (see Wireless Communication Facility).

Wireless communications means any personal wireless service, which includes but is not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing devices described in Part 15 of the FCC's regulations (e.g., wireless internet services and paging).

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 Master Plan means the Wireless Telecommunications Master Plan developed and adopted by the City, as amended from time to time, to enforce applicable development standards, land development regulations, state law and federal law related to the deployment of wireless telecommunications infrastructure.

Sec. 4.20.03. - Applicability.

A. Except as provided in section 4.20.04, the following shall apply to the development activities including, but not limited to, installation, construction or modification of the following wireless communications facilities:

- (1) Existing towers.
- (2) Proposed towers.
- (3) Public towers.
- (4) Replacement of existing towers.
- (5) Collocation on towers and base stations.
- (6) Attached WCF.
- (7) Concealed WCF.

B. These regulations are subject to state and federal law limitations.

Sec. 4.20.04. - Exempt installations.

The following uses are exempt from the provisions of this section notwithstanding any other provision of the City's land development regulations, but are subject to all applicable building code compliance and building permit reviews:

- (1) Non-commercial, amateur radio antennas as provided for in Section 125.561, Florida Statutes.

- (2) Satellite earth stations that are one meter (39.37 inches) or less in diameter in all residential districts and two meters or less in all other zoning districts and which are not greater than 20 feet above grade in residential districts and 35 feet above grade in all other zoning districts.
- (3) A government-owned WCF, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City; except that such WCF must comply with all federal and state requirements. This exemption shall terminate upon the state of emergency ending.
- (4) A government-owned WCF erected for the purposes of installing antenna(s) and ancillary equipment necessary to provide communications for public health and safety.
- (5) A temporary, commercial WCF, upon the declaration of a state of emergency by federal, state or local government, or determination of public necessity by the City, and approval by the City; except that such WCF must comply with all federal and state requirements. The exemption may be permitted by the City to continue to three months after the duration of the state of emergency.
- (6) A temporary, commercial WCF for the purposes of providing coverage of a special event such as news coverage or sporting event, subject to approved by the City, except that such WCF must comply with all federal and state requirements. Said WCF may be exempt for a period of up to one week after the duration of the special event.
- (7) Antenna support structures, antennas, and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities that are licensed by the FCC shall be regulated in accordance with federal, state and other applicable regulations.

Sec. 4.20.05. – Wireless Master Plan

- A. The City has adopted a Wireless Master Plan by Resolution of the City Council. The Wireless Master Plan identifies existing or proposed City or publicly owned sites for wireless communication infrastructure and service.
- B. Design standards for proposed towers in the Wireless Master Plan shall be consistent with this Ordinance and the Wireless Master Plan but may be further detailed and addressed through the required lease terms for use of any public property.
- C. The Wireless Master Plan was adopted by the City Council by Resolution No. _____, as may be amended by City Council resolution hereafter. And, by this reference, the Wireless Master Plan is incorporated herein.
- D. The Land Use Administrator or designee may waive application requirements in Section 4.20.09 for sites within the Wireless Master Plan. The applicable requirements are listed in Section 4.20.09.
- E. If an applicant receives a permit to develop a site on City-owned property, the permit shall not become effective until the applicant and the City have executed a written agreement or lease setting forth the applicable terms and provisions.

- F. No permit granted under this section shall convey an exclusive right, privilege, permit, or franchise to occupy or use the publicly owned sites of the jurisdiction for delivery of wireless communications services or any other purpose.
- G. No permit granted under this section shall convey any right, title or interest in the public lands, but shall be deemed a permit only to use and occupy the public lands for the limited purposes and term stated in the agreement between the lessor and lessee.
- H. Sites located within the Wireless Master Plan may utilize a standard landscape plan, approved by the Land Use Administrator or designee.
- I. Sites within the Wireless Master Plan may utilize alternative compliance standards to access a WCF site, if approved by the Land Use Administrator or designee.

Sec. 4.20.06. – Preferred siting locations.

- A. All new WCFs and any supporting structures, except for those proposed within the public rights-of-way, shall generally adhere to the following siting preferences, in order of preference:
 - (1) City-owned property identified in the Wireless Master Plan;
 - (2) Other public property identified in the Wireless Master Plan;
 - (3) Other City owned or public property not identified in the Wireless Master Plan;
 - (4) Privately owned property not identified in the Wireless Master Plan.
- B. If the proposed location for the new WCF is not consistent with the preferred hierarchy and the Wireless Master Plan, the applicant must file relevant information as indicated in Section 4.20.09 with the siting application including, at minimum, the following:
 - (1) An affidavit by a radio frequency engineer demonstrating that despite diligent efforts to adhere to the geographic preferences established in the wireless master plan, wireless master plan options are not technically infeasible, practical or justified given the location of the proposed WCF;
 - (2) An affidavit demonstrating that the proposed site will not adversely affect existing or future single-family uses or environmentally sensitive areas and is not contrary to the City's Comprehensive Plan and Unified Land Development Code; and
 - (3) The existing land uses of the subject and surrounding properties within 300 feet of the proposed site.
- C. This section shall not be interpreted to require applicants to locate on publicly-owned sites when lease negotiation processes are prohibitively lengthy or expensive relative to those of the private sector as determined by the Land Use Administrator or designee, based upon competent substantial evidence. The applicant is considered justified in selecting a lower-ranked privately-owned property option if the government entity fails to approve a memorandum of agreement or letter of intent to lease a specified publicly-owned site within 90 days of the application date or if it is demonstrated that the proposed lease rate for the specified public-owned site significantly exceeds the market rate for comparable privately-owned sites.

Sec. 4.20.07. - Permitted uses.

A. The placement, maintenance or modification of WCFs shall be permitted only in accordance with the wireless communication permit, and the land development requirements of this Code. The placement or maintenance of wireless communication facilities in the public rights-of-way shall comply with the regulations of Chapter 42 of the Code of Ordinances:

B. Applicable permits.

All applications shall meet the review timeframes as shown in Section 4.20.10.

- (1) Level I wireless communication facility permit. All applicable non-exempt applications to place, maintain, modify, or collocate wireless communications facilities, not subject to special exception use approval, shall be subject to administrative review and approval by the Land Use Administrator or designee, with no public hearing requirement.
- (2) Level II wireless communication facility permit. All applicable non-exempt applications to place, maintain, or substantially change wireless communications facilities that do not qualify for an administrative permit shall be subject to the special exception approval process set forth in Section 2.07 of the Land Development Code, except that the application review and approval timeframes set forth in Section 4.20.10 shall apply. New towers proposed in non-master planned sites shall require Level II permits. All other installations only require Level 1 permits.
- (3) Communications Rights-of-Way Permit. All non-exempt applications to place, maintain, modify, or collocate wireless communications facilities within the public rights-of-way shall be subject to the review and approval requirements set forth in Chapter 42, Code of Ordinances, and the applicable land development regulations set forth herein. Wireless communication facilities, other than small wireless facilities and micro wireless facilities, are prohibited within the public rights-of-way.
- (4) Eligible facilities requests. Any request for modification of an existing tower or base station involving collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment that does not substantially change the physical dimensions of such tower or base station shall be reviewed and processed in accordance with the provisions set forth in Section 4.20.12.

C. Expedited collocation applications.

- (1) Expedited collocation applications for antenna on towers. In accordance with Section 365.172, F.S., collocation of antenna on towers, including nonconforming towers, are subject only to building-permit review, which may include a review for compliance with this section, if the applicants meet the following requirements:

- a. The collocation does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower; and
- b. The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment facilities and ancillary facilities, except as allowed under this section; and
- c. The collocation consists of antennas, equipment facilities, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennas placed on the tower and to its accompanying equipment facilities and ancillary facilities and, if applicable, applied to the tower supporting the antennas. Such regulations may include the design and aesthetic requirements but not procedural requirements, other than those authorized by this subsection, of the applicable land development code in effect at the time the initial antenna's placement was approved.

Such collocations shall not be subject to the design or placement requirements of the land development code in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antenna placement approval, to any other portion of the land development code, or to public hearing review. Such collocation applications shall be decided by the Land Use Administrator or designee.

- (2) Expedited collocation applications for antenna on base stations. In accordance with Section 365.172, F.S., except for an historic building, structure, site, object, or district, the following collocation applications on all other existing base stations shall be subject to no more than administrative review for compliance with this section and building permit standards if they meet the following requirements:

- a. The collocation does not increase the height;
- b. The collocation does not increase the existing ground space area, otherwise known as the compound, if any, approved in the site plan for the equipment facility and ancillary facilities.
- c. The collocation consists of antennas, equipment facility and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure in effect at the time of approval of the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this subsection at the time of the collocation application; and
- d. The collocation consists of antennas, equipment facility and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with subsection (c), and were applied to the initial antennas placed on the structure and to its accompanying equipment facility and ancillary facilities and, if applicable, applied to the structure supporting the antennas.

