

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES TO ESTABLISH NEW REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES AT CHAPTER 94 - ZONING AND LAND DEVELOPMENT REGULATIONS, ARTICLE X – SUPPLEMENTAL DISTRICT REGULATIONS, DIVISION 2 – WIRELESS COMMUNICATIONS; CREATING A NEW DIVISION AT CHAPTER 78 –STREETS, SIDEWALKS AND PUBLIC PLACES, ARTICLE XI – TELECOMMUNICATIONS, DIVISION 2 – WIRELESS COMMUNICATION FACILITIES IN RIGHT-OF-WAY; EXTENDING THE MORATORIUM ON APPLICATIONS FOR WIRELESS COMMUNICATION FACILITIES UNTIL THIS ORDINANCE BECOMES EFFECTIVE; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

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WHEREAS, CityScape Consultants, Inc. (CityScape) provided technical assistance to the City in the development of the City’s Wireless Telecommunications Master Plan; and

WHEREAS, the Master Plan included an analysis of current infrastructure and project demand for future wireless telecommunication services throughout the City; and

WHEREAS, as part of Cityscape’s scope of services, Cityscape worked with City staff to develop regulations for the regulation of wireless telecommunication facilities on public and private lands; and

WHEREAS, the new regulations for wireless communication facilities are intended to facilitate orderly wireless network deployments throughout the City consistent with the community’s wireless communication service demands and health, safety and general welfare objectives, without conflicting with federal and state regulations; and

WHEREAS, the new regulations for wireless telecommunication facilities are necessary for compliance with recent revisions to federal law and recent reports and orders issued by the Federal Communications Commission; and

WHEREAS, City staff has sought and obtained input from interested industry members in developing the new regulations; and

WHEREAS, this Ordinance will amend the wireless communication regulations set forth in the Chapter 94, Zoning and Land Development Regulations, of the City Code governing facilities on private property; and

WHEREAS, the regulations regarding wireless communications in the public right-of-way will be set forth in Chapter 78, Streets, Sidewalks and Public Places, which governs the rights-of-way;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:

SECTION 1: The City Commission hereby finds and determines that the amendments to the Zoning and Land Development Regulations proposed by this Ordinance are consistent with the Comprehensive Plan of the City adopted pursuant to Chapter 163, Part II, Florida Statutes, and the amendment standards of Section 94-32 of the Zoning and Land Development Regulations.

SECTION 2: The wireless communication regulations found in the Code of Ordinances of the City of West Palm Beach, at Chapter 94 (Zoning and Land Development Regulations), Article X (Supplemental District Regulations), Division 2 (Wireless Communications) are hereby amended and replaced in their entirety, and shall now read as follows:

Sec. 94-330. Wireless Communications Facilities

(a) *Purpose.* The purpose of this article is to establish general guidelines for the siting (not in public rights-of-way) of towers and other structures used for wireless communications and broadcast facilities including the antenna, ground equipment, and accessory structures related to wireless communications infrastructure, and to promote the health, safety, and general welfare of the public from:

1. Potential injury to citizens and damage to property from falling towers;
2. Potential injury to people while playing around towers and their appurtenant compounds;
3. Potential injury and damage to low-flying law enforcement and medical helicopters and public and private aircraft;
4. Potential aesthetic harm to residential communities;
5. Potential incompatibility with historic districts; and
6. Potential negative economic impacts on the heritage and scenic tourist industry.

(b) *Jurisdiction.* These regulations shall govern the establishment and maintenance of wireless communications facilities not within the public rights-of-way. Provisions of this article II shall apply uniformly to all areas within the jurisdiction of the city.

(c) *Exempt Facilities.* The following items are exempt from the provisions of this division; however compliance with other applicable regulations in this code and all applicable building permits and other permits required by the code will be required:

1. Any amateur radio tower less than fifty (50) feet in height and located at the rear of the property, not located in an historic district, or less than twenty-five (25) feet in height and located at the rear of the property located in a historic district.

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2. Satellite earth stations that are one meter (39.37 inches) or less in diameter in all non-historic residential districts and two meters or less in all other non-historic zoning districts.
3. A government-owned wireless communications facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the city designee; except that such facility must comply with all federal and state requirements. No wireless communications facility shall be exempt from the provisions of this division beyond the duration of the state of emergency.
4. A government-owned wireless communications facility erected for the purposes of installing antenna(s) and ancillary equipment necessary to provide communications for public health and safety.
5. A temporary, commercial wireless communications facility, upon the declaration of a state of emergency by federal, state, or local government, or determination of public necessity by the city and approved by the city; except that such facility must comply with all federal and state requirements. The wireless communications facility may be exempt from the provisions of this division up to three (3) months after the duration of the state of emergency.
6. A temporary, commercial wireless communications facility, for the purposes of providing coverage of a special event such as news coverage or sporting event, subject to approval by the city, except that such facility must comply with all federal and state requirements. Said wireless communications facility may be exempt from the provisions of this division up to one week after the duration of the special event.

(d) *Applicability.* These regulations shall apply to installation, construction, or modification of all wireless communications facilities not exempt under subsection (d) above, including but not limited to:

1. Non-exempt amateur radio station antennas and structures more than twenty-five (25) feet in height within an historic district; and those fifty (50) feet or higher in non-historic districts, consistent with the requirements of F.S. §166.0435.
2. Non-exempt satellite earth stations.
3. Existing antenna support structures.
4. Proposed antenna support structures.
5. Public antenna support structures.
6. Replacement of existing antenna support structures.
7. Mitigation of antenna support structures.
8. Collocation on existing antenna support structures.
9. Attached wireless communications facilities.
10. Concealed wireless communications facilities.
11. Broadcast facilities.

Sec. 94-331 – Definitions

(a) *Definitions.* To the extent that the following definitions conflict with any definition contained in section 94-611, the following definitions shall control:

Abandoned - Any tower without any mounted transmitting and/or receiving antennas in continued use for a period of 180 consecutive days.

Abandonment - The cessation of all uses of a wireless communications facility; 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. By way of example, and not limitation, cessation of all use of an antenna mounted on a streetlight, where the streetlight continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

Alternative structure - A structure that is not primarily constructed for the purpose of supporting antennas but on which one or more antennas may be mounted. Alternative structures include, but are not limited to, buildings, water tanks, light stanchions, pole signs, billboards, church steeples and high voltage electric power transmission towers. Concealed towers are not alternative structures.

Amateur radio tower – Any tower used for amateur radio transmissions consistent with the "Complete FCC U.S. Amateur Part 97 Rules and Regulations" for amateur radio facilities.

Ancillary structure - Equipment, devices and structures associated with a wireless communications facility, including but not limited to: concrete slabs on grade, guy anchors, generators, feed lines, mounting hardware, pedestals, and transmission cable supports; however, specifically excluding equipment cabinets, towers, alternative structures and antenna elements.

Anti-climbing device - 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, the removal or absence of climbing pegs, "squirrel-cones," or other approved devices, but excluding the use of barbed or razor wire.

Antenna - Any apparatus designed for the transmitting and/or receiving of electromagnetic waves, including but not limited to: telephonic, radio or television communications. Types of antenna include, but are not limited to: omni-directional (whip) antennas, sectionalized (panel) antennas, multi or single bay (FM & TV), yagi, or parabolic (dish) antennas, and in the case of AM broadcast facilities the actual tower structure.

Antenna array - A group of antennas and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or common mounting support structure for a unified purpose of transmitting or receiving electromagnetic waves for a single wireless services provider, or if combined antennas, for the combined providers.

Antenna element – Any antenna or antenna array.

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ASR - The antenna structure registration number as required by the FAA and FCC.

Antenna support structure – See “Tower”

Attached antenna – An antenna element attached to an alternative structure.

Base station - The electronic equipment at a fixed location utilized by the wireless communication provider(s) for the transmission and reception of radio signals, including DAS and small cells. The term does not include a tower.

Breakpoint technology - 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.

Broadcast facilities – Towers, antennas, and/or antenna arrays for FM/TV/ broadcasting transmission facilities, and tower(s) utilized as antennas for an AM broadcast station that are licensed by the FCC.

Broadcast tower – A tower built primarily for broadcast facilities, but which may also be used for collocation of other wireless communications facilities.

Collocation – The practice of installing and operating multiple antenna elements, which are owned or controlled by multiple wireless service providers, and/or radio common carrier licensees on the same tower, antenna support structure, or alternative structure using different and separate antenna, feed lines, equipment cabinets, generators and other radio frequency generating equipment.

Combined antenna – An antenna or an antenna array designed and utilized to provide wireless communications services for more than one wireless provider, or a single wireless provider utilizing more than one frequency band or spectrum, for the same or similar type of services.

Concealed – A tower, pole, antenna element or ancillary structure, or equipment compound that is not readily identifiable as such, and is camouflaged and designed to be aesthetically compatible with the area and the existing and proposed building(s) and uses on a site so as to reduce or mitigate the facility's potential adverse visual impacts on the surrounding areas. There are two types of concealed facilities: 1) antenna attachments and 2) freestanding antenna support structures. A concealed attached antenna includes a structure which is not primarily constructed for the purpose of holding attachment antennas but on which one or more antennas may be mounted. Examples of concealed attached facility include, but are not limited to the following: painted antenna and feed lines to match the color of a building or structure, faux windows, dormers or other architectural features that blend with an existing or proposed building or structure. Freestanding concealed antenna support structures usually have a secondary, obvious function which may be, but is not limited to the following: church steeple, windmill, bell tower, clock tower, light standard, flagpole with or without a flag, or tree.

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DAS – Distributed Antenna System – A DAS system consists of: (1) a number of remote communications nodes deployed throughout the desired coverage area, each including at least one antenna for transmission and reception; (2) a high capacity signal transport medium (typically fiber optic cable) connecting each node to a central communications hub site; and (3) radio transceivers located at the hub site (rather than at each individual node as is the case for small cells) to process or control the communications signals transmitted and received through the antennas. A DAS installation shall be considered a non-concealed attached antenna for purposes of these regulations

DAS Hub - Ancillary equipment usually contained in a shelter or other enclosure which does not have any wireless transmission or receive equipment contained therein but is utilized in the deployment and operation of wireless DAS receive/transmit infrastructure that is located elsewhere.

Development area – The area occupied by a wireless communications facility including areas inside or under the following: an antenna-support structure's framework, equipment cabinets, ancillary structures and access ways.

Downtown action committee – The legal entity established and authorized by section 94-31(f) of this code to oversee the development of the area governed by the downtown master plan.

Equipment cabinet – Any structure, including: cabinets, shelters, pedestals, and other similar structures that are used exclusively or in combination with ancillary facilities, to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

Equipment compound – The fenced area surrounding the ground-based wireless communication facility that includes the following: the tower or antenna support structure's framework and ancillary structures such as equipment necessary to operate the antenna, cabinets, shelters, pedestals, and other similar structures.

FAA - The Federal Aviation Administration.

FCC – The Federal Communications Commission.

Feed lines – Cables used as the interconnecting media between the equipment cabinet and the antenna. Also known as “transmission lines”.

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

Guyed tower – 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.

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Geographic search ring – An area designated by a wireless provider or operator for a new base station and antenna elements, produced in accordance with generally accepted principles of wireless engineering.

Handoff candidate – 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 tower – A tapered style of tower that consists of vertical and horizontal supports with multiple legs and cross-bracing, and metal crossed diagonal strips or rods to support antennas.

Law means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued, including, but not limited to, the Communications Act of 1934, 47 USC 151 et seq., as amended by the Telecommunications Act of 1996, PL 104-104 § 101(a), 110 Stat. 70, and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto.

Master plan – The Wireless Telecommunications Master Plan developed and adopted by the city commission, as amended from time to time.

Mitigation – A modification of an existing antenna support structure to increase its height or to improve its integrity, by replacing or removing one or several antenna support structures located in proximity to a proposed new antenna support structure in order to encourage compliance with this article or improve aesthetics or functionality of the overall wireless network. Mitigation may also include replacement of an existing tower or antenna support structure with a new tower or antenna support structure which mitigates the impacts of its predecessor.

Monopole tower – A style of free-standing 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.

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

OTARD – Pursuant to sec. 207 of the Telecommunications Act of 1996, the FCC adopted the Over-the-Air Reception Device (“OTARD”) rule concerning governmental and non-governmental restrictions on viewer's ability to receive video programming signals from direct broadcast satellites, broadband radio service providers and television broadcast stations.

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

Pass-through provider - Any person who, upon registering with the city, places or maintains a wireless communications facility in the city's rights-of-way and that does not remit communications service taxes as imposed by the City pursuant to F.S. ch. 202 and F.S. § 337.401.

Place or maintain or placement or maintenance or placing or maintaining - To erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider or pass-through provider that owns or exercises physical control over wireless communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A party 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 is not placing or maintaining facilities in the public rights-of-way.

Private property – Real property owned by an individual or entity other than the city or other governmental entity or agency.

Provider's designed service – The configuration and manner of deployment of wireless communications services the wireless services provider has designed for an area as part of its network.

Public rights-of-way - A public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path, or alley or any other property for which a government entity is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the government holds a property interest therein. "Public rights-of-way" shall not include private property. "Public rights-of-way" shall not include any real or personal government property except as described above and shall not include government buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

Public safety communications equipment – All communications equipment utilized by a public entity for the purpose of ensuring the safety of the public and operating within the frequency range of 150 MHz, 450 MHz, 700 MHz, 800 MHz, 1,000 MHz, 6GHz and any future spectrum allocations at the direction of the FCC.

Replacement – The removal of an existing tower for purposes of erecting a new tower of nearly equal dimensions usually for the purposes of improvement structural integrity.

Satellite earth station – A single or group of parabolic (or dish) antennas 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 the associated separate equipment cabinets necessary for the transmission or reception of wireless communications signals with satellites.

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Small cell – A low-powered wireless base station that functions like cells in a mobile wireless network, typically covering localized outdoor areas.

Structure – Anything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground, including advertising signs.

Tower – A vertical projection composed of metal or other material with or without a foundation that is designed for the express purpose of accommodating antennas at a desired height. 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 twenty (20) feet. Types of towers include the following: guyed, lattice and monopole structures.

Tower base – The above ground portion of the foundation, usually concrete, on which the tower is situated. For measurement calculations, the tower base is that point on the foundation reached by dropping a perpendicular line from the geometric center of the tower.

Tower height – The vertical distance measured from the grade line to the highest point of the tower, including any antenna, lighting, lightning protection or other equipment affixed thereto.

Tower site – The land area that contains, or will contain, a proposed tower, support structures and other related buildings, equipment and/or improvements.

Transmission – The development of a radio signal from an antenna device for the purpose of communications or communication of data.

Transmission line - See "Feedline" definition above.

Wireless communications facility - Any staffed or unstaffed location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or antenna array, transmission cables, equipment cabinets, a tower, cabling, antenna brackets, and other such equipment. The following shall be deemed a wireless communications facility: new, mitigated, or existing towers, government-owned towers, replacement towers, collocation on existing towers, attached wireless communications facilities, DAS, small cell, concealed wireless communication facilities, and non-concealed wireless communication facilities

Sec. 94-332 – Siting communication facilities.

(a) *Siting Alternatives Order.* The preferred siting of a wireless communication facility within the City will be in accordance with the following siting alternatives order:

1. a. Concealed attached antenna on public right of way/property
b. Collocated or combined on existing tower on public right of way property

2. a. Concealed attached antenna on private property
b. Collocated or combined on existing tower on private property
3. Non-concealed attached antenna
 - a. On public right of way/property
 - b. On private property
4. Mitigation of existing tower
 - a. On public right of way/property
 - b. On private property
5. Concealed freestanding tower
 - a. On public right of way/property
 - b. On private property
6. Non-concealed freestanding tower
 - a. On public right of way/property
 - b. On private property

For attached, collocated, or combined antenna: The order of ranking preference, highest to lowest, is: 1a, 2a, 1b, 2b, 3a, 3b. Where a lower ranked alternative is proposed, the applicant must file relevant justification, including, but not limited to, an affidavit by a licensed engineer with documented expertise in radio frequency propagation, demonstrating that despite diligent efforts to adhere to the established hierarchy within the geographic search area, higher ranked options are not technically feasible, practical or justified given the location of the proposed wireless communications facility.

For mitigated or freestanding tower: The order of ranking preference from highest to lowest is: 4a, 4b, 5a, 5b, 6a, 6b. Where a lower ranked alternative is proposed, the applicant must demonstrate higher ranked options are not technically feasible, practical, or justified given the location of the proposed wireless communications facility, and the existing land uses of the subject and surrounding properties within 300 feet of the proposed tower.

Facilities to be located in the public right-of-way. Facilities in the public right-of-way shall be governed by ch. 78, art. XI, div. 2 of this code.

Sec. 94-333 – Permits.

(a) The placement or maintenance of new wireless communication facilities shall be permitted within the zoning districts only in accordance with the wireless communication permit indicated in the following table, and shall be subject to compliance with the land development requirements and permit or registration requirements of this code. The placement or maintenance of wireless communication facilities in the public rights of way shall comply with the regulations in chapter 78 of this code.

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Zoning District	<u>Amateur Radio Tower 25- 50 feet in historic district; Satellite Earth Station <1 meter diameter in historic district</u>	<u>Amateur Radio Tower > 50 feet Satellite Earth Station >1 meter diameter</u>	<u>Antenna Element Replacement</u>	<u>Facilities to be located on WPB Master Plan designated sites</u>	<u>Concealed Attached Antenna</u>	<u>Collated or Combining on Existing Tower</u>	<u>Non-concealed Attached Antenna *</u>	<u>Mitigation of Existing Tower</u>	<u>Concealed Freestanding Tower Satellite Earth Station >1 meter diameter</u>	<u>Non-concealed Freestanding Tower</u>	<u>Broadcast Tower</u>
SF3, SF5, SF7, SF11, SF14		I	I	II	IV**		II				
SF7-C4, SF14-C2, SF14-C3, SF14-C5	I	III	I	II	IV*		II				
MF14, MF20, MF32		I	I	II	II	II	II				
MF14-C1, MF14-C2, MF20-C1, MF32-C1	I	III	I	II	II	II	II				
CC2		I	I	II	II	II	II				
DMP Residential Subdistrict		I	I	II	II	II	II				
DMP Non-Residential Subdistrict		I	I	II	II	II	II				
CM		I	I	II	II	II	II	II	III		
OC		I	I	II	II	II	II	II	III		
NC		I	I	II	II	II	II	II	III		
GC		I	I	II	II	II	II	II	III		
AC		I	I	II	II	II	II	II	III		
POR		I	I	II	II	II	II	II	III		
I		I	I	II	II	II	II	II	III	IV	IV
ROS		I	I	II	II	II	II	II	III	IV	IV
CS		I	I		II	II	II	II	III	IV	IV

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				II							
UT		I	I	II	II	II	II	II	III	IV	IV
W		I	I	II	II	II	II	II	III	IV	IV
PC		I	I	II	II	II	II	II	III	IV	IV
PD		I	I	II	II	II	II	II	III	IV	IV
NMUD, CMUD, BMUD		I	I	II	II	II	II	II^			

*Non-concealed attached antennas are only allowed on high voltage electric power transmission towers and light stanchions not located in public rights of way except for DAS facilities.

**Concealed attached antennas are only allowed on non-residential parcels in SF districts and are expressly prohibited on a parcel used for residential purposes.

^Level II provided the mitigated facility does not increase the existing height. If there is a height increase, level III or IV permit shall be required.

(b) *Wireless communication permits.*

(1) *Level I wireless communication permit.* The wireless communication permit issued by the planning division to an individual, corporation, partnership, or other entity to engage in the creation of an amateur radio tower which exceeds twenty five feet in a historic district and fifty feet in non-historic districts in accordance with the provisions of F.S. § 166.0435, or a satellite earth station in excess of one meter in diameter, (or less than one meter in diameter if located in an historic district), or antenna element replacements. For installation within a local or national register historic district or designated site, a certificate of appropriateness is also required pursuant to section 94-49.

(2) *Level II wireless communication permit.* The wireless communication permit issued by the planning division to an individual, corporation, partnership, or other entity to engage in: (i) concealed attached antennas, (ii) non-concealed attached antennas on existing transmission towers and light stanchions (iii) collocation or combining on existing tower or facilities to be located on sites contained in the master plan, and excluding amateur radio towers, in accordance with the provisions of F.S. §.365.172(12); (iv) for DAS facilities outside of a public right of way (including a DAS Hub); (v) mitigation of existing tower; and (vi) for new concealed attached facilities. For installation within a local or national register historic district or designated site, a certificate of appropriateness is required pursuant to section 94-49.

(3) *Level III wireless communication permit.* The Class B special use permit (Sb) issued by the planning division after review and approval by the zoning board of appeals (ZBA), or by the historic preservation board for property within an historic district, to an individual, corporation, partnership, or other entity to engage in the creation of new concealed towers, excluding amateur radio towers. For installation within a local or

national register historic district or designated site, a certificate of appropriateness is also required pursuant to sec. 94-49.

(4) *Level IV wireless communication permit.* The Class A special use permit (Sa) issued by the planning division after review by the planning board and approval by the city commission, to an individual, corporation, partnership, or other entity to engage in the mitigation of existing tower facilities, creation of new broadcast facilities, non-concealed towers or non-concealed attached facilities, excluding amateur radio towers, and certain concealed attached antennas in certain zoning districts.

Sec. 94-334 - Level I development standards.

(a) *Amateur radio towers.* The requirements in this section regarding amateur radio towers are based on health, safety, and aesthetic considerations and has been crafted to accommodate reasonable amateur communications, and to represent the minimum practicable regulation to accomplish the city's legitimate purposes.

(1) *License.* Applicant shall provide a copy of a valid FCC amateur operator's license as required by 47 C.F.R. §97.5.

(2) *Building permit.* An amateur radio tower shall not be erected until a valid building permit has been obtained from the city.

(3) *Height.* Tower height and location shall comply with applicable federal and state law regarding amateur radio towers, including the requirements of F.S. sec, 166.0435, and *Amateur Radio Preemption*, 101 FCC2d 952 (1985) ("PRB-1"). Any height request from an amateur tower applicant in excess of fifty (50) feet in non-historic districts and twenty-five (25) feet in historic districts shall require a variance pursuant to section 94-349 of this code. The applicant shall present technical evidence to demonstrate that the antenna structure is the minimum practical height necessary to allow function at all amateur frequency bands.

(4) *Minimum Setback Requirements.*

- a. Free standing tower. A distance equal to the height of the tower shall separate new amateur radio towers from property lines, right-of-way lines and/or easements.
- b. Tower or antenna support structure bracketed to main structure. A distance equal to the measurement from the top bracket to the top of the highest antenna shall separate the tower/antenna support from property lines, right-of-way lines and/or easements.
- c. Any relocation of an amateur radio tower on the same parcel must comply with current setback requirements. A variance may be obtained if the relocation does not increase the amount by which setbacks are nonconforming, other than increases necessitated solely by changes in size of the base to support the new tower.