- (3) If only a portion of the collocation does not meet the requirements of any of the above subsections, such as an increase in the height or a proposal to expand the ground space approved in the site plan for the equipment facility by more than 400 square feet or 50 percent, where all other portions of the collocation meet the requirements of this subsection, that portion of the collocation only may be reviewed as set forth in subsection (6) below. A collocation proposal under this subsection that increases the ground space area approved in the original site plan, for equipment facilities and ancillary facilities, by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall require no more than administrative review for compliance with the City's regulations; including, but not limited to, land development code and building permit review; provided, however, that any collocation proposal that increases the original compound size more than such greater cumulative amount shall be reviewed as if it were a new communications facility.
- (4) Any existing tower, including a nonconforming tower, may be structurally modified to permit collocation, or may be replaced through no more than administrative review and building permit review, and is not subject to public hearing review, if the overall height of the tower is not increased and, if the replacement tower is a monopole tower, or if the pre-existing tower is a stealth tower, the replacement tower is a similar stealth tower.
- (5) The owner of the existing tower on which the proposed antennas are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development code to which the pre-existing tower must comply, including any aesthetic requirements, provided the condition or requirement is consistent with this subsection.
- (6) Colocations or portions of colocations that are not exempt from this section and do not fall under the provisions of subsections 4.20.07.C(1) through (4), shall be reviewed through a full permitted use review. Those located on historic structures or in historic districts, shall be reviewed through the review processes for historic structures or districts indicated in the LDC.

Sec. 4.20.08. - Development standards.

A. *General:*

(1) All development standards and land development code regulations relating to the property upon which the WCF is located shall apply. Additionally, where permitted as provided in Section 4.20.07, the following development standards apply to all attached collocations and all new, modified, or combined WCF installations. Where any environmentally sensitive lands, historic or scenic overlay districts or corridor plans also apply, the most restrictive standards shall govern.

(2) Cabinets shall be provided within the principal building, behind a screen on a rooftop or on the ground within the fenced-in and screened equipment compound. This is not required if out of the public view.

(3) All equipment compounds shall be enclosed with a wood/brick/masonry fence or otherwise secured and screened with opaque landscaping. Fencing shall be subject to the requirements as outlined in the LDC.

(4) WCF equipment compounds shall be landscaped as required in Chapter 11 of the LDC. Wireless Master Plan sites may utilize a standard alternative landscape plan approved by the Land Use Administrator or designee.

(5) Attaching commercial messages for off-site and on-site advertising to a WCF is prohibited and unlawful. The placement of a religious symbol as part of the concealment of a WCF shall not be considered prohibited commercial messages or signage. The only signage that is permitted upon a tower, equipment cabinet, or fence shall be informational, and for the purpose of identifying the tower (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable). On permitted signs which are not located on a tower, cabinet or fence, a WCF may be concealed inside such signage, provided that all applicable standards for both the signage and the concealed WCF are met.

(6) Lighting on WCFs, if required by the FAA, shall not exceed the FAA minimum standards. Any lighting required by the FAA must be of the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) allowable by the FAA to minimize the potential attraction to migratory birds. Dual lighting standards are required and strobe light standards are prohibited unless required by the FAA. The lights shall be oriented so as not to project directly onto surrounding residential property, consistent with FAA requirements. Any security lighting for on-ground facilities and equipment shall be in compliance with the LDC.

(7) Each WCF and its equipment compounds shall be constructed and maintained in conformance with all applicable building code requirements.

(8) Equipment compounds shall not be used for the storage of any excess equipment or hazardous waste (e.g., discarded batteries). It is prohibited and unlawful to allow an outdoor storage yard in a WCF equipment compound or to use the equipment compound as habitable space.

(9) The WCF shall comply with all applicable federal, state and local regulations.

(10) The WCF applicant shall comply with all applicable American National Standards Institute (ANSI) standards as adopted by the FCC.

(11) Each WCF shall be designed to ensure that no sound emissions from machinery, alarms, bells, buzzers, or similar noise making devices are audible beyond the perimeter of the equipment compound and shall comply with the City of Palm Coast Code of Ordinances.

(12) Building permits. A building permit shall be required for the construction, modification, and collocation of all WCFs, including any accessory structures or equipment, as provided in Section 4.20.07 above.

(13) The WCF and its equipment compound shall be subject to the setbacks of the underlying zoning district. Antennas may extend a maximum of 30 inches into the setback. However, no antenna or portion of any structure shall extend into any easement.

B. *Attached WCFs:*

(1) Attached WCF's may be permitted in all zoning districts. The top of the attached WCF shall not be more than 20 feet above the existing or proposed building or structure.

(2) Feed lines and antennas shall be designed to architecturally match the facade, roof, wall, or structure on which they are affixed in order to blend with the existing structural design, color, and texture and in order to provide the least visually obtrusive profile.

C. *Freestanding WCFs:*

(1) All new freestanding WCFs shall meet minimum lot size standards of the underlying zoning district and are subject to the LDC.

(2) New freestanding towers shall be configured and located in a manner that shall minimize adverse effects including, but not limited to, visual impacts on the landscape and adjacent properties. New freestanding WCFs shall be designed to match adjacent structures and landscapes with specific design considerations such as architectural design, height, scale, color and texture, and shall have the least visually obtrusive profile.

(3) Grading shall be minimized and limited only to the area necessary for the new WCF as approved by the Land Use Administrator or designee.

(4) All support structures shall be certified to comply with the safety standards contained in the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) Document 222-F, Structural Standards For Steel Antenna Towers and Supporting Structures, as amended, by a Florida professional engineer.

(5) Freestanding towers may only be permitted as monopole towers. Guyed and lattice structures are prohibited, unless the applicant demonstrates to the City by clear and convincing evidence that monopole towers are not feasible to accommodate the intended uses. Freestanding monopoles are prohibited from single-family or multi-family residential districts unless the applicant can conclusively demonstrate to the satisfaction of the City that it cannot reasonably provide its service to the residential zone from outside of the district. The City shall cooperate to determine an appropriate location for the freestanding tower of an appropriate design within the residential district. The applicant shall reimburse the City for all reasonable costs incurred by the City for this cooperative determination.

(6) The height of a new monopole tower shall not exceed the heights provided in the table below:

Freestanding Non-Wireless Master Plan Sites	
Zone	Maximum Height WCF
Single family Residential	Not permitted unless applicant can conclusively demonstrate to the satisfaction of the City that it cannot reasonably provide its service to the residential zone from outside of the district.

Multifamily Residential	Not permitted unless applicant can conclusively demonstrate to the satisfaction of the City that it cannot reasonably provide its service to the residential zone from outside of the district.
MPD	As determined by the MPD ordinance, unless within a Wireless Master Plan
All other districts	Up to 150 feet.
Wireless Master Plan Sites	
All districts	Up to 150 feet.

(7) In calculating the height limit, above ground foundation shall be included, but lightning rods or lights required by the FAA that do not provide any support for antennas shall be excluded. If the freestanding WCF is located within the Wireless Master Plan, the maximum height may be up to 150 feet.

(8) A freestanding monopole and its equipment compound shall be subject to the land development code regulations applicable to the underlying zoning district. The minimum setback distance for a freestanding tower shall be 150 feet from any residentially zoned or platted property. Freestanding monopoles are not allowed in residentially zoned or platted property. In the event of any conflict between this section and the Land Development Code, this section shall control.

(9) New towers shall maintain a galvanized gray finish or other approved contextual or compatible color and provide the least visually obtrusive profile, except as required by Federal regulations. The level of required concealment for antenna placement shall be determined based upon the visibility and location of the proposed tower and the network objectives of the desired coverage area.

(10) All new or modified freestanding WCFs shall be engineered to maximize colocation.

D. *Attached Collocation or Combined WCFs:*

(1) An attached collocation or combined WCF shall not increase the height of an existing tower or base station by more than 20 feet, unless required by Federal law. The maximum total height shall be 150 feet.

(2) The City may require new antenna to be flush-mounted or concealed on a case by case basis, if it is determined that a practical visual and aesthetic benefit can be achieved if in the public view. If the applicant demonstrates through RF propagation analysis that flush-mounted or concealed antennas will not meet the network objectives of the desired coverage area, this requirement shall not apply.