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- (4) *Location.* Behind the principal structure and located, to the extent practical, to limit sight from the public rights-of-way, without interfering with communications and operability. If free standing, tower or antenna shall be located toward the rear of the property.
- (5) *Antenna Element.* Antennas shall be mounted so as to provide for removal at the approach of hurricanes.
- (6) The addition of antenna elements or the replacement of existing antenna elements shall be permitted provided that the new or replacement does not increase the height or wind loading of the subject facility as evidenced by a sealed statement from a structural engineer licensed by the state of Florida
- (6) *Variance.* Amateur tower applicants that do not meet the requirements set forth in this section may seek a variance or waiver, as applicable, pursuant to the procedures in sec. 94-349 and shall provide information to the city as to the technical basis for the applicant's request.

Sec. 94-335 - Level II Development Standards.

(a) Concealed attached antenna.

- 1) The top of the attached antenna shall not be more than twenty (20) feet above the existing or proposed building or structure, excluding elevator shafts, appurtenances or other vertical spires or extensions.
- 2) When an attached antenna is to be located on a legal nonconforming building or structure, then the existing permitted nonconforming setback and height shall prevail.
- 3) Feed lines and antennas shall be designed to architecturally match the façade, roof, wall, or structure on which they are affixed so that they blend with the existing structural design, color, and texture.
- 4) Equipment cabinets shall be located within the existing building or behind an opaque enclosure matching the architectural designs and colors of the principal building or structure.
- 5) New equipment cabinets are subject to the setback requirements of the underlying zoning district.

(b) Collocated or combining on existing tower

- 1) A collocated or combined antenna or antenna array shall not exceed the maximum height prescribed in the special use permit (if applicable) or as approved on the applicable site plan if originally constructed without a special use permit, and shall not affect any tower lighting.
- 2) New antenna mounts shall be flush-mounted onto existing structures, unless it is demonstrated through RF propagation analysis that flush-mounted antennas will not meet the network objectives of the desired coverage area.

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- 3) Existing and new equipment cabinets shall be subject to the setbacks of the underlying zoning district. If the collocation or combined antenna is located on a legal nonconforming building or structure, then the existing permitted nonconforming setback shall prevail.
- 4) At the time of installation, all applicable buffer and screening requirements shall be brought into compliance.
- 5) Equipment cabinets shall be located within the existing equipment compound. If the existing equipment compound is not sized adequately to accommodate the new proposed ground equipment, then a revised site plan shall be submitted addressing the overall ground space for the proposed equipment.
- 6) Applications entitled to the streamlined processes described in F.S. §365.172(12) shall meet all the following requirements:
 - i. The additional antenna array, transmission lines, and related ancillary equipment including the base station shall not exceed the number of same items previously approved for such tower when originally approved, and the collocated facility is in complete conformance with the original conditions imposed on the tower upon which it is being attached.
 - ii. The proposed collocation shall not increase the overall height and width of the tower or telecommunications support structure to which the proposed infrastructure is to be attached.
 - iii. The collocation shall not increase the ground space area approved in the antenna support facility site plan for equipment enclosures and ancillary facilities.
 - iv. The existing tower on which the collocation will attach shall comply with applicable regulations, restrictions, or conditions, if any, applied to the initial telecommunications facilities placed on the tower.
 - v. The proposed additional collocation and tower shall comply with all federal, State and local safety requirements.
 - vi. The proposed collocation and ancillary equipment shall not exceed the applicable structural capacity limits for the tower, as evidenced by a sealed statement from a structural engineer licensed in the state of Florida.
- 7) Applications for collocation entitled to streamlined processes pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 shall be approved provided they meet the following requirements, as applicable:
 - (i) A collocation on an existing antenna-supporting structure not in a public right of way shall not increase the overall height of the antenna-supporting structure, antenna and/or antenna array more than 10% or 20 feet, whichever is greater. A collocation on an existing antenna-supporting structure within a public right of way shall not increase the overall height of the antenna-supporting structure, antenna and/or antenna array more than 10% or 10 feet, whichever is greater.
 - (ii) A collocation eligible under this subsection (7) shall not, for towers not in a public right of way, protrude from the antenna-supporting structure more than 20 feet or the width of the structure at the elevation of the collocation, and for

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towers within a public right of way, protrude from the antenna-supporting structure more than 6 feet.

(iii) Any collocation on an existing antenna-supporting structure shall meet current building code requirements (including wind loading).

(iv) A collocation shall not add more than four additional equipment cabinets or one additional equipment shelter to be eligible as a collocation under this subsection (7).

(v) A collocation eligible under this subsection (7) shall not require excavation outside of existing leased or owned parcel or existing easements.

(vi) A collocation eligible under this subsection (7) shall not defeat any existing concealment elements of the antenna-supporting structure.

(c) *Non-concealed attached antenna.* Non-concealed attachments shall only be allowed on electrical transmission towers and existing light stanchions subject to approval by the planning division and the utility company or owner of said tower or stanchions. The attachments must be contained within canisters.

(d) *Mitigation of existing tower.* Mitigation shall accomplish a minimum of one of the following: i) reduce the total number of towers within the city; or ii) reduce the total number of nonconforming towers within the city; or iii) replace an existing tower with a new tower on the same property to improve network functionality resulting in compliance with this ordinance. Mitigation is subject to the following:

- 1) No tower shall be mitigated more than one time.
- 2) *Height:* The height of a tower approved for mitigation shall not exceed one hundred and fifteen (115) percent of the height of the tallest tower that is being mitigated. (For example a 100 foot existing tower could be rebuilt at 115 feet.)
- 3) *Setbacks:* Attempts shall be made to meet the setback requirement for the new tower on the same property to the maximum degree possible. At a minimum, the new tower and its equipment compound shall be no closer to any property lines, neighboring structures or adjacent dwelling units as the tower and equipment compound being mitigated.
- 4) *Breakpoint technology:* A newly mitigated monopole or lattice tower shall use breakpoint technology in the design of the replacement facility.
- 5) *Buffers:* At the time of mitigation, the tower equipment compound shall be brought into compliance with any applicable buffer requirements.
- 6) *Visibility:* Mitigated antenna-supporting structures shall be configured and located in a manner that minimizes adverse effects on the lines of sight, landscape and adjacent properties, with specific design considerations as to height, scale, color, texture, and architectural design of the buildings on the same and adjacent zoned lots.
- 7) Any replacement tower which meets the criteria set forth in this subsection (d) must obtain a level II wireless communications permit. Any replacement tower which does not meet the above criteria shall be considered a new tower subject to all provisions of this article. The existing tower, including tower base but excluding the

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tower foundation, must be removed within ninety (90) days of the completion of the new tower.

(e) *DAS Facilities not located in public right of way (including DAS Hub)*

- 1) *Height.* The height of a DAS facility not located in a public right of way shall not exceed the height of light poles or residential utility poles on surrounding lots.
- 2) *Setbacks:* A distance equal to the height of the DAS facility shall separate the DAS facility from property lines, right-of-way lines and/or easements.
- 3) *Visibility.*
 - a. The placement of antennas on buildings and other structures is encouraged and preferred over the installation of towers or monopoles. Where feasible, co-location of facilities and minimum number of antennas shall be evaluated to determine whether and to the extent to which the proposed facility has been designed carefully.
 - b. Where feasible, antennas can be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging.
 - c. Antenna-supporting structures shall be configured and located in a manner that minimizes adverse effects on the lines of sight, landscape and adjacent properties, with specific design considerations as to height, scale, color, texture, and architectural design of the buildings on the same and surrounding lots. Concealment design is strongly encouraged and shall be utilized whenever possible in order to minimize the visual impact of wireless communications facilities.
- 4) *Equipment cabinets.* Equipment shelters or cabinets shall be consistent with the general character of the neighborhood and historic character if applicable. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or otherwise concealed with materials and colors consistent with the surrounding backdrop, structures and local character.
 - a. Screening enclosures shall be allowed when the design is architecturally compatible with the building
 - b. Screening materials shall consist of materials and colors consistent with the surrounding backdrop and/or textured to match the existing structure.
 - c. The use of foliage and vegetation around ground equipment may be required based on conditions of the specific area where the ground equipment is to be located.
 - d. Equipment cabinets may not be mounted on a freestanding DAS facility except at ground elevation, unless above-ground elevation is approved by the city commission as the best option to preserve aesthetics and local character.
- 5) All exposed cables, conduits, surface mounted wires on attached DAS facilities shall be concealed or painted to match the building. Freestanding DAS facilities not in a public right of way shall not have exposed cables, conduits or surface mounted wires.
- 6) Lighting of these facilities is not allowed.

Sec. 94-336 - Level III Development Standards.

All new concealed towers shall meet the following requirements:

a) *Determination of Need.* No new concealed freestanding tower shall be permitted unless the applicant demonstrates that no existing tower or alternative structure within the applicant wireless provider's geographic search area can accommodate the applicant's proposed antenna elements; or that use of such existing facilities would prohibit personal wireless services in the geographic search area to be served by the proposed antenna support structure. Accordingly, the applicant shall provide:

- 1) A copy of the geographic search area of the wireless provider committed to locate on the tower and that is justifying the placement of the tower;
- 2) An inventory of all existing towers and all potential alternative structures that are at least 80 percent of the height of the proposed tower within that geographic search area; and
- 3) A written explanation documenting why an existing tower cannot reasonably be used, instead of building a new tower.

b) In residential districts, new towers shall only be permitted on lots whose principal use is not single-family residential including but not limited to: schools, churches, synagogues, fire stations, parks, and other government-owned property and/or facilities.

c) All towers up to 130 feet in height shall be engineered and constructed to accommodate no less than three (3) antenna arrays.

d) *Height.*

- 1) Height calculations shall include above ground foundations, but exclude lightning rods or lights required by the FAA that do not provide any support for antennas.
- 2) New concealed towers shall be limited to one hundred and thirty (130) feet or less in height.

e) *Setbacks.* New freestanding towers and equipment compounds shall be subject to the setbacks described below for breakpoint technology:

- 1) If the antenna support structure has been constructed using breakpoint design technology, the minimum setback distance shall be equal to 110 percent of the distance from the top of the structure to the breakpoint level of the structure, or the minimum side and rear yard requirements, whichever is greater. For example, on a 100-foot tall monopole with a breakpoint at 80 feet and a side and back setback of 15 feet, the minimum setback distance would be 22 feet (110 percent of 20 feet, the distance from the top of the monopole to the breakpoint). However, if the side and back setback were 30 feet, then 30 feet would be the minimum setback distance in the above example. Certification by a registered professional engineer licensed by the State of Florida of the breakpoint design and the design's fall radius must be provided together with the other information required herein from an applicant.

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- 2) If the antenna support structure has not been constructed using breakpoint design technology, the minimum setback distance shall be equal to 110% of the height of the proposed antenna support structure.

f) *Visual impact analysis; photo simulation.* The applicant must demonstrate that the proposed tower does not create a significant adverse visual aesthetic impact on the surrounding landscape, adjacent properties and existing line of sight. The application shall include a visual impact analysis, including simulated photographic evidence of the proposed tower and antenna appearance from any and all residential areas within 1,500 feet and other area vantage points approved by the planning division, including the facility types the applicant has considered. Such simulations shall demonstrate the potential visual impact on the area, including but not limited to:

- 1) Overall height
- 2) Configuration
- 3) Physical location
- 4) Mass and scale
- 5) Materials and color
- 6) Illumination
- 7) Architectural design

g) New concealed freestanding towers shall be designed to match adjacent structures, landscapes and local character with specific design considerations such as architectural designs, height, scale, color, and texture.

h) *Balloon test.* A balloon test shall be required subsequent to the receipt of the photo simulations in order to demonstrate the proposed height of the tower.

- 1) The applicant shall arrange to raise a colored balloon, in sharp contrast with sky blue and no less than three feet in diameter, at the maximum height of the proposed tower and within thirty (30) horizontal feet of the center of the proposed antenna support structure.
- 2) The applicant shall inform the city and abutting property owners in writing of the date and times of the test at least 14 days in advance. The date, time and location of the balloon test shall be advertised in a locally distributed paper in a display ad at least two (2) inches in width by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test dates determined by city staff, as well as alternate dates in case of inclement weather. The balloon shall be flown for at least four (4) consecutive hours during daylight hours on the dates chosen. The applicant shall record the weather during the balloon test. Re-advertisement will not be required if inclement weather occurs, provided the advertisement specifies the alternative date in the event of inclement weather.

i) *Equipment Compound.* The equipment compound shall not be used for the storage of any excess equipment or hazardous materials. No outdoor storage yards shall be allowed in a tower equipment compound, and the compound shall not be used as habitable space.

j) *Fencing.* All equipment compounds shall be enclosed with an opaque fence. Alternative equivalent screening may be approved through the site plan approval process described in section 94-35.

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k) *Equipment cabinets.* Cabinets shall not be visible from pedestrian views. Cabinets may be provided within the principal building, behind a screen on a rooftop, or on the ground within the fenced-in and screened equipment compound.

l) *Buffers and landscaping.*

- 1) In all allowable locations the equipment compound shall be landscaped and screened pursuant to section 94-444(b).
- 2) Alternative landscaping plans which provide for the same average canopy and understory trees but propose alternative siting on the entire subject property on which the proposed facility is projected may be considered and approved by the planning division, provided the proposed alternative maximizes screening as provided above, and is otherwise consistent with the requirements of this section.

m) *Signage.* Commercial messages shall not be displayed on any tower. Noncommercial signage shall be subject to the following:

- 1) The only signage that is permitted (and shall be required) upon an antenna support structure, equipment cabinets, or fence shall be informational, and for the purpose of identifying the antenna support structure (either by the ASR registration number or other identifying information), as well as the party responsible for the operation and maintenance of the facility; i.e. the address and telephone number, security or safety signs, and property manager signs (if applicable).
- 2) If more than two hundred twenty (220) volts are necessary for the operation of the facility and is utilized within the equipment compound or in the antenna support structure, signs located every twenty (20) feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum height of each letter four (4) inches) the following: "HIGH VOLTAGE - DANGER."

n) *Lighting.* Lighting on towers 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. 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 property, consistent with FAA requirements.

o) *Grading.* Grading shall be minimized and limited only to the area necessary for the new tower and equipment.

p) *Sounds.* No unusual sound emissions such as alarms, bells, buzzers, or the like are permitted. Sound levels shall not exceed 70db.

q) *Generators.* Emergency generators and their permitted fuel tanks shall be allowed at each tower site.

r) *Parking.* One parking space is required for each tower development area. The space shall be provided within the leased area, or equipment compound or the development area as defined on the site plan.

Sec. 94-337 - Level IV Permits (Non-Concealed Towers)

(a) *Determination of Need.* No new non-concealed towers shall be permitted unless the applicant demonstrates that no existing tower or alternative structure within the applicant wireless provider's geographic search area can accommodate the applicant's proposed antenna elements; or that use of such existing facilities would prohibit personal wireless services in the geographic search area to be served by the proposed antenna support structure. Accordingly, the applicant shall provide:

- 1) A copy of the geographic search area of the wireless provider committed to locate on the tower and that is justifying the placement of the tower;
- 2) An inventory of all existing towers and all potential alternative structures that are at least 80 percent of the height of the proposed tower within that geographic search area;
- 3) A written explanation documenting why an existing tower cannot reasonably be used, instead of building a new tower.

(b) *Height.* All new non-broadcasting non-concealed towers shall be one hundred and thirty (130) feet or less in height.

(c) All freestanding non-concealed towers up to one hundred and thirty (130) feet in height shall be engineered and constructed to accommodate no less than four (4) antenna arrays.

(d) Freestanding non-concealed towers shall be limited to monopole type antenna support structures, unless the applicant demonstrates that such design is not feasible to accommodate the intended uses.

(e) *Setbacks.* New freestanding towers and equipment compounds shall be subject to the setbacks described below for breakpoint technology:

- 1) If the antenna support facility has been constructed using breakpoint design technology, the minimum setback distance shall be equal to 110 percent of the distance from the top of the structure to the breakpoint level of the structure, or the minimum side and rear yard requirements, whichever is greater. For example, on a 100-foot tall monopole with a breakpoint at 80 feet and a side and back setback of 15 feet, the minimum setback distance would be 22 feet (110 percent of 20 feet, the distance from the top of the monopole to the breakpoint). However, if the side and back setback were 30 feet, then 30 feet would be the minimum setback distance in the above example. Certification by a registered professional engineer licensed by the State of Florida of the breakpoint design and the design's fall radius must be provided together with the other information required herein from an applicant.
- 2) If the antenna support facility has not been constructed using breakpoint design technology, the minimum setback distance shall be equal to 110% of the height of the proposed antenna support structure.

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(f) *Visual impact analysis; photo simulation.* The applicant must demonstrate that the proposed tower does not create a significant adverse visual aesthetic impact on the surrounding landscape, adjacent properties and existing lines of sight. The application shall include a visual impact analysis, including simulated photographic evidence of the proposed tower and antenna appearance from any and all residential areas within 1,500 feet and other area vantage points approved by the planning division, including the facility types the applicant has considered. Such simulations shall demonstrate the potential visual impact on the area, including but not limited to:

- 1) Overall height
- 2) Configuration
- 3) Physical location
- 4) Mass and scale
- 5) Materials and color
- 6) Illumination
- 7) Architectural design

(g) *Antenna mounts.* New non-broadcast antenna mounts shall be flush-mounted, unless it is demonstrated through RF propagation analysis that flush-mounted antennas will not meet the network objectives of the desired coverage area.

(h) *Balloon test.* A balloon test shall be required subsequent to the receipt of the photo simulations in order to demonstrate the proposed height of the tower.

- 1) The applicant shall arrange to raise a colored balloon, in sharp contrast with sky blue and no less than three feet in diameter, at the maximum height of the proposed tower and within thirty (30) horizontal feet of the center of the proposed antenna support structure.
- 2) The applicant shall inform the city and abutting property owners in writing of the date and times of the test at least 14 days in advance. The date, time and location of the balloon test shall be advertised in a locally distributed paper in a display ad at least two (2) inches in width by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test dates determined by city staff, as well as alternate dates in case of inclement weather. The balloon shall be flown for at least four (4) consecutive hours during daylight hours on the dates chosen. The applicant shall record the weather during the balloon test. Re-advertisement will not be required if inclement weather occurs, provided the advertisement specifies the alternative date in the event of inclement weather.

(i) *Equipment Compound.* The equipment compound shall not be used for the storage of any excess equipment or hazardous materials. No outdoor storage yards shall be allowed in a tower equipment compound. The compound shall not be used as habitable space.

(j) *Fencing.* All equipment compounds shall be enclosed with an opaque fence. Alternative equivalent screening may be approved through the site plan approval process pursuant to section 94-35.

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(k) *Equipment cabinets.* Cabinets shall not be visible from pedestrian views. Cabinets may be provided within the principal building, behind a screen on a rooftop, or on the ground within the fenced-in and screened equipment compound.

(l) *Buffers and landscaping.*

- 1) In all allowable locations the equipment compound shall be landscaped and screened pursuant to section 94-444(b).
- 2) Alternative landscaping plans which provide for the same average canopy and understory trees but propose alternative siting on the entire subject property on which the proposed facility is projected may be considered and approved by the planning division, provided the proposed alternative maximizes screening as provided above, and is otherwise consistent with the requirements of this section.

(m) *Signage.* Commercial messages shall not be displayed on any tower. Noncommercial signage shall be subject to the following:

- 1) The only signage that is permitted upon an antenna support structure, equipment cabinets, or fence shall be informational, and for the purpose of identifying the antenna support structure (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility; i.e. the address and telephone number, security or safety signs, and property manager signs (if applicable).
- 2) If more than two hundred and twenty (220) volts are necessary for the operation of the facility, signs located every twenty (20) feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum height of each letter four (4) inches) the following: "HIGH VOLTAGE - DANGER."

(n) *Lighting.* Lighting on towers shall meet and 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. 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 property, consistent with FAA requirements.

(o) *Grading.* Grading shall be minimized and limited only to the area necessary for the new tower and equipment.

(p) *Sounds.* No unusual sound emissions such as alarms, bells, buzzers, or the like are permitted. Sound levels shall not exceed 70db as measured from the ground immediately outside of the equipment compound for the facility.

(q) *Generators.* Emergency generators and their permitted fuel tanks shall be allowed at each tower site.

(r) *Parking:* One parking space is required for each tower development area. The space shall be provided within the leased area, or equipment compound or the development area as defined on the site plan.

Sec. 94-338 - Level IV Permits (Broadcast Towers)

(a) *Determination of Need.* No applications for new broadcast facilities shall be accepted unless the applicant provides a copy of a valid FCC Form 351/352 construction permit specifying NAD 27 coordinates for the proposed tower (together with a conversion of such coordinates to NAD 83.), which shall be prima facie evidence of the applicant's need for a specific geographic location in order to construct a broadcast station.

(b) *Height.* Height for broadcast facilities shall be evaluated on a case by case basis; the determination of height contained in the applicant's FCC Form 351/352 construction permit or application for construction permit and an FAA determination of no hazard (FAA Form 7460/2) shall be considered prima facie evidence of the tower height required for such broadcast facilities.

(c) *Setbacks.* New broadcast facilities and anchors shall be setback a minimum of five hundred (500) feet from any single-family dwelling unit on same zone lot; and a minimum of 1 foot for every 1 foot of tower height from all adjacent lots of record.

(d) *Visual impact analysis; photo simulation.* The applicant must demonstrate that the proposed tower does not create a significant adverse visual aesthetic impact on the surrounding landscape, adjacent properties and lines of sight. The application shall include a visual impact analysis, including simulated photographic evidence of the proposed tower and antenna appearance from any and all residential areas within 1,500 feet and other area vantage points approved by the planning division, including the facility types the applicant has considered. Such simulations shall demonstrate the potential visual impact on the area, including but not limited to:

- 1) Overall height
- 2) Configuration
- 3) Physical location
- 4) Mass and scale
- 5) Materials and color
- 6) Illumination
- 7) Architectural design

(e) *Equipment Compound.* The equipment compound shall not be used for the storage of any excess equipment or hazardous materials. No outdoor storage yards shall be allowed in a tower equipment compound. The compound shall not be used as habitable space.

(f) *Fencing.* All broadcast facility towers, AM antenna(s) towers, and guy anchors shall each be surrounded with an anti-climbing fence compliant with applicable FCC regulations.

(g) *Broadcast equipment cabinets.* Except for AM broadcast facilities, cabinets shall not be visible from pedestrian views.

(h) *Buffers and landscaping.*

1. Except for AM broadcast facilities, it is the intent that all pedestrian views from public rights-of-ways and adjacent residential land uses be screened from proposed broadcast facilities pursuant to section 94-444(b). AM broadcast facilities shall, where practicable, use artificial screening devices in lieu of natural vegetation for screening its ground equipment located at the base of AM tower(s).
2. Alternative landscaping plans which provide for the same average canopy and understory trees but propose alternative siting on the entire subject property on which the proposed facility is projected may be considered and approved by the planning division, provided the proposed alternative maximizes screening as provided above, and is otherwise consistent with the requirements of this section.