Sec. 4.20.09. - Submittal requirements for Level I and Level II permits.

- A. Application form. Requests for Level I and Level II wireless communication permits shall be made only on application forms approved by the City. Applications shall contain all information required by this land development code and other City regulations, and shall be reviewed for completeness.
- B. Application materials. In addition to the application materials specified in this code for the appropriate type of review, all applications shall provide sufficient materials (plans, graphics, narratives, or expert statements) to demonstrate compliance with all applicable requirements of this section.

(1) Level I and Level II applications shall contain the following:

- a. Application.
- b. A site plan addressing the development standards of the LDC. If applicable, an application meeting the special exception requirements of Section 2.07 of the LDC shall be submitted.
- c. An affidavit by a RF engineer demonstrating compliance with Section 4.20.05. If a non-master plan site is proposed, the affidavit must address why master plan sites are not technically feasible, practical or justified given the location of the proposed WCF communications facility.
- d. FCC documentation including a copy of FCC license submittal or registration, and FCC license or registration
- e. Proposed maximum height of the WCF including, but not limited to, individual measurement of the base, the tower or base station, and lightning rod.
- f. Photo-simulated post-construction renderings of the completed proposed tower, base station, equipment cabinets, and ancillary structures from locations to be determined during a mandatory pre-application conference. The renderings shall, at a minimum, include renderings from the vantage point of any adjacent roadways and occupied or proposed non-residential or residential structures, proposed exterior paint and stain samples for any items to be painted or stained, exterior building material and roof samples.
- g. If the proposed WCF is subject to FAA regulation, then, prior to issuance of a building permit, evidence of compliance with applicable FAA requirements under 14 C.F.R. § 77 et seq., as amended, together with any FAA "no hazard" determinations concerning the WCF (if applicable) shall be timely provided by the applicant to the City.
- h. In order to facilitate the regulation, placement, and construction of WCFs and to ensure that all parties comply with the rules, regulations and applicable guidelines of the FCC, each owner of a WCF or applicant for a WCF shall provide an affirmative statement that it will comply with all applicable federal, state and local statutory and regulatory requirements.
- i. For applications for new towers or other freestanding WCFs, as necessary to determine that there is no other existing structure that could reasonably be used for the placement of the proposed antennas, or for applications for new WCFs or attached collocations that increase the height of an existing structure, as needed to determine if the proposed height is necessary to provide the carrier's designed service, materials detailing the locations of existing WCFs to which the proposed antenna will be candidate for

- placement, including, but not limited to, latitude and longitude of the proposed and existing antenna. This material is not required for Wireless Master Plan sites.
- j. For applications for new towers or other freestanding WCFs, as necessary to determine that there is no other existing structure that could reasonably be used for the placement of the proposed antennas, a map showing the designated search ring. This map is not required for Wireless Master Plan sites.
 - k. A compliance letter from the State Historic Preservation Office of Cultural and Historic Programs of the Florida Department of State.
 - l. With regard to attached colocations, attached and combined WCFs, the applicant shall also submit:
 - i. Certification furnished by a Florida registered professional engineer that the WCF has sufficient structural integrity to support the proposed antenna and feed lines in addition to all other equipment located or mounted on the structure.
 - m. With regard to freestanding concealed or non-concealed WCFs, and modification of WCFs, for non-Wireless Master Plan sites only, the applicant shall also submit:
 - i. A report and supporting technical data demonstrating that all antenna attachments and colocations, including all potentially useable utility distribution poles or transmission towers and other elevated structures within the proposed geographic search ring, and alternative antenna configurations have been examined, and found unacceptable. The report shall include reasons that existing facilities such as utility distribution poles and transmission towers and other elevated structures are not acceptable alternatives to a new freestanding WCF. The report regarding the adequacy of alternative existing WCFs or the mitigation of existing WCFs to meet the applicant's need or the needs of service providers indicating that no existing WCF could accommodate the applicant's proposed WCF shall demonstrate any of the following:
 - a. No existing WCFs located within the geographic search ring meet the applicant's engineering requirements, and why.
 - b. Existing WCFs are not of sufficient height to reasonably meet the applicant's engineering requirements, and cannot be increased in height.
 - c. Existing WCFs do not have sufficient structural integrity to support the applicant's proposed WCFs and related equipment, and the existing WCF cannot be sufficiently improved.
 - d. Other limiting factors that render existing WCFs unsuitable.
 - ii. The applicant shall provide simulated photographic evidence of the proposed WCFs appearance from four vantage points chosen by the City with consultation with the applicant, including the facility types the applicant has considered and the impact on adjacent properties including, but not limited to:
 - a. Overall height.
 - b. Configuration.

- c. Physical location.
- d. Mass and scale.
- e. Materials and color.
- f. Illumination.
- g. Architectural design.

This does not apply to Wireless Master Plan sites.

iii. If applicable, the applicant shall provide a statement as to the potential visual and aesthetic impacts of the proposed WCF on all adjacent properties assigned a residential land use designation or zoning district. This does not apply to Wireless Master Plan sites.

iv. A certification by a Florida professional engineer that the WCF has sufficient structural integrity to accommodate the required and a proposed number of colocations.

v. A certification by a Florida professional engineer specifying the design structural failure modes of the proposed WCF, if applicable.

vi. Identification of the proposed intended service providers of the WCF.

n. With regard to antenna element replacements.

i. Any repair or replacement of an existing antenna or antenna array with another of equal number that does not increase the number and/or size of transmission lines, and that is not readily discernibly different in size, type and appearance when viewed from ground level from surrounding properties, as reasonably determined by the City, and which will not alter the structural integrity of the support structure, is exempt from further review, provided that a notarized certification is submitted by a qualified technician stating that the replacement will not alter the structural integrity of the support structure and that any changes will not affect electrical specifications.

ii. For any repair or replacement of an existing antenna or antenna array on a WCF that changes the mechanical, structural or electrical specifications of the WCF, but does not increase the number and/or size of feed lines and does not increase the number and/or size of antenna elements to the existing WCF, the applicant must, prior to making such modifications, apply for a new building permit review for such requested changes, and, for structural changes to freestanding WCFs, shall provide, in addition to any other documentation necessary for building permit review, a stamped or sealed structural analysis of the existing freestanding WCF prepared by a Florida professional engineer indicating that the existing tower or base station as well as all existing and proposed appurtenances meets the City and Florida Building Code requirements (including, but not limited to, wind loading) for the tower or base station.

o. With regard to the replacement of or modification to an existing WCF, except a tower.

The replacement of or modification to a WCF, except a tower, that results in a WCF facility not readily discernibly different in size, type and appearance, when viewed from ground level from surrounding properties, and the replacement or modification of

equipment that is not visible from surrounding properties, all as reasonably determined by the Land Use Administrator, are subject only to building permit review.

(2) Level II applications

- a. A completed special exception approval application, and all items required pursuant to Section 2.07, including compliance with all applicable special exception requirements.
- C. Disclosure of ownership. A notarized affidavit from all owners having a legal, equitable, or beneficial ownership interest in the tower or base station, or privately owned real property upon which a facility is or will be located or collocated, granting permission to the applicant to locate upon such real property, or attach to the tower or base station being collocated upon or attached to.
- D. Submission of fee. All applications must be accompanied by the permit fee as established by resolution of the City Council.

Sec. 4.20.10. – Application Review Process.

- A. A pre-application conference is required. To minimize issues related to permit application, prior to submitting materials for a permit application, an applicant must request a pre-submittal meeting with the Land Use Administrator or designee. The City shall undertake efforts to accommodate an applicant's request for a pre-application conference within ten (10) business days of a request.
- B. Expert review. The City may require that all wireless communications 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. Application Review Timeframes: "shot clock". The City's action on proposals to place, maintain, modify, or collocate wireless communications facilities shall be subject to the applicable standards and time frames set out in Section 365.172, Florida Statutes, 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same may be amended from time to time. 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. Except for eligible facilities request applications reviewed in accordance with Section 4.20.12, the following procedures apply to installation of a new WCF or modification:

(1) Notification of completeness. The Land Use Administrator or designee shall notify the applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements set forth above. However, such determination shall not be deemed as an approval of the application. Such notification shall indicate with specificity any deficiencies which, if cured, could make the application properly completed.

(2) Expedited collocation applications. The City shall grant or deny each properly completed expedited collocation application for collocation based on the application's compliance with this section, applicable provisions of the City Code and any other applicable regulations, and within the normal timeframe for a similar building permit review, but in no case later than 45 business days after

the date the application is determined to be properly completed. This timeframe shall not apply to lease negotiations for collocation on City-owned property.

(3) All other applications. The City shall grant or deny each properly completed application for any other non-exempt WCF, including special exception approvals and collocations that do not qualify for an expedited collocation, based on the application's compliance with this section and any other applicable law, including but not limited to the City Code, and within the normal timeframe for a similar type of review, but in no case later than 90 business days after the date the City determines the application is completed. This timeframe shall not apply to lease negotiations for wireless communications facilities on City-owned property. Collocations located on historic base stations, or within a historic district, shall be reviewed through the review processes for historic structures or districts indicated in the LDC.

(4) An application is deemed submitted or resubmitted on the date the application is received by the City. If the City does not notify the applicant in writing that the application is not completed in compliance with the City's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the City's regulations, the City shall so notify the applicant in writing indicating with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, would make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the City shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. However, if applicant does not cure the application deficiencies within 20 business days after receiving the notice of deficiencies, the application shall be considered withdrawn or closed unless an extension, due to reasonable circumstances, of the time to cure is requested by the applicant prior to the expiration of the 20-day period, and such extension is granted by the Land Use Administrator or designee.

(5) The timeframes specified above may be extended, but in no case longer than 90 calendar days for collocations, and 150 calendar days for new installations, and only to the extent that the application has not been granted or denied because the City's procedures generally applicable to all other similar types of applications require action by the City Council or Planning and Land Development Regulation Board, and such action has not taken place within the specified timeframes. Under such circumstances, the City Council or Planning and Land Development Regulation Board, as applicable, shall either grant or deny the application at its next regularly scheduled meeting, or, otherwise, the application shall be deemed automatically approved; accordingly, the Land Use Administrator or designee may by letter to the applicant extend the timeframe for a decision until the next available scheduled meeting date of the City Council or Planning and Land Development Regulation Board as to whether to grant or deny an application for a permit. To be effective, a waiver of the timeframes set forth herein must be voluntarily agreed to by the applicant and the City. The City may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, the City may require a one-time waiver in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the City. Notwithstanding the foregoing, the City and an applicant may voluntarily agree to waive the timeframes set forth above.

- D. Appeals. Any person aggrieved by an administrative decision rendered by the Land Use Administrator regarding the provisions of this Section 4.20 may appeal such decision to the Planning and Land Development Regulation Board in accordance Section 2.16.01 of the LDC.

Sec. 4.20.11. - Interference with public safety communications.

- A. The City adopts a policy of requesting prior notification of activation or modification of WCF facilities as provided for in 47 C.F.R. §22.973 and 47 C.F.R. § 90.675 and in accordance with those provisions, WCF providers shall notify the Land Use Administrator or designee prior to a new site activation or existing site modification and provide the information required by the federal regulations.
- B. Whenever the City has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by one or more WCFs, the following steps shall be taken:

(1) The City shall provide notification to all WCF service providers operating within 5,000 feet of the public safety communications equipment at issue, in accordance with the procedures indicated in 47 C.F.R. § 22.972 and 47 C.F.R. § 90.674, using the website www.Publicsafety800mhzinterference.com. Upon such notification, the owners shall use their best efforts to cooperate and coordinate with the City and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in 47 C.F.R. § 22.972 and 47 C.F.R. §90.674 and following the applicable FCC adopted Best Practices Guide, as may be amended or revised by the FCC from time-to-time.

(2) If any WCF owner fails to cooperate with the City in complying with the owner's obligations under this section and if the FCC makes a determination of radio frequency interference with the City public safety communications equipment, an owner who fails to cooperate and/or the owner of the WCF which caused the interference, shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the City for all reasonable costs associated with ascertaining and resolving the interference including, but not limited to, any engineering studies obtained by the City to determine the source of the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in 47 C.F.R. § 22.972 and 47 C.F.R. § 90.674.

Sec. 4.20.12. – Eligible Facilities Requests.

- A. Applicability and Intent. This section implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) as interpreted by the Federal Communications Commission’s (“FCC”) Acceleration of Broadband Deployment Report & Order dated October 21, 2014, which requires local governments to approve any eligible facilities request for modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. This section shall apply only to eligible facilities requests for an eligible support structure that is a legal conforming or legal nonconforming structure at the time a completed eligible facilities request is submitted to the City. To the extent that the nonconforming structures and use provisions of the City of Palm Coast LDCs would operate to prohibit or condition approval of an eligible facilities request otherwise allowed under this section, such provisions are superseded by this section. This subsection shall not apply to an eligible facilities request

replacement of the existing tower or base station. This subsection shall also not apply where the WCF requested to be modified is located upon a City-owned structure, or upon non-right-of-way property which is either City-owned or City-leased.

B. Sole and Exclusive Procedure. Except as may otherwise be provided in this section, and notwithstanding any other provisions in the City Code, the provisions of this section 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 the Spectrum Act. 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 this section shall control. In the event that an application for a project approval 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 Section 6409 of the Spectrum Act, such proposal shall not be entitled to review under this section and may be subject to review under other applicable provisions of the City Code.

C. Application Requirements. No eligible facilities request shall be deemed complete unless it is in writing, accompanied by the application fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant. The application shall be submitted on a form prepared by the City. The applicant shall be obligated to demonstrate conclusively that the proposed modification satisfies the standards set forth herein and that the modification shall meet all applicable building codes.

D. Review of Application. The City shall review an eligible facilities request application to determine if the proposed modification is subject to this section, and if so, if the proposed modification will result in a substantial change to the physical dimensions of an eligible support structure.

E. Timeframe for Review. Within forty-five (45) calendar days of the date on which an applicant submits a request seeking approval under this subsection, the City shall approve, and may not deny, an eligible facilities request, unless it determines that the application is not covered by this section or proposes a substantial change to the physical dimensions of the eligible support structure.

F. Tolling of Timeframe for Review. The 45-day period begins to run when the application is filed with the Land Use Administrator or designee in person during the City's regular business hours, and may be tolled only by mutual agreement, or in cases where the City determines that the application is incomplete.

(1) To toll the time frame for incompleteness, the City must provide written notice to the applicant within thirty (30) calendar days of receipt of the application, clearly and specifically delineating all missing documents or information.

(2) The time frame for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City shall have ten (10) calendar days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the same procedure used for the first notice of incompleteness. Except as may be otherwise agreed to by the applicant and the City, second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Notices of incompleteness from the City shall be deemed received by the applicant upon the earlier of personal service upon the applicant, three days from deposit of the notice in the U.S.

Mail, postage prepaid, to the applicant, or by electronic mail if the applicant has agreed to receive notices in such a manner.

(5) If after submittal of the application the applicant modifies the eligible facilities request, the modified application shall be considered a new application subject to commencement of a new application review period.

G. Approval or Denial. An eligible facilities request shall be approved, and an eligible facilities permit issued, upon determination by the City that the proposed modification is subject to this section and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities request shall be denied upon determination by the City that the proposed modification is not subject to this section or will substantially change the physical dimensions of an eligible support structure.

H. Denial. A denial of an eligible facilities request shall be in writing and shall set forth the reasons for the denial.

I. Remedies. Applicant and City retain any and all remedies that are available at law or in equity and any action challenging a denial of an application or notice of a deemed approved remedy, may be brought in a court of competent jurisdiction within thirty (30) days following the date of the denial or following the date of notification of the deemed approved remedy.

J. Applicable Code Requirements. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety. Any approved eligible facilities request may be conditioned upon compliance with such codes and other laws.

K. Expiration of Approval. An approved eligible facilities request shall be valid for a term of 180 days from the date of approval or the date the application is deemed approved.

L. Not Covered as an Eligible Facilities Request. Should the City determine that an applicant's request is not covered by Section 6409(a) of the Spectrum Act, the presumptively reasonable time frame under [47 U.S.C. § 332\(c\)\(7\)](#), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under [47 U.S.C. § 332\(c\)\(7\)](#), pursuant to the limitations applicable to other reviews under that statute.

M. Failure to Act. In the event the City fails to approve or deny a request under this section within the timeframe for review, accounting for any tolling, the request shall be deemed granted. The application deemed granted does not become effective until the applicant notifies the City in writing after the review period has expired, accounting for any tolling, that the application has been deemed granted.

Sec. 4.20.13. – Abandonment.