(i) *Signage.* Commercial messages shall not be displayed on any tower. Noncommercial signage shall be subject to the following:

1. The only signage that is permitted upon an antenna support structure, equipment cabinets, or fence shall be informational, and for the purpose of identifying the antenna support structure (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility; i.e. the address and telephone number, security or safety signs, and property manager signs (if applicable).
2. If more than two hundred twenty (220) volts are necessary for the operation of the facility, signs located every twenty (20) feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum height of each letter four (4) inches) the following: "HIGH VOLTAGE - DANGER."

(j) *Lighting.* Lighting on towers shall meet and 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. 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 property, consistent with FAA requirements.

(k) *Grading.* Grading shall be minimized and limited only to the area necessary for the new tower and equipment.

(l) *Sounds.* No unusual sound emissions such as alarms, bells, buzzers, or the like are permitted. Emergency generators are allowed. Sound levels shall not to exceed 70db as measured from the ground immediately outside of the equipment compound for the facility.

(m) *Generators.* Emergency generators shall be allowed at each tower site.

(n) *Parking.* One parking space is required for each tower development area. The space shall be provided within the leased area, or equipment compound or the development area as defined on the site plan.

Sec. 94-339 - Modification of wireless communication facilities.

(a) *Conforming facilities.* Conforming existing wireless communication facilities, or conforming portions of such facility, may be repaired, modified, improved, or altered, without enlargement, with applicable building permits, provided: (i) the facility will continue to meet the

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requirements of this article and the wireless communications permit and/or special use permit issues; and (ii) no nonconformity is created.

(b) *Non-conforming facilities.*

- 1) Nonconforming wireless communication facilities may be modified, improved, or altered (without enlargement), with applicable building permits, provided no new nonconformity is created and/or an existing nonconformity is not increased.
- 2) If a new nonconformity would be created or an existing nonconformity increased, an application for approval of the proposed modification under the applicable wireless communication permit level must be submitted for review and approval by the applicable reviewing entity.
- 3) The following modifications will not be deemed to create a new or to increase an existing nonconformity, if they comply with all applicable conditions or provisions of existing wireless communication permits: 1) a collocation or addition of a new antenna with ancillary facilities; 2) a new equipment cabinet or generator in the existing equipment compound; or 3) any exempt facility.

Sec. 94-340 - Application for wireless communications permit.

(a) *Application form.* Requests for wireless communication permits shall be made only on application forms approved by the planning division. Applications shall contain all information required by this zoning code and other city regulations, and shall be reviewed for completeness.

(b) *Site plan review.* Site plan review and approval shall be required in accordance with sec. 94-35 of this chapter and the provisions for Class A and Class B special use permits, as applicable.

(c) *Application materials.* In addition to the application materials specified in this code for the appropriate type of review, all applications for wireless telecommunication permits shall provide sufficient materials (plans, graphics, narratives, or expert statements) to demonstrate compliance with the applicable requirements of this article.

(1) *Permit Level III and Level IV.* Applications for wireless communication Level III and Level IV permits shall include the following additional information:

- (a) Determination of need
- (b) Priority level justification
- (c) Visual impact analysis
- (d) Balloon test
- (e) Written analysis explaining how the proposed tower does not create a significant adverse visual aesthetic impact on the surrounding landscape, adjacent properties, and existing line of sight, as measured against the criteria indicated in sec.94-343.

(d) *Disclosure of ownership.* All wireless communication permit applications regarding communication facilities on private property shall include a verified statement showing each person or corporation having a legal, equitable, or beneficial ownership interest in the real property upon

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which the communication facility is or will be located. Corporations shall provide the names and addresses of the corporation and principal executive officers.

(e) *Submission of fee and application prior to action by city.* Prior to action taken by a department, division or official body of the city concerning a specific application, an applicant must submit the proper fee and a complete official application to the planning division.

(f) *Completeness review.*

- 1) *Section 6409 collocation.* A collocation application entitled to expedited streamlined processing pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and sec. 94-335(b)(7) of this code shall be deemed complete unless the City provides written notice to the applicant that the submission is incomplete (a “notice of incompleteness”) within 30 calendar days of application submission (or within some other mutually agreed upon timeframe). Notice of incompleteness shall be in writing and shall identify specifically the deficiencies in the application which, if cured, would make the application complete. Upon notice of incompleteness, the timeline for a decision shall be tolled until the applicant re-submits to correct such deficiency. The city shall, within ten calendar days of re-submission, notify the applicant of continuing deficiencies or the application will be deemed complete. The timeline for a decision shall be likewise tolled during the additional re-submission deficiency period until the second resubmission.
- 2) *Other collocations.* Other collocation applications entitled to expedited streamlined process review pursuant to F.S. § 365.172(12) and sec. 94-335(b)(6) of this code shall be deemed complete unless the city provides a written notice of incompleteness to the applicant within 30 calendar days of submission (or within some other mutually agreed upon timeframe). Notice of incompleteness shall identify specifically the deficiencies in the application which, if cured, would make the application complete. Upon notice of incompleteness, the timeline for a decision shall be tolled until the applicant re-submits to correct such deficiency. The city shall, within ten days of re-submission, notify the applicant of continuing deficiencies or the application will be deemed complete. The timeline for a decision shall be likewise tolled during the additional re-submission deficiency period until the second resubmission.
- 3) *All other applications.* Within twenty business days of receipt of an application for a wireless communications facility, the city shall determine if the application form has been completed and if all required items have been submitted.
 - a. If the city determines that the application is not complete and/or if all required items have not been submitted, the city shall, within the 20 business days of the application submittal, notify the applicant in writing that the application is incomplete (a “notice of incompleteness”). The notice of incompleteness shall list, with specificity, those items that are incomplete and/or missing and indicate what must be provided to make the application complete.
 - b. If the applicant resubmits the additional information or revised application, the city shall review the resubmitted materials for completeness. If the application is still not

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complete, the city shall send the applicant another notice of incompleteness indicating the remaining within 20 business days after the application is resubmitted.

- c. Upon resubmittal of the revised application and/or additional information and materials, the city shall follow the process identified in steps (1) through (3) above until all deficiencies identified are deemed cured and the application is deemed complete.
 - d. If the city does not respond in writing to the applicant within the specified timeframe, then the application shall be deemed to be complete.
- 4) When the application is deemed complete, the city shall advise the applicant and begin processing the application.

Sec. 94-341 - Application review timeframes.

a) *Section 6409 collocation.* A collocation application entitled to expedited streamlined processing pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and sec. 94-335(b)(7) of this code shall be approved or denied in writing, and shall be postmarked to the applicant by the 60th calendar day after the initial submission, excluding any tolling period. The timeline for a decision shall be tolled by a notice of incompleteness until resubmittal, and until the second resubmission.

b) *Other collocations.* Other collocation applications entitled to expedited streamlined process review pursuant to F.S. § 365.172(12) and sec. 94-335(b)(6) of this code shall be reviewed by the city's plans and plats review committee (PPRC) within 45 business days of submission, (or within some other mutually agreed upon timeframe) after the date the application is deemed complete. The timeline for a decision shall be tolled by a notice of incompleteness until resubmittal, and until the second resubmission.

c) *All other wireless communication facilities.* The city shall review and grant or deny each complete application within 90 business days from the date the application is determined to be complete. The timeline for a decision shall be tolled by a notice of incompleteness until resubmittal, and until the second resubmission.

1). For level IV permit applications only, the 90 business-day timeframe may be extended if the hearing on the class A special use permit before the city commission, following the review process and timeframe applicable to all class A special use approvals for all uses, cannot reasonably occur within the 90 business days. Under such circumstances, the city commission must either grant or deny the application at its next regularly scheduled meeting after the 90 business days have expired or the application shall be deemed automatically approved.

d) If the city does not grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this section, the application shall be deemed automatically approved and the applicant may proceed with the next level of review or, if no additional levels of review, with submittal for a building permit.

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e) The timeframes in this section may be waived if a waiver is voluntarily agreed to by the applicant and the city. A one-time waiver may be required by the city, without the applicant's consent, in the case of a declared local, state, or federal emergency which directly affects the permitting activities of the city, for the length of that emergency.

Sec. 94-342 - Approval Process.

(a) *Wireless communication permit level I and level II.* The approval of a level I or a level II wireless communication permit is subject to administrative review as provided in this section and shall be governed by the following process:

- 1) The planning division shall review the application, and submitted documents for compliance with all requirements of this article, including the regulations for the applicable permit level and the criteria contained in sec. 94-343. The city may, at its discretion, obtain additional third party technical assistance to review and assess the technical merits of the documents.
- 2) If the planning division determines that the application meets all of the requirements of this article, the city shall approve the application package and the applicant may proceed to request a building permit.
- 3) If the planning division determines that additional information or documentation is necessary to complete the review in accordance with the requirements of this article, then the city shall provide written notification to the applicant as to the supplemental information or documentation requested for review. The applicant shall provide to the city any requested materials for review. This process shall continue until the city has sufficient information to approve or deny the application.
- 4) If the planning division determines the application and documentation fails to meet the intent and requirements of this article, the city may deny the application. All such denials shall be in writing.
- 5) Appeals from a decision made by the planning division shall be to the zoning board of appeals for area outside the downtown; to the downtown action committee for area within the downtown; and to the historic preservation board for locally or nationally designated properties.

(b) *Wireless communication permit level III and level IV.* The approval of a level III or level IV permit is subject to special use permit as identified in the table in sec. 94-333 and shall be governed by the following process:

- 1) If the planning division determines that additional information or documentation is necessary to complete the review in accordance with the requirements of this article, then the city shall provide written notification to the applicant as to the supplemental information or documentation requested for review. The applicant shall provide to the city any requested materials for review. This process shall continue until the city has sufficient information for the review process.
- 2) The application shall follow the process for the appropriate special use permit pursuant to sec. 94-36 of this code.

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- 3) The application shall be reviewed for compliance with all requirements of this article, including the regulations for the applicable permit level, the criteria contained in sec 94-343, and the standards for a special use permit contained in sec. 94-36 of this code. The city may forward the submittal package to a third party consultant for review of the materials.
- 4) The approving bodies, in determining whether a wireless communications facility is in harmony with the area or the effects and general compatibility of a wireless communications facility with adjacent properties, may consider the aesthetic effects of the tower as well as mitigating factors concerning aesthetics.
- 5) The approving bodies may disapprove an application on the grounds that the wireless communications facility's aesthetic effects are unacceptable, or may condition approval on changes in tower height, design, style, buffers, or other features of the wireless communications facility or its surrounding area. Such changes in non-broadcast installations need not result in performance identical to that of the original application.

Sec. 94-343 – Review criteria.

(a) *Wireless communication permit level I and level II.* Applications for wireless communication permits for level I and level II shall be evaluated based on the specific permit level requirements in this article and the following additional criteria:

1. The placement of antennas on buildings and other structures is encouraged and preferred over the installation of towers or monopoles. Where feasible, co-location of facilities and minimum number of antennas shall be evaluated to determine the proposed facility has been designed carefully.
2. If a facility is to be installed in or on a historic building or structure, a certificate of appropriateness is required pursuant to section 94-49. Additional measures shall be required so as to not alter the historic significance of the building or structure
3. Antennas should be screened or hidden from the public view by the following methods: designed as architectural elements, screened with enclosures or landscaping. Screening materials shall consist of materials and colors consistent with the surrounding backdrop, structure, and local character and/or textured to match the existing structure.
4. Where feasible, antennas can be placed directly above, below or incorporated with vertical design elements of a building to help in camouflaging. Antennas mounted on architecturally significant structures or architecturally significant details of the building should be covered with appropriate casings, which are manufactured to match existing architectural features found on the building.
5. All exposed cables, conduits and/or surface mounted wires shall be concealed or painted out to match the building.
6. Equipment shelters or cabinets shall be consistent with the general character of the neighborhood and historic character, if applicable.