Any WCF and equipment compound that is not operated for a continuous period of 210 days shall be considered abandoned. The Land Use Administrator may require removal of the WCF and equipment compound under the following circumstances, which are deemed detrimental to the health, safety and welfare interests of the City:

- (1) The WCF has not been operated for a continuous period of 210 days, except for periods caused by force majeure, in which case, repair or removal shall commence within 90 days or within such other reasonable time approved by the Land Use Administrator;
- (2) The WCF creates a public health or safety hazard, which shall be deemed a nuisance per se; or
- (3) The WCF has been located, constructed, or modified without obtaining all permits and approvals required by law, or located, constructed, or modified in a manner inconsistent with applicable permit requirements and state or federal law.

If the Land Use Administrator makes such a determination the owner of such WCF and equipment compound shall remove the same, at the owner's expense, within 90 days of receipt of notice from the City notifying the owner of such abandonment. An owner may apply to extend the time for removal or reactivation by submitting an application stating the reason for such extension. The City may extend the time for removal or reactivation up to 90 days upon a showing of good cause. If the WCF or equipment compound is not removed in accordance with the requirements of this section, the City may give notice that it will contract for removal within 90 days following written notice to the owner. Thereafter, the City may cause removal of the WCF and equipment compound with all costs being borne by the owner. The City may record a lien against the property in the amount of all costs and expenses of the City. Upon removal of the WCF, the equipment compound and the foundations, including two feet below ground level, the development area shall be returned to its natural state and topography and vegetated consistent with the natural surroundings or consistent with the current use of the land at the time of removal. The cost of rehabilitation shall be borne by the owner. Except as provided herein, the abandonment of WCFs within public rights-of-way shall be managed in accordance with the procedures set forth in Section 42-123, City Code of Ordinances. Any special exception approval for a WCF shall automatically expire 210 days from the date of abandonment without reactivation, or upon completion of dismantling and removal, whichever is first, or pursuant to the notice required by Section 42-123 of the City Code of Ordinances.

Sec. 4.20.14. - Code enforcement.

- A. The City may enforce the provisions of this section in accordance with the provisions of applicable state law and pursue any and all available legal remedies.
- B. The City shall engage in a program of periodic inspections to ensure continuing adherence to the standards of this section and to ensure that WCFs are being appropriately maintained.

Sec. 4.20.15. – Compliance with state and federal regulations; preemption.

In implementing this section and the provisions set forth herein, the City shall comply with applicable state and federal regulations, and the provisions of this section 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 section and state or federal law, state and federal law shall control. In the event any provision of this section 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.

ATTACHMENT "B"

Sec. 14.02. - Glossary.

* * *

~~*Antenna support structure:* A vertical projection composed of metal or other material, with or without a foundation, designed for the express purpose of accommodating antennas at a desired height. Antenna support structures do not include any device used to attach antennas to an existing building, unless the device extends above the highest point of the building by more than 20 feet. Types of support structures include the following:~~

- ~~(1) *Base station:* The electronic equipment utilized by the wireless providers for the transmission and reception of radio signals.~~
- ~~(2) *Guyed structure:* A style of antenna support structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building. Guyed structures for new wireless communication facilities are prohibited within the City.~~
- ~~(3) *Lattice structure:* A tapered style of antenna support structure that consists of vertical and horizontal supports with multiple legs and cross-bracing and metal crossed strips or bars to support antennas.~~
- ~~(4) *Monopole structure:* A style of freestanding antenna support structure consisting of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of antenna support structure is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground or on a building's roof.~~

* * *

~~*Collocation:* The practice of installing and operating multiple wireless carriers, service providers, and/or radio common carrier licensees on the same antenna support structure or freestanding wireless communication facility, concealed or nonconcealed, or as attached wireless communication facilities using different and separate antenna, feed lines, and radio frequency generating equipment. Specific types of collocations include:~~

- ~~(1) *Attached collocations:* Those using attached wireless communication facilities on other types of existing structures.
 - ~~a. *Combined antenna:* An antenna or an antenna array designed and utilized to provide services for more than one wireless provider for the same or similar type of services.~~~~
- ~~(2) *Free standing collocations:* Those where the antennas are located on antenna support structures or other freestanding wireless communication facilities, concealed or nonconcealed, together with the ancillary structures, feed lines, equipment shelters, and other necessary facilities, which may be located either on or in the antenna support structure or freestanding wireless communication facility, inside a building or structure, or on the ground; or~~

* * *

~~*Equipment compound:* The fenced area surrounding the ground-based wireless communication facility including, but not limited to, the areas inside or under the following: an antenna support structure's framework and ancillary structures such as equipment necessary to operate the antenna on the wireless communication facility that is above the base flood elevation including: cabinets, shelters, pedestals, and other similar structures.~~

* * *

Mitigation: An action or series of actions to offset the adverse wetland impacts. Mitigation usually consists of restoration, enhancement, creation, preservation, or a combination thereof. Mitigation also refers to the required replacement of protected trees that are removed for multi-family, institutional, commercial, and industrial development and residential lots. ~~Relating to wireless communication facilities, mitigation means a modification of an existing antenna support structure to increase the height, or to improve its integrity, by replacing or removing one or several antenna support structure(s) located in proximity to a proposed new antenna support structure. This is to encourage compliance with this Code or improve aesthetics or functionality of the overall wireless network.~~

* * *

Wireless communication facilities: ~~The equipment and associated structures needed to transmit and/or receive electromagnetic signals. A wireless communication facility typically includes antennas, supporting structures, enclosures, and/or cabinets housing associated equipment, cable, access roads, and other accessory development. Receive-only radio and television antennas and satellite dishes or antennas are excluded from this definition. 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.~~

* * *

City of Palm Coast, Florida

Agenda Item

Agenda Date : 1/16/2018

Department PLANNING Item Key	Amount Account #
Subject ORDINANCE 2018-XX AMENDING CHAPTER 42 ARTICLE IV COMMUNICATION RIGHTS-OF-WAY	
<p>Background : <u>UPDATE FROM THE JANUARY 9, 2018 WORKSHOP</u></p> <p>This item was heard by City Council at their January 9, 2018 Workshop. There were no changes suggested to this item. However, there were some final legal revisions made to the Ordinance which are highlighted in yellow.</p> <p><u>ORIGINAL BACKGROUND FROM THE JANUARY 9, 2018 WORKSHOP</u></p> <p>The Palm Coast City Council has made improved wireless infrastructure and service a high priority. This direction stems from an increasing recognition that wireless connectivity is becoming an increasingly essential need for residents, businesses, and visitors, both locally and nationwide.</p> <p>Overall trends indicate that Americans have a decreased household reliance on landlines; only 49% of Americans still use landlines. In addition, today's subscribers have increased their data usage in ways previously unimagined. Further, recent storms have shown us the importance of maintaining public service emergency communications and infrastructure. Lastly, an ever-changing regulatory climate and an increased tolerance toward wireless communication facilities warrant a review of the City's current policies.</p> <p>The project under consideration consists of three components: a revised Wireless Communication Facilities Ordinance in the City's Land Development Code, proposed amendments to the City's Right of Way (ROW) Ordinance to regulate small cell facilities in the ROW, and a proposed Wireless Master Plan.</p> <p>There have been significant changes to wireless technologies and federal legislation since the adoption of the existing City Ordinances in 2005. While the City currently regulates Wireless Communication Facilities in two code locations, this item amends Chapter 42 Article IV Communication Rights-of-Way. In a separate agenda item, staff has drafted a second ordinance to repeal Chapter 54 "Wireless Telecommunications" of the Code of Ordinances and amend Section 4-20, "Wireless Communication Facilities" of Chapter 4, "Conditions for limited specific uses and activities" in the City's Unified Land Development Code.</p> <p>In 2017, the Florida Legislature passed, and Governor Scott signed, the "Advanced Wireless Infrastructure Deployment Act." The Act places certain limitations on local government authority to regulate the collocation of small wireless facilities within the public rights-of-way. The proposed Communication Rights-of-Way Ordinance repeals and replaces Article IV of Chapter 42 Code of Ordinances to meet applicable State and Federal Law including the Advanced Wireless Infrastructure Deployment Act within the limitations on local government authority.</p>	

In essence, the proposed Ordinance will allow applicants to obtain a newly- created Communications Rights-of-Way permit from the City. The permit process established in the Ordinance establishes minimum regulatory requirements for these type of facilities consistent with State law. These requirements include insurance provisions, bonding requirements, as well as an application process. Such provisions are important since the new State law allows applicants to apply for up to 30 pole locations on one permit.

Recommended Action :

Adopt Ordinance 2018-XX AMENDING CHAPTER 42, ARTICLE IV, COMMUNICATION RIGHTS-OF-WAY

ORDINANCE 2018-____
AMENDING CHAPTER 42
OF THE CODE OF ORDINANCES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AMENDING SECTION 42-38, “EXCEPTIONS” OF ARTICLE II, “RIGHT-OF-WAY UTILIZATION”, OF CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES” TO PROVIDE EXCEPTION FOR WIRELESS FACILITIES PERMITTED IN ACCORDANCE WITH THE COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE; AMENDING ARTICLE IV, “COMMUNICATIONS RIGHTS-OF-WAY” OF CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES”, OF THE CODE OF ORDINANCES OF THE CITY OF PALM COAST, TO AMEND AND UPDATE THE REGULATIONS REGARDING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW INCLUDING THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR 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 Council of the City of Palm Coast (“City Council”) 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 Council 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 Palm Coast, 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, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. AMENDMENT OF SECTION 42-38, “EXCEPTIONS” OF ARTICLE II, “RIGHT-OF-WAY UTILIZATION” CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES”. That Section 42-38 “Exceptions” of Article II, “Right-of-Way Utilization” of Chapter 42, “Streets, Roads, Bridges, and Other Public Places” of the City Code of Ordinances, is hereby amended as follows:

Section 42-38. Exceptions.

* * *

(d) Emergency repair. Emergency repair as defined in section 42-34(f) above, may be performed without obtaining a permit prior to such repair. Emergency repair work shall be completed in accordance with applicable directives from the City or other authority as expeditiously as possible. The City shall be notified on all emergency repair work by 10:00 a.m., the workday following beginning of such repair work and the proper applications made at that time.

(e) Wireless Communication Facilities. Wireless communication facilities permitted in accordance with Section 42-108 do not require a permit issued pursuant to this article.

SECTION 3. AMENDMENT OF ARTICLE IV, “CITY OF PALM COAST COMMUNICATIONS RIGHTS-OF-WAY” OF CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES”. That Article IV, “City of Palm Coast

Ordinance 2018-_____

Communications Rights-of-Way” of Chapter 42, “Streets, Roads, Bridges, and Other Public Places” of the City Code of Ordinances, is hereby amended as shown in Attachment “A.”

SECTION 4. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 5. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, 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 6. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this ____ day of _____ 2018.

Adopted on second reading after due public notice and hearing this ____ day of _____ 2018.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality

William E. Reischmann Jr. Esq.

ATTACHMENT "A"

ARTICLE IV. - COMMUNICATIONS RIGHTS-OF-WAY

Sec. 42-101. - Title.

This article shall be known and may be cited as the "City of Palm Coast Communications Rights-of-Way Ordinance".

Sec. 42-102. - Intent and purpose.

It is the intent of the City 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; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § Section 337.401, F.S.(2000), as it may be amended, the City's home rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; 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 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. 42-103. - 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 in accordance with Section 42-108 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 Planning Manager or designee 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 tower as defined in Section 4.20, Land Development Code, 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 City of Palm Coast, 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.

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. ~~transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, for purposes of this article "cable service", as defined in F.S. § 202.11(2), (2000), as it may be amended, is not included in the definition of "communications services", and cable service providers may be subject to other ordinances of the City.~~

Communications services provider shall mean any person including a municipality or county providing communications services through the placement or maintenance of a communications facility in public rights-of-way. "Communications services provider" shall also include any person including a municipality or county that places or maintains a communications facility in public rights-of-way but does not provide communications services. The term includes pass-through providers and wireless infrastructure providers.

~~*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.~~

Dealer shall mean 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 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.

Ordinance shall mean this article.

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.

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 as defined in Section 337.401, F.S., as amended, or a communications facility provider pursuant to this section.

Permit shall mean a communications rights-of-way permit required pursuant to Section 42-108 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.

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

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

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 five hundred (500) foot radius of a communications facility site or proposed communications facility site.

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 or Wireless Communication Facilities shall mean any equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial, or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include: (a) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; (b) wireline backhaul

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

Wireless Infrastructure Provider 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 capable 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. 42-104. – 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 within the public rights-of-way of roadways and railways under the jurisdiction and control of the Florida Department of Transportation unless approved in writing by the Florida Department of Transportation and, pursuant to any permit delegation agreement, the City.
- (c) 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. 42-104105. - Registration for placing or maintaining communications facilities in public rights-of-way.

- (a) Applicability. All persons, including, but not limited to, a A communications services provider, pass-through provider, or wireless infrastructure provider, seeking that desires to place or maintain a communications facility in public rights-of-way in the City shall first register with the City in accordance with this article 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 a communications facility such facilities in public rights-of-way.
- (b) 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.

- (c) Application Requirements. Each communications services provider that desires to place or maintain a small wireless facility, micro wireless facility, or utility pole for collocation of a small wireless facility ~~communications facility~~ in public rights-of-way in the City shall file a single registration with the City 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;

(2) 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;

(3) 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 ~~For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;~~

(4) 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; ~~and~~

(5) A copy ~~The number~~ of the applicant's certificate of authorization, public convenience and necessity, or other similar certification or licenses to provide communications services issued by the Florida Public Service Commission, the FCC ~~Federal Communications Commission~~, or other federal or state authority, if any;

(6) ~~For an applicant that does not provide a Florida Public Service Commission certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, such as the number of the certificate from or filing with the Florida Department of State. If the applicant is a corporation, proof of authority to do business in the state of Florida, including the number of the corporate certification;~~

(7) 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;

(8) 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

- (d) Application Fees. No registration application fees shall be imposed for registration under this Article. ~~Each applicant for a registration shall submit a registration application fee with the~~

~~application, which shall not be refunded if the application is withdrawn; provided that the registrant may credit the registration application fee as provided in F.S. § 337.401(3). Fee amounts shall be established by resolution of the City and shall be in an amount not to exceed the City's costs and expenses incurred in connection with reviewing and approving the registration. If the registration application fee is insufficient to cover all costs or expenses incurred by the City in connection with review and approval of the registration, the applicant shall reimburse the City for any such costs and expenses in excess of the registration application fee following receipt of written notice, which shall explain any additional costs or expenses. This subsection (d)(1) shall be repealed and shall have no force or effect on or after October 1, 2001.~~

~~(1) No registration application fees shall be imposed on or after October 1, 2001.~~

- (e) Review of Registration. The City shall review the information submitted by the applicant. Such review shall be by the designated City Manager official or his or her designee. If the applicant submits information in accordance with subsection (c) 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 (c) above, the City shall notify the applicant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has 30 days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in section 42-~~114108~~.
- (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 April 1 of even-numbered years in accordance with the registration requirements in this article, except that a registrant that initially registers during the even-numbered year when renewal would be due or the odd-numbered year immediately preceding such even-numbered year shall not be required to renew until the next even-numbered year. Within 30 days of any change in the information required to be submitted pursuant to subsection (c), ~~except, as of October 1, 2001, subsection (c)(3),~~ 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) Applicability to Resellers. ~~In accordance with applicable City ordinances, codes or regulations, a permit may be required of a communications services provider that desires to place or maintain a communications facility in public rights-of-way. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. 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. 42-105-106. - Notice of transfer, sale or assignment of assets in public rights-of-way.

If a registrant transfers, sells or assigns its assets located in public rights-of-way incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article. Written notice of any such transfer, sale or assignment shall be provided by such registrant to the City within 20 days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in section 42-104105 within 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. 42-107. - 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 42-123 of this article.
- (4) The registrant fails to comply with any of the rules, regulations, or general conditions set forth herein.

- (b) Notice of intent to terminate. Prior to termination, the City Manager or designee, shall notify the registrant with a written notice 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. The registrant shall have 30 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City Manager or designee, to accomplish the same. If not eliminated, or if the plan is rejected, the City Manager or designee shall provide written notice

of such rejection within 15 days of receipt of the plan to the registrant. A registrant shall be notified by written notice of any decision by the City Manager or designee to terminate its registration. Such written notice shall be sent within seven days after the decision. Should registrant wish to appeal the City Manager or designee's decision, the appeal to City Council shall be subject to the appeal process as provided in section 42-114.

(c) In the event of termination, the former registrant shall:

(1) Notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or

(2) Provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in section 42-114, the City may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities; or requiring the registrant within 90 days of the termination, or such longer period as may be agreed to by the City, 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. 42-106108. – Communications Rights-of-Way Permit Required. Placement or maintenance of a communications facility in public rights of way.

(a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing or maintaining a communications facility in public rights of way.