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7. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or materials and colors consistent with the surrounding backdrop, or wrapping cabinets with site appropriate graphics.
8. Screening enclosures shall be allowed when the design is architecturally compatible with the building.
9. Lighting. Lighting of these facilities is not allowed.

(b) *Wireless communication permit level III and level IV.* Applications for wireless communication permits for level III and level IV shall be evaluated based on: (i) the specific permit level requirements in this article; (ii) the standards for the applicable special use permit; and (iii) the following criteria:

1. Where feasible, co-location of facilities and minimum number of antennas shall be evaluated to determine whether and to the extent that the proposed facility has been designed carefully.
2. If the approving authority determines that the proposed additional service of non-broadcast facilities, coverage, or capacity to be achieved by the location of the proposed new wireless communications facility can be achieved by use of one or more alternative existing wireless communications facilities, it may disapprove the proposed antenna support facility application.
3. All exposed cables, conduits and/or surface mounted wires shall be concealed or painted out to match the building.
4. Equipment shelters or cabinets shall be consistent with the general character of the neighborhood and historic character if applicable.
5. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or materials and colors consistent with the surrounding backdrop, structure and local character and/or wrapping cabinets with site appropriate graphics.
6. Screening enclosures shall be allowed when the design is architecturally compatible with the building.
7. The approving bodies in determining whether a wireless communications facility is in harmony with the area or the effects and general compatibility of a wireless communications facility with adjacent properties may consider the aesthetic effects of the tower as well as mitigating factors concerning aesthetics.
8. The approving bodies may disapprove an application on the grounds that the wireless communications facility's aesthetic effects are unacceptable, or may condition approval on changes in tower height, design, style, buffers, or other features of the wireless communications facility or its surrounding area. Such changes in non-broadcast installations need not result in performance identical to that of the original application.
9. Factors relevant to aesthetic effects are: the protection of the view in sensitive or particularly scenic areas and areas specially designated in adopted plans such as unique natural features, scenic roadways and historic sites; the concentration of towers in the proposed area; and whether the height, design, placement or

other characteristics of the proposed tower could be modified to have a less intrusive visual impact.

Sec. 94-344. - Fees and charges.

(a) *Fees.* Fees for all applications required by this chapter shall be established by resolution of the city commission, as may be amended from time to time.

(b) *Supplemental review.* The city reserves the right to require a supplemental review for any type of collocation, attachment, mitigated tower, new tower, or antenna element when determined by the city to be necessary due to the complexity of the methodology or analysis required to review an application for any proposed or existing wireless communications facility. The cost to the city for such supplemental technical review shall be borne by the registrant/applicant and be in addition to other applicable fees.

(c) The city may withhold the issuance of any permits to a registrant until any amount past due from registrant to city is paid in full.

Sec. 94-345 – Publicly-Owned Property Under the Wireless Master Plan.

a) The city's wireless master plan indicates sites the city prefers for the location of wireless communication facilities. Some of these preferred sites are owned by the city or other government entities. Except as specifically provided herein, the terms of this article, and the requirements established thereby, shall be applicable to all wireless communications facilities to be developed or collocated on city or government-owned sites (excluding public rights-of-way), unless excepted under sec. 94-330..

b) Any wireless telecommunications permit for installation or maintenance of facilities on city-owned property (excluding public rights-of-way) shall not become effective until the applicant and the city have executed a written agreement or lease setting forth the particular terms and provisions under which the use of city property will be granted. Authorization to use city property is subject to city commission approval.

Sec. 94-346 – Interference with Public Safety Communications

By placing or maintain wireless telecommunication facilities within the city, each and every telecommunication service provider and pass-through service provider agrees to each of the following:

1. Compliance with "good engineering practices" as defined by the FCC in its rules and regulations.
2. Compliance with FCC regulations regarding susceptibility to radio frequency interference, frequency coordination requirements, general technical standards for power, antenna, bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI).
3. In the case of an application for collocated wireless communications facilities, the applicant/registrant, together with the owner of the subject site, shall use their best efforts to provide a composite analysis of all users of the site to determine that the

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applicant's proposed facilities will not cause radio frequency interference with the city's public safety communications equipment and will implement appropriate technical measures, as described in antenna element replacements, to attempt to prevent such interference.

4. Whenever the city, or a public safety agency (after notice to 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 antenna arrays, the following steps shall be taken:
 - a. The city shall provide notification to all wireless service providers operating in the city of possible interference with the public safety communications equipment, and upon such notifications, 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 the joint wireless industry-public safety "Enhanced Best Practices Guide," released by the FCC in Appendix D of FCC 04-168 (released August 6, 2004), including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time in any successor regulations.
 - b. If any equipment owner fails to cooperate with the city in complying with the owner's obligations under this section or if the FCC makes a determination of radio frequency interference with the city public safety communications equipment, the owner who failed to cooperate and/or the owner of the equipment which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the city for all 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 the "Enhanced Best Practices Guide" within twenty-four hours of city's notification.

Sec. 94-347 - Satellite Earth Stations (SES)

(a) Satellite earth stations (SES) that are less than one meter (39.39 inches) in diameter are permitted in historic districts or historic eligible districts, but in such districts installation is subject to either painting requirements consistent with the historic character, or relocation of the SES on a historic building in a manner that does not affect the ability of the SES to receive its signals from orbiting or geo-stationary satellites, in order to preserve historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470.

(b) Satellite earth stations which are larger than one meter (39.37 inches) in diameter, intended to receive signals from orbiting or geo-stationary satellites and other sources, or to link wireless service sites together by wireless transmission of voice or data shall comply with the following provisions.

(f) Single and two-family residential standards:

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1. Rooftop SESs are prohibited.
 2. An SES shall be considered an accessory structure; however, an SES shall be permitted within five feet of a side and/or rear property line.
 3. No SES shall be permitted within the front yard or setback. For lots having more than one street frontage, an SES shall be located in a side yard which does not abut a public or private right-of-way.
 4. No SES shall exceed 15 feet in height. No dish shall exceed ten feet in diameter.
 5. Landscape including shrubs a minimum of 24 inches on all sides or property, an opaque screen (i.e., wood fence, translucent mesh, etc.) or both shall be incorporated on any SES located in a rear yard.
 6. There shall be no more than one antenna on any single family or duplex lot.
- (ii) Nonresidential and multifamily standards:
1. All SESs shall be ground-mounted and located in the rear yard so as not to be visible from any public right-of-way.
 2. An SES may not be located in the rear yard if the rear lot lines abuts a public right of-way, lands zoned residential.
 3. Landscaping including shrubs a minimum of 36 inches on all sides, an opaque screen (i.e., wood fence, translucent mesh, etc.) or both shall be incorporated on any dish located in a rear yard.
 4. No SES shall exceed 20 feet in height measured from grade. No dish shall exceed fifteen 15 feet in diameter.
 5. Nonresidential SESs may be considered for roof installation provided that application is made for a level III permit. Roof-mounted SES must be screened by parapets that appear to be an integral part of the building so that not more than 25 percent of the antenna height is visible from grade level of adjacent property and adjacent public or private rights-of-way.
 6. All SESs shall not be light reflective. Dish antennas shall not have any sign copy on them nor shall they be illuminated.
 7. Each person wishing to place SESs in nonresidential and multifamily zoned property shall make application for a Class B special use permit.
 8. There shall be no more than one antenna on any parcel. However, where business is licensed by the city as a dealer of electronic equipment, such business may have two antennas for their parcel.

Sec. 94-348 - Abandonment.

Towers, antennas and their associated equipment compound shall be removed, at the owner's expense, within 180 calendar days of cessation of use or abandonment. An owner wishing to extend the time for removal or reactivation shall submit an application stating the reason for such extension. The city may extend the time for removal or reactivation up to 60 additional calendar days upon a showing of good cause. Upon removal of the tower, antenna, and

equipment compound, the development area shall be returned to its natural state and topography and vegetated consistent with the natural surroundings or consistent with the current uses of the surrounding or adjacent land at the time of removal.

Sec. 94-349 – Variance or waiver

(a) An applicant may request a variance or waiver from the requirements of this article for a wireless communications permit. A request for such variance or waiver shall include all information described in this subsection and any other reasonable information the city may require, along with the applicable waiver request fee, as established by resolution.

(b) A request for a variance or waiver from the requirements of a wireless communications permit Level I or Level II request shall be made to the downtown action committee, for applications within the downtown master plan area, the historic preservation board for applications within an historic district or property, or the zoning board of appeals for all other applications, pursuant to the applicable provisions of ch. 94 of this code. In addition to all other application requirements for variances or waivers contained in this code, and for special use permits, as applicable, an application for a variance or waiver from the requirements of this article shall include the following additional information:

- (i) A detailed explanation, with supporting engineering or other data, as to why a waiver from the requirements of this section is required in order to allow the registrant/applicant to have nondiscriminatory and competitively neutral use of city rights-of-way;
- (ii) Availability of co-location opportunities;
- (iii) Size and height of the proposed facilities;
- (iv) Location and separation distances of the proposed facilities;
- (v) Location of the nearest residential units or residentially zoned properties;
- (vi) Adjacent and nearby topography, tree coverage and foliage;
- (vii) Design of the proposed facilities with particular reference to elimination of visual impacts of such facilities;
- (viii) Any other factors the city determines to be relevant.

(b) In addition to all other applicable criteria for variances or waivers contained in this code, and for special use permits, as applicable, the downtown action committee, the historic preservation board, or the zoning board of appeals shall consider the following additional factors:

- (i) Supporting engineering or other data, as to why a waiver from the requirements of this section is required in order to allow the registrant/applicant to have nondiscriminatory and competitively neutral use of city rights-of-way;
- (ii) Availability of co-location opportunities;
- (iii) Size and height of the proposed facilities;
- (iv) Location and separation distances of the proposed facilities;
- (v) Location of the nearest residential units or residentially zoned properties;

(vi) Adjacent and nearby topography, tree coverage and foliage;

(vii) Design of the proposed facilities with particular reference to elimination of visual impacts of such facilities;

(c) In granting any waiver, the downtown action committee, the historic preservation board or zoning board of appeals, as applicable, may impose conditions to the extent considered necessary to minimize any adverse effects of the proposed facility on adjoining and nearby properties or to protect the health, safety and welfare of the city and the public.

SECTION 3: There is hereby created new divisions within Chapter 78, Streets, Sidewalks and Public Places, Article XI, Telecommunications, Division 2, Wireless Communication Facilities in Rights-of-Way, which shall read as follows:

ARTICLE XI. – TELECOMMUNICATIONS & WIRELESS COMMUNICATIONS

DIVISION 1 - GENERALLY

Sec. 78-381. - Intent and purpose.

It is the intent of the city to promote the public health, safety, and general welfare by providing for the use of the public rights-of-way within the city, to adopt and administer reasonable regulations consistent with state and federal law, including F.S. §§ 337.401, 362.01, and 337.29(3), and the city's home-rule authority in accordance with the provisions of the Telecommunications Act of 1996, to provide for the payment of compensation and other consideration to the city for the cost of regulating and maintaining the public rights-of-way and for the privilege of using the public rights-of-way within the city for constructing and maintaining telecommunications facilities and wireless communication facilities, and to establish reasonable regulations concerning the use of the public rights-of-way for such facilities; and minimizing disruption to the public rights-of-way.

Sec. 78-382. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words not otherwise defined in this section shall be given the meaning set forth in sec. 94-341 of this code, and if not defined therein, as defined in the Communications Act of 1934, 47 USC 151 et seq., as amended (collectively, the "Communications Act"), and, if not defined therein, as defined by state statute; and, if not defined therein, be construed to mean the common and ordinary meaning.

Abandoned - Any tower without any mounted transmitting and/or receiving antennas in continued use for a period of 180 consecutive days.

Abandonment - The cessation of all uses of a wireless communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure

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where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of an antenna mounted on a streetlight, where the streetlight continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

Alternative structure - A structure that is not primarily constructed for the purpose of supporting antennas but on which one or more antennas may be mounted. Alternative structures include, but are not limited to, buildings, water tanks, light stanchions, pole signs, billboards, church steeples and high voltage electric power transmission towers. Concealed towers are not alternative structures.

Ancillary structure - Equipment, devices and structures associated with a wireless communications facility, including but not limited to: concrete slabs on grade, guy anchors, generators, feed lines, mounting hardware, pedestals, and transmission cable supports; however, specifically excluding equipment cabinets, towers, alternative structures and antenna elements.

Antenna - Any apparatus designed for the transmitting and/or receiving of electromagnetic waves, including but not limited to: telephonic, radio or television communications. Types of antenna include, but are not limited to: omni-directional (whip) antennas, sectionalized (panel) antennas, multi or single bay (FM & TV), yagi, or parabolic (dish) antennas, and in the case of AM broadcast facilities the actual tower structure.

Antenna array - A group of antennas and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or common mounting support structure for a unified purpose of transmitting or receiving electromagnetic waves for a single wireless services provider, or if combined antennas, for the combined providers.

Antenna element – Any antenna or antenna array.

ASR - The antenna structure registration number as required by the FAA and FCC.

Attached antenna – An antenna element attached to an alternative structure.

Base station - The electronic equipment at a fixed location utilized by the wireless communication provider(s) for the transmission and reception of radio signals, including DAS and small cells. The term does not include a tower.

Collocation – The practice of installing and operating multiple antenna elements, which are owned or controlled by multiple wireless service providers, and/or radio common carrier licensees on the same tower, antenna support structure, or alternative structure using different and separate antenna, feed lines, equipment cabinets, generators and other radio frequency generating equipment.

Combined antenna – An antenna or an antenna array designed and utilized to provide wireless communications services for more than one wireless provider, or a single wireless provider utilizing more than one frequency band or spectrum, for the same or similar type of services.

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Concealed – A tower, pole, antenna element or ancillary structure, or equipment box that is not readily identifiable as such, and is camouflaged and designed to be aesthetically compatible with the area so as to reduce or mitigate the facility's potential adverse visual impacts on the surrounding areas. Concealed poles (or stealth poles) are designed to conceal the equipment internally. .

DAS – Distributed In rights-of-way, the preference for concealment of equipment boxes is landscaping, then wrapping, or both *Antenna System* – A DAS system consists of: (1) a number of remote communications nodes deployed throughout the desired coverage area, each including at least one antenna for transmission and reception; (2) a high capacity signal transport medium (typically fiber optic cable) connecting each node to a central communications hub site; and (3) radio transceivers located at the hub site (rather than at each individual node as is the case for small cells) to process or control the communications signals transmitted and received through the antennas. A DAS installation shall be considered a non-concealed attached antenna for purposes of these regulations

DAS Hub - Ancillary equipment usually contained in a shelter or other enclosure which does not have any wireless transmission or receive equipment contained therein but is utilized in the deployment and operation of wireless DAS receive/transmit infrastructure that is located elsewhere.

Downtown action committee – The legal entity established and authorized under this code to oversee the development of the area governed by the downtown master plan.

Equipment cabinet – Any structure, including: cabinets, shelters, pedestals, and other similar structures that are used exclusively or in combination with ancillary facilities, to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

FAA - The Federal Aviation Administration.

FCC – The Federal Communications Commission.

Feed lines – Cables used as the interconnecting media between the equipment cabinet and the antenna. Also known as “transmission lines”.

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

Geographic search ring – An area designated by a wireless provider or operator for a new base station and antenna elements, produced in accordance with generally accepted principles of wireless engineering.

Handoff candidate – A wireless communication facility that receives call transference from another wireless facility, usually located in an adjacent first “tier” surrounding the initial wireless facility.

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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.

Law means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued, including, but not limited to, the Communications Act of 1934, 47 USC 151 et seq., as amended by the Telecommunications Act of 1996, PL 104-104 § 101(a), 110 Stat. 70, and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto.

Master plan – The Wireless Telecommunications Master Plan developed and adopted by the city commission, as amended from time to time.

Mitigation – A modification of an existing antenna support structure to increase its height or to improve its integrity, by replacing or removing one or several antenna support structures located in proximity to a proposed new antenna support structure in order to encourage compliance with this article or improve aesthetics or functionality of the overall wireless network. Mitigation may also include replacement of an existing tower or antenna support structure with a new tower or antenna support structure which mitigates the impacts of its predecessor.

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

Pass-through provider - Any person who, upon registering with the city, places or maintains a wireless communications facility in the city's rights-of-way and that does not remit communications service taxes as imposed by the City pursuant to F.S. ch. 202 and F.S. § 337.401.

Place or maintain or placement or maintenance or placing or maintaining - To erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider or pass-through provider that owns or exercises physical control over wireless communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A party 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 is not placing or maintaining facilities in the public rights-of-way.

Pole – A vertical projection composed of metal or other material with or without a foundation that is designed for the express purpose of accommodating antennas at a desired height.

Pole height – The vertical distance measured from the grade line to the highest point of the pole, including any antenna, lighting, lightning protection or other equipment affixed thereto.

PSC means the Florida Public Service Commission.

Public rights-of-way - A public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path, or alley or any other property for which a government entity is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the government holds a property interest therein. "Public rights-of-way" shall not include private property. "Public rights-of-way" shall not include any real or personal government property except as described above and shall not include government buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

Public safety communications equipment – All communications equipment utilized by a public entity for the purpose of ensuring the safety of the public and operating within the frequency range of 150 MHz, 450 MHz, 700 MHz, 800 MHz, 1,000 MHz, 6GHz and any future spectrum allocations at the direction of the FCC.

Registrant or *facility owner* mean a telecommunications company, or a wireless communications services provider or pass-through provider, or other person which seeks to use the public rights-of-way and has registered with the city in accordance with the provisions of this article.

Registration and *register* mean the process described in this article whereby a telecommunications service provider, or a wireless communications services provider or pass-through provider provides certain information to the city.

Replacement – The removal of an existing tower for purposes of erecting a new tower of nearly equal dimensions usually for the purposes of improvement structural integrity.

Small cell – A low-powered wireless base station that functions like cells in a mobile wireless network, typically covering localized outdoor areas.

Structure – Anything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground, including advertising signs.

Telecommunications company has the meaning set forth in F.S. § 364.02(12). The term "telecommunications company" does not include an open video system, a cable service provider or wireless service provider.

Telecommunications service means, without limitation, the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by and through 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. Telecommunications service, as contemplated in this definition, does not include the provision of service via an open video system, a cable service or wireless provider. The term "communications" may be substituted for the term "telecommunications".

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Telecommunications service provider means any person making available or providing telecommunications services, as defined in this section, through the placement or use of a telecommunications facility in the public rights-of-way.

Telecommunications facilities, facilities and systems mean any facility, equipment or property, including, but not limited to, cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, located, to be located, used, or intended to be used in the public rights-of-way of the city to transmit, convey, route, receive, distribute, provide or offer telecommunications services. It shall not mean wireless communication facilities, as otherwise defined in this article.

Transmission – The development of a radio signal from an antenna device for the purpose of communications or communication of data.

Transmission line - See “Feedline” definition above.

Wireless communications facility for purposes of this article means exclusively a Distributed Antenna System or “DAS” as defined above, and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment.

DIVISION 2 – TELECOMMUNICATIONS

Sec. 78-384. - Registration

DIVISION 3 – WIRELESS COMMUNICATION FACILITIES

Sec. 78-401. - Registration for wireless communications facilities in public rights-of-way.

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

(b) *Registration.* Each wireless communications services provider or pass-through provider that desires to place or maintain a wireless communications facility in public rights-of-way in the city shall file a single registration with the city, on city-approved forms, that shall include the following information:

- (1) Name of the registrant;
- (2) Name, address and telephone number of the registrant's primary contact person in connection with the registration and of the person to contact in case of an emergency;

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- (3) Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article, and
- (4) A copy of federal or state certification authorizing the registrant to provide wireless communications services, if any;
- (5) If the registrant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or by other means; and
- (6) A security fund in accordance with this article.

Within 30 days of any change in the registration information submitted, a registrant shall provide updated information to the city.

(c) *Registration process.* The city shall review the information submitted by the registrant. If the registrant submits information in accordance with this section, the registration shall be effective and the city shall notify the registrant of the effectiveness of registration in writing. If the city determines that the information submitted is not complete, the city shall notify the registrant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The city shall notify a registrant within 30 calendar days after receipt of registration information from the registrant.

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

(e) *Renewal.* A registrant shall renew its registration with the city each year between January 1 and March 31. Registration renewals shall include: (i) updates to registration information; (ii) an inventory of the registrant's newly installed facilities or abandoned facilities since the prior registration or registration renewal. 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 wireless communications services provider or pass-through provider has complied with the registration requirements of this article.

(f) *Non-exclusive.* Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a wireless communications facility in any particular area in public rights-of-way within the city.

(g) *Transfer or control, sale or assignment of assets.* If a registrant transfers, sells or assigns its registration or its wireless communications facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall comply with the terms of this article. Written notice of any such transfer, sale or assignment shall be provided to the City within twenty days of 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 this section within sixty days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate city officials that the transferee, buyer or assignee is the new applicant.

(h) *Termination of registration.*

(1) The city commission may declare a registration terminated and revoke and cancel all privileges granted under that registration if: (a) a federal, state or local authority suspends, denies, or revokes a registrant's certification or license to provide wireless communications service or certificate of use, (b) the registrant's placement and maintenance in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and registrant fails to remedy the danger after notice, (c) the registrant abandons or ceases to use its wireless communications facilities in the public rights-of-way, or (d) a pass-through provider fails to comply with the requirements of sec. 78-402.

(2) Prior to termination, the city shall notify the registrant in writing of the intent to terminate and the reasons for such termination. Except in the case of extraordinary danger to the general public, the registrant shall have 60 days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the city commission, to accomplish the same. In the event of extraordinary danger to the general public, the registrant shall take all action necessary to remedy the danger immediately.

(3) In the event the city commission terminates the registration, the registrant shall be given written notice of such termination.

(4) The terminated registrant shall, within a reasonable time following such termination, either: (a) notify the city of the assumption or anticipated assumption by another registrant of ownership of the registrant's facilities in the public rights-of-way; or (b) provide an acceptable plan for disposition of its communications facilities in the public rights of way. If a terminated registrant fails to comply with this provision, the city may, in addition to any other remedies available at law or in equity, require the registrant or the registrant's bonding company to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal; or remove some or all of the facilities from the public rights-of-way using city employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement. In any event, a terminated registrant shall take all actions necessary to render every portion of the facilities remaining in the public rights-of-way of the city safe.

(5) In the event of a termination of registration, this provision does not permit the city to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certificate of use or license with the governing federal or state agency, where required, and is properly registered with the city, where required.

Sec. 78-402. - Placement or maintenance of a wireless communications facility in public rights-of-way.

(a) Registrants, wireless communications services providers or by pass-through providers, that place or maintain any wireless communications facility in a public right-of-way shall comply with and abide by all applicable provisions of this section and this article. Registrants shall comply with and abide by all applicable provisions of the state statutes and city ordinances, codes and regulations in placing or maintaining a wireless communications facility in public rights-of-way.

(b) *Conditional use.* The city shall retain the right, without limitation, to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within

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the limits of the city. Nothing in this article shall affect the city's authority to add, vacate or abandon public rights-of-way.

(c) A registrant shall not commence to place or maintain a wireless communications facility in public rights-of-way until all applicable permits have been issued by the city or other appropriate authority.

(d) Wireless communications facilities within a right-of-way may be comprised of DAS or "Distributed Antenna Systems" and small cells, but shall not include a DAS Hub.

(e) *Wireless right-of-way placement permit.* Registrants shall obtain a wireless communications right-of-way placement permit prior to placing or maintaining any wireless communication facilities in the city rights-of-way, pursuant to sec. 78-403.

(f) *Temporary right-of-way work permit.* Registrants shall obtain a temporary right-of-way permit pursuant to sec. 78-431 of this code before performing any work in the city rights-of-way.

(g) The city may grant utility easements or otherwise permit the placement and maintenance of other utilities in the public rights of way, including, water, sewer, electric, gas, storm drainage, communications, traffic, and other utilities and facilities, cables or conduit, and including underground and overhead installations.

(h) *Insufficient space.* The city has the authority to prohibit or limit the placement of new or additional wireless communications facilities within the public rights-of way if there is insufficient physical space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way. A determination of insufficient physical space may be made when: (i) necessary to protect existing facilities in the public rights-of-way; (ii) to accommodate city plans for public improvements or projects; (iii) to the extent not prohibited by applicable law, to prevent interference with the operations of public safety telecommunications services; or (iv) to accommodate traffic safety issues raised by the city, the county, FDOT or any other agency with regulatory authority over any right-of-way within the city.

(i) *No interference.*

1) All wireless communications facilities shall be placed and maintained so as not to interfere unreasonably with the use of the public rights-of-way by the public and so as not to cause unreasonable interference with the rights and convenience of property owners who adjoin any of the public rights-of-way.

2) All wireless communications facilities shall be placed and maintained so as not to interfere, displace, damage or destroy any other utilities or facilities, including but not limited to, water mains, sanitary sewer facilities, storm drains, electrical facilities; gas mains, pipes, cables or conduits of the city or any other utility's facilities lawfully occupying the public rights-of-way of the city.

3) All wireless communications facilities shall be placed and maintained so as not to create interference with the operations of public safety telecommunications services.

(j) *Collocation.*

(1) Applications for collocation entitled to streamlined processes pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 shall be approved provided they meet the following requirements:

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(a) A collocation on an existing antenna-supporting structure within a public right of way shall not increase the overall height of the antenna-supporting structure, antenna and/or antenna array more than 10% or 10 feet, whichever is greater.

(b) A collocation shall not, for towers within a public right of way, protrude from the antenna-supporting structure more than 6 feet.

(2) To the extent not inconsistent with public service commission regulations, the city may require the co-location of facilities in existing conduit. In making such requests, the city shall take into consideration the following factors: the economic and technical feasibility of such requests; interference with the use of the public rights-of-way by the public.

(3) Collocation of equipment shall not increase the overall height and width of the pole to which the proposed equipment is to be attached, except where expressly permitted by and in accordance with 47 USC Section 1455(a) and in conformity with applicable health and safety regulations. Collocation shall not increase the ground space area currently occupied by wireless telecommunication facilities.

(k) *Location in arterial rights of way.* Wireless communications facilities shall be located in arterial rights-of-way whenever possible. Placement of wireless communications facilities in rights-of-way other than arterial rights-of-way shall be justified by an engineering analysis from the registrant to the satisfaction of the city engineer prior to the issuance of any permit.

(l) *Location in Residential areas.* Whenever wireless communications facilities must be placed in a right-of-way with residential uses on one or both sides, neither poles, equipment, antennas or other structures shall be placed directly in front of a residential structure. If a right-of-way has residential structures on only one side, the wireless communications facilities shall be located on the opposite side of the right-of-way whenever possible. All wireless communications facilities shall be located such that views from residential structures are not significantly impaired.

(m) *Concealment.* Concealment design is required for wireless communication facilities located in a right-of-way to minimize the visual impact of wireless communications facilities.

(n) *Poles.*

(1) Poles to be utilized for wireless communication facilities must be concealed, with equipment located within the pole structure. Poles shall be located so as to align with existing poles in the right of way and have equal setback distances with existing poles from the curblineline of the right of way. The height of wireless communications facility poles shall be compatible in height to other utility poles located in the same right-of-way or neighborhood within the city, and shall be comparable in style and configuration to streetlight fixtures. Newly installed poles for wireless communications facilities should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the pole. Nothing contained in this section shall be interpreted to prohibit the co-location of antennas on existing poles due to antenna height requirements. Newly installed poles shall be located midway between existing trees and/or poles that are installed along the right of way, provided that the new pole is no closer than 15 feet from a deciduous tree and no closer than 10 feet to a palm tree or pole.

- (2) In the event the required separation distances herein cannot be met because of an existing utility pole, the applicant shall make reasonable efforts to collocate on the existing pole. If the existing pole is a city pole, the applicant may petition the City to replace the existing pole with a pole capable of accommodating the applicant's needs and also continuing to serve its original city function. The replacement pole shall meet all of the requirements of this section 78-402. Additionally, if the replacement pole will also function as a streetlight, the pole and light fixture must meet city standards for structural integrity and lighting, and must be a lighting type approved by the city's engineering services division (generally LED), and must be metered separately for electric power to the streetlight and the communications equipment. The applicant shall be responsible for maintenance of such pole, with the city responsible for the cost of replacement or repair of the light fixture. The city's engineering services division shall approve the replacement pole for compliance with this section.

(o) *Equipment Boxes.* The location of equipment boxes shall be subject to approval of the city's engineering services division to ensure the public safety and coordination with other utilities and facilities in the rights-of-way. In order to avoid the clustering of multiple items of ground equipment in a single area, a maximum of two ground equipment boxes may be grouped together in any single location. In addition, such locations must be spaced a minimum of 500 linear feet apart from each other, where feasible. Individual ground equipment boxes shall not exceed three feet wide, by three feet deep by five feet high in size. Equipment boxes for wireless communications facilities shall be concealed and located in areas with existing foliage or other aesthetic features to obscure the view of the equipment box. The use of foliage and vegetation around ground equipment is preferred. The wrapping of ground equipment may also be required by the city based on conditions of the specific area where the ground equipment is to be located. Equipment boxes shall be concealed by landscaping and may be wrapped or have other treatment to conceal the equipment, provided such wrapping or treatment does not interfere with the function of the equipment box. Equipment boxes may only be located on poles in those limited circumstances where the city commission determines that such location is the better option for the aesthetics and visual character of the area. No generators to support equipment boxes may be placed in the public right-of-way except temporarily, in case of emergency, and approved in advance by the city's engineering services division.

(p) *Location in Downtown Master Plan area.* Wireless communication facilities placed or maintained in the public rights-of-way in the downtown master plan area shall comply with the following special requirements, notwithstanding anything to the contrary in this division:

(1) *Primary pedestrian streets.* Wireless communications facilities shall not be located in rights of way designated as primary pedestrian streets arterial rights-of-way and shall be located in other rights-of way whenever possible. Placement of wireless communications facilities in primary pedestrian rights-of-way shall be justified by an engineering analysis from the registrant to the satisfaction of the city engineer prior to the issuance of any right-of-way permit.

(q) *Installation or placement.*

(1) To the extent not inconsistent with public service commission regulations, the city may require 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. In making such requests, the city shall take into

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consideration including the economic and technical feasibility of such requests and the inconvenience to the public and other users of rights-of-way.

(2) 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, F.S. ch. 556, as amended.

(3) *Scheduling.* In the interest of the public's health, safety and welfare, upon request of the city, a registrant shall 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 timeframe in the subject public right-of-way. The city may require a registrant to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the public rights-of-way. The city may provide a more definite time frame based on specific city construction or maintenance schedules.

(3) *As-builts.* If the facility location plans provided by registrant require revision based upon actual installation, the registrant shall promptly provide revised plans or "as-builts" to the city upon completion of any installation or construction. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the city's geographical database, or other format acceptable to the city and in conformance with the city's Engineering Standards. The registrant shall provide such plans at no cost to the city. The city shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended.

(r) *Restoration.* A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition as existed before registrant performed work in the public right-of-way, in accordance with the city's Engineering Services Standard Details, subject to the city's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. If the registrant fails to make such restoration within ten calendar days after completion of construction, or such other time as may be required by the city, the city may after written notice to the registrant, perform such restoration using city employees, agents or contractors, and charge all costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within thirty days after the submission of the bill by the city to the registrant. Alternatively, at the sole discretion of the city, the city may seek to recover expenses, costs and loss from restoring the right-of-way, against the registrant's construction bond pursuant to sec. 78-404.

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

(t) *Removal or relocation.* Removal or relocation at the direction of the city of a registrant's wireless communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as amended.

(u) *Inspection.* The city shall have the right to make such inspections of wireless communication facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article. In the event the city determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will

provide registrant no less than three days written notice setting forth the violation and requesting correction.

(v) *Registrant's risk.* City makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's wireless communications facilities and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk.

(w) *Cooperation.* Subject to applicable law, a registrant shall, on the request of any person or entity holding a permit issued by the city, temporarily support, protect, raise or lower its wireless communications facilities to permit the work authorized by the permit. The expense of such temporary support, protection, 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 thirty calendar days advance written notice to arrange for such temporary relocation. If the city requests the temporary support, protection, raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary support, protection, raising or lowering of the facility.

Sec. 78-403. – Wireless communications right-of-way placement permit.

(a) As part of any wireless communication right-of-way permit application to place a new or replace an existing wireless communications facility in public rights-of-way, the registrant shall provide the following information to the city:

- (1) An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment 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 and/or techniques), identifying any deviation from the city's Engineering Standards;
- (3) Describing the concealment methods to be used, including the type of foliage and colors of concealment methods, as applicable;
- (4) If replacement of a city pole is requested, indicate the city function to be replaced, the proposed type of lighting or replacement facility proposed, the electric metering proposed, and provide evidence of compliance with city standards;
- (5) A traffic maintenance plan for any disruption or obstruction of the public rights-of-way;
- (6) Information on the ability of the public rights-of-way to accommodate the proposed facility, including information that identifies all above-ground facilities currently existing in the areas to which the permit application applies, and extending one thousand feet beyond said areas within the city if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons with facilities in the public rights-of-way);
- (7) If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;

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- (8) The timetable for construction of the project or each phase thereof, and the areas of the city which will be affected;
 - (9) An inventory of all existing wireless communications facilities that the registrant or the registrant's predecessors in interest has previously placed in the areas to which the permit application applies, and extending one thousand (1,000) feet beyond said areas within the city as well as any other areas within the city which the city finds reasonably necessary to review the permit application;
 - (10) In the case of an application for collocated wireless communications facilities, the applicant/registrant, together with the owner of the subject site, shall use their best efforts to provide a composite analysis of all users of the site to determine that the applicant's proposed facilities will not cause radio frequency interference with the city's public safety communications equipment and will implement appropriate technical measures, as described in antenna element replacements, to attempt to prevent such interference.
 - (11) *Notice to owners.* At least 15 days prior, but not more than 30 days prior, to the anticipated start of the work in the public rights-of-way, the registrant shall mail written notice of the work in the public right-of-way to property owners within 500 feet who adjoin such rights-of-way (the "notification area"). The notification area may be expanded at the city's discretion. Registrant shall provide proof of such mailing to the city.
 - (12) *Public information meeting.* Based on the scope of the impact to the public rights-of-way and the number of property owners to be impacted or the severity of the impact on the general public, the city may require the registrant to hold a public information meeting for purposes of answering questions and taking comments from property owners and the public. Should a public information meeting be required, the registrant shall