(b) *Communications Rights-of-Way Permit Required.* Except as provided herein, a A registrant shall not commence to place, ~~or~~ maintain, or modify a communications facility in public rights-of-way, without a communications rights-of-way permit issued by the City Manager or designee in accordance with this section, unless otherwise exempt as provided herein. An effective registration shall be a condition of obtaining a permit. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or maintain a communications facility in the public rights-of-way until all applicable permits if any, have been issued by the City or other appropriate authority, ~~except in the case of an emergency.~~ 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 shall or may be required to obtain an after the fact permit if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. Registrant 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 Planning 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. As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide the following:

(1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of facilities that will be located in public rights-of-way;

- ~~(2) — A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);~~
 - ~~(3) — A maintenance of traffic plan for any disruption of the public rights of way;~~
 - ~~(4) — Information on the ability of the public rights of way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons);~~
 - ~~(5) — If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights of way;~~
 - ~~(6) — The timetable for construction of the project or each phase thereof, and the areas of the City which will be affected; and~~
 - ~~(7) — Such additional information as the City finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.~~
- (d) ~~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.~~ Application Requirements. To ensure compliance with federal and state law, applicants shall request and schedule an application submittal appointment with the Planning Manager or designee or designee. Permit application submittal appointments shall be scheduled by the City, at the City's sole discretion, upon no less than five 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 30 small wireless facilities, or five individual permit applications shall be received at a permit application submittal appointment. The application shall be in a form approved by the Planning Manager or designee, and shall include such information as the City finds reasonably necessary to demonstrate applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.
- (e) ~~All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights of way by the public and with the rights and convenience of property owners who adjoin any of the public rights of way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights of way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible.~~ Affidavits.
- (i) — An application for a permit to install new utility pole(s) or new wireless support structures (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 500 foot radius of the proposed new communications facility.

(ii) 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.

(iii) 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 nine 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.

(iv) 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.

- (f) ~~All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.~~ 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.
- (g) ~~After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, (2000), as it may be amended. For 12 months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense.~~ 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.
- (h) ~~Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, (2000), as they may be amended.~~ 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 Planning Manager or designee.
- (i) ~~A permit from the City constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create a property right or grant~~

~~authority to impinge upon the rights of others who may have an interest in the public rights-of-way.~~ 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 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.

- (j) ~~A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.~~ 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.
- (k) ~~In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556, (2000), as it may be amended.~~ Communications Services Tax In Lieu of Permit fee. A registrant that places or maintains a communications facility 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 amended from time to time, and City Code Section 42-124.
- ~~(l) Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas.~~
- ~~(m) Upon request of the City, and as notified by the City of the other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way, and registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.~~
- ~~(n) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the City or any other person's facilities lawfully occupying the public rights-of-way of the City.~~
- ~~(o) The City makes no warranties or representations regarding the fitness, suitability, or availability of City's public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk. Nothing in this article shall affect the City's authority to add, vacate or abandon public rights-of-way, and City makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.~~
- ~~(p) The City shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article.~~
- ~~(q) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public~~

~~rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the City, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the City.~~

- ~~(r) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the City and within said limits as same may from time to time be altered.~~
- ~~(s) A registrant shall, on the request of any person holding a permit issued by the City, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation.~~

~~A wireless facility that is a portion of a communication facility, such as an antenna ("wireless facility(ies)"), which is attached to a legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole ("vertical structure(s)"), shall be subject to the following criteria:~~

- ~~(1) Wireless facilities may not extend more than 20 feet above the highest point of the vertical structure;~~
- ~~(2) Wireless facilities that are attached to a vertical structure located in public rights-of-way that is 15 feet or less in width and is located adjacent to real property used as a single family residence shall be flush mounted to the vertical structure;~~
- ~~(3) Wireless facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;~~
- ~~(4) Wireless facilities shall comply with any applicable Federal Communications Commission Emissions Standards;~~
- ~~(5) The design, construction, and installation of such wireless facilities shall comply with any applicable local building codes;~~
- ~~(6) No commercial advertising shall be allowed on such wireless facilities; and~~
- ~~(7) Any accessory equipment and related housing in the public rights-of-way that are used in conjunction with such a wireless facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment.~~

~~Vertical structures, such as towers, whose sole purpose is to serve as a mounting device for antennae, are expressly prohibited from being placed in the public rights-of-way unless applicable zoning and land use laws or regulations allow such structures to be placed within the zoning district in which such public rights-of-way are located or to which they are adjacent.~~

42 - 109. – Permit Review.

(a) *Review Process.* The City shall process and issue permits for the placement, maintenance, or modification of communication facilities 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) *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, or latest published version.

(5) Fails to comply with applicable codes, the Land Development Code, and the applicable provisions of this Article.

(d) *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.

(e) *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 from time to time; and 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same amended from time to time. 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. 42-110. 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 Planning Manager or designee and these structures shall be erected under the supervision of the Planning Manager or designee 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 Planning Manager or designee 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 Planning Manager or designee 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 Planning Manager or designee:

- (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 behind the curb to avoid damage to any sidewalk. 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 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. 42-111. - Design, Placement and Collocation Standards for Communications Facilities in the Public Rights-of-Way.

- (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. The following objective design standards regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the City:

(1) All proposed small wireless facilities for collocation on a wireless support structure or utility pole shall meet one of the following stealth design standards:

a. Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or structure or covered with a shroud. No exposed wires or, cables are permitted. Slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole at the level of the antenna attachment, and side mounted enclosures, if any, do not extend more than thirty (30) inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna; or

b. Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or covered with a shroud. No exposed wires or cables are permitted. A street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility. Any street light fixture shall be maintained in good working order by the applicant or pole owner.

(2) Applicants shall not place or maintain signage on communications facilities in public rights-of-way, unless otherwise required by federal or state law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.

(3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, or state and federal laws and regulations or as permitted by the City.

(4) Ground-mounted small wireless facilities shall be located within a ten (10) foot radius of the structure or utility pole for the collocated small wireless facility and, if possible, in areas with existing foliage or another aesthetic features to obscure the view of the ground-mounted small wireless facility. The ground-mounted small wireless facility shall be designed to appear similar to other at-grade facilities in the same public rights-of-way and may be further concealed with additional plantings. Any additional plantings proposed pursuant to this subsection shall be approved by the City and be maintained by the registrant pursuant to a landscape maintenance agreement.

(5) The antennas and related equipment shall be in a color that will provide the most camouflage, as determined by the City Manager or designee, or designee. Ground based small

wireless facilities shall be painted forest green, unless determined otherwise by the City Manager, or designee. When on a black pole, wireless facilities shall be painted black, unless determined otherwise by the City Manager, or designee.

(6) A new utility pole that replaces an existing utility pole shall be of substantially similar design, material, and color as the existing utility pole.

(b) Waiver. The City's design standards set forth in subsection (a), may be waived by the Planning Manager or designee upon a showing by the applicant 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 by the Planning Manager or designee 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 4.20 of the Land Development Code.

(d) Height Requirements.

(1) Utility Poles and Wireless Support Structures. The height of a new utility pole or wireless support structure installed in conjunction with the collocation of a small wireless facility within the public rights-of-way shall be no greater than:

a. Unless waived by the Planning Manager or designee, 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.

b. If there is no utility pole within 500 feet, the height of the utility pole shall not exceed 50 feet.

(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. Small wireless facilities are prohibited on utility poles, wireless support structures, or similar structures 15 feet or less in height unless waived upon a showing of good cause by the Planning Manager 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 article 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.

(6) 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.

(7) 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 applicable to wireless communication facilities set forth in Section 4.20 of the Land Development Code, and any applicable requirements set forth in the City Code, as amended from time to time.

(g) *Prohibited Collocations, Attachments, Installations, and Services Not Authorized.*

(1) This article does not authorize the following:

(a) 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.

(b) 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.

(c) 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.

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

(3) 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.

Sec. 42-112. – General Conditions.

As a condition of allowing the placement or maintenance of 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 land use regulations, including those set forth in Section 4.20, of the City Land Development Code. 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 of As-Builts.* Within 45 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.
- (f) *Production and Filing of As-Builts.* Every communications services provider that is registered with the City shall produce and keep on file at its principal place of business an accurate and complete set of as-builts of all facilities placed and maintained in the public rights-of-way. The location and identification of facilities and the production of as-builts shall be at the sole expense of the communications services provider. Within 30 days of any written request by the Planning Manager or designee, the communications services provider must provide to the City, at no cost, copies of complete sets of as-builts 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-builts 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 facility placed in the public rights-of-way by the communications services provider without first having obtained the required permit shall be removed within 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 Planning Manager or designee and the cost of removal shall be borne and paid by the

communications services provider upon demand.

- (h) *Underground.* A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with any undergrounding requirements of the City that prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the City. 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 Planning Manager or designee, 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 Planning Manager or designee.
- (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.
- (j) *Undergrounding of Electric Utility Facilities.* The communications services provider or wireless infrastructure provider must, at the time 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 Planning Manager or designee, 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 Planning Manager or designee'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 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 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 Planning Manager or designee to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the public rights-of-way or other facilities that is occurring or is scheduled to occur within a reasonable time from application for a permit as determined by the Planning Manager or designee. 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 Planning Manager or designee 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 Planning Manager or designee.

(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 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 Planning Manager or designee, maintain and correct any restorations made pursuant hereto for a period of 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 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 Planning Manager or designee, 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 Council 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 Planning Manager or designee, 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 service 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.

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

Sec. 42-~~107~~113. - 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 42-~~108~~114 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 registrant 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.

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. 42-~~108~~114. - Appeals.

Final, written decisions of the City ~~official~~ Manager or designee suspending or denying 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 Manager or designee within 30 days of the date of the final, written decisions to be appealed. Any appeal not timely filed as set forth above shall be waived. The City Council shall hear the appeal as set forth in the City Code. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within 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. 42-115. - Duty to Notify City of Resellers; Conditional Use of Public Rights-of-Way.

Within 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 42-105 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. 42-109. - 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 42-116 of this article.~~

~~(b) — Prior to termination, the registrant shall be notified by the City official with a written notice setting forth all matters pertinent to the proposed termination action, including which of (1) through (3) above is applicable as the reason therefore, and describing the proposed action of the City with respect thereto. The registrant shall have 60 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City official, to accomplish the same. If the plan is rejected, the City official shall provide written notice of such rejection to the registrant and shall make a recommendation to the City Council regarding a decision as to termination of registration. A decision by a City to terminate a registration may only be accomplished by an action of the City Council. A registrant shall be notified by written notice of any decision by the City Council to terminate its registration. Such written notice shall be sent within seven days after the decision.~~

~~(c) — In the event of termination, the former registrant shall:~~

~~(1) — Notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or~~

~~(2) — Provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in section 42-108, the City may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities or requiring the registrant within 90 days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from~~

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

- ~~(d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.~~
- ~~(e) In the event of termination of a registration, this section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the City, if required.~~

Sec. 42-~~116~~110. - Existing communications facilities in public rights-of-way.

~~A~~ Communications services provider with an existing communications facility in the public rights-of-way of the City has 60 days from the effective date of this article (~~June 19, 2001~~) to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

Sec. 42-~~117~~111. - Insurance.

- (a) A registrant shall provide, pay for and maintain, satisfactory to the City, the following types of insurance described herein. All insurance shall be from responsible companies admitted and duly authorized to do business in the State of Florida and shall have assigned by A.M. Best Company, a minimum of 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) having a rating reasonably acceptable to the City. All liability policies shall provide that the City, and its council members, officers, and employees, are named as is an additional insureds with respect to any covered liability arising out of or relating to the placement or maintenance of communications facilities in the public rights-of-way or other as to the activities under this article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. 30 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 insurance requirements may be satisfied by evidence of self insurance or other types of insurance acceptable to the City.
- (b) The limits of coverage of insurance required shall be not less than the following:
 - (1) ~~Worker's compensation and employer's liability insurance and Florida Statutory requirements.~~
Employer's liability:

\$500,000.00 limit per each accident.

\$500,000.00 limit per each employee.
 - (2) Comprehensive general liability:

Bodily injury and property damage—\$5,000,000.00 combined single limit each occurrence.

(3) Automobile liability:

Bodily injury and property damage—\$51,000,000.00 combined single limit each accident.

(4) Worker's compensation:

Florida statutory requirements.

(c) The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates, including all endorsements and riders, must be signed by the authorized representative of the insurance company and must be filed and maintained with the City annually. Thirty (30) 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 certificates 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 the requirements of Section 42-117 of the City of Palm Coast 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 council members, officers and employees are additional insureds; and

(4) that the City must 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 to 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 registrant 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 registrant must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

Sec. 42-~~112~~118. - Indemnification.

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of or in connection with the placement or maintenance of its communications system or facilities in public rights-of-way by the registrant, 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 a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This indemnification provision includes, but is not 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 registrant, or alleged to have been so caused or occurred; or (2) involving the registrant's violation of any easement or private property rights. the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. City agrees to notify the registrant, in writing, within a reasonable time of City receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, (2000), as it may be amended.

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

Sec. 42-113119. – Maintenance Bond. A maintenance surety for the communications system shall be submitted upon release of the performance surety. The maintenance surety provides a guarantee that the improvements were completed without defects in workmanship or materials, and guarantees timely removal. The expiration date shall be the date of the eventual removal of the equipment from the right of way.

(a) Maintenance surety amount. The amount of the maintenance surety shall be based on 20 percent of the actual/present day costs of construction, as certified under seal by the project engineer of record, and subject to approval by the Planning Manager.

(b) Maintenance surety release. The maintenance surety may be released by the Planning Manager upon the eventual removal of the improvements from the right of way. This action must be initiated, in writing, by the registrant.

Construction bond.

~~(a) — Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, a City may require a construction bond to secure the restoration of the public rights-of-way. 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 42-114.~~

~~(b) — The rights reserved by the City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this article, or at law or equity.~~

~~(c) — The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved in this article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the City may have.~~

Sec. 42-~~120~~114. - Security fund.

At or prior to the time of registration, ~~a registrant receives its first permit to place or maintain a communications facility in public rights-of-way~~ after the effective date of this article, the registrant must ~~may be required to~~ file with the City, for City approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$25,000.00 having as a surety a company qualified to do business in the State of Florida, and acceptable to the City, which shall be referred to as the "security fund". The security fund shall be maintained from such time through the earlier of:

(1) Transfer, sale, assignment or removal of all communications facilities in public rights-of-way; or

(2) 12 months after the termination or cancellation of any registration. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to section 42-~~115~~122 of this article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the City may in its discretion not require a security fund or may accept a corporate guarantee of the registrant or its parent company.

Sec. 42-~~121~~. – Performance Bond.

(a) Before any registrant 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 registrant 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 registrant

with all requirements, duties and obligations imposed by the provisions of the City of Palm Coast 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 Planning Manager or designee 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 registrant 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 registrant'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. 42-~~122~~115. - 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 IV, 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 Council 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 Council 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 Council 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's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 42-~~123~~116. - Abandonment of a communications facility.

- (a) Upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the City within 60 ~~90~~ days.
- (b) The City may direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the City determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:
 - (1) Compromises safety at any time for any public rights-of-way user; ~~or during construction or maintenance in public rights-of-way;~~
 - (2) Compromises safety of other users or persons performing construction or maintenance of 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 public rights-of-way use.

In the event of ~~(23)~~, the City may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

- (c) In the event that the City does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the City or another person at such third party's cost.
- (d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the City within the time period specified in the written notice, which time period must be a reasonable time period as may be required by the City under the circumstances, the City may perform such removal and charge the cost of the removal against the registrant.

Sec. 42-~~124~~117. - Force majeure.

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

Sec. 42-125. – 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 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 in Subsection 42-112(t), a communications services provider who meets the definition of dealer as set forth in this article and who has registered in accordance with Section 42-105 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 Palm Coast'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 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 Subsection 42-125(b) of 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 Palm Coast'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 Subsection 42-125(b) of the City Code or such other amount or rate of compensation as mutually agreed to in writing by the Government and the City.

Sec. 42-~~126~~¹¹⁸. - Reservation of rights and remedies.

(a) The City hereby expressly reserves the following rights: ~~to amend this article as it shall find necessary in the lawful exercise of its police powers.~~

(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 Council 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 Council 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 42-105 to the extent such reseller wants the right to place or maintain communication facilities in the public rights-of-way. Any person using or leasing communication 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 ~~(June 19, 2001)~~ of this article and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date ~~(June 19, 2001)~~ 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 registrant has available under applicable law.
- (e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.
- (f) If provisions of this article conflict with any other provision of the City Code of Ordinances, or the Land Development Code, the more restrictive provisions shall govern.

Sec. 42-127. - Special provisions for 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 wireless tower or base station within public rights-of-way of the City which does not substantially change the physical dimensions of such tower or base station provided the procedure and requirements set forth in Section 4.20.12, of the Land Development Code, are satisfied. Except as may otherwise be provided in this article, and notwithstanding any other provisions in the City Code, the provisions of Section 4.20.12 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 4.20.12 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 4.20.12 and may be subject to review under other applicable provisions of the City Code.

Sec. 42-128. – 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 section 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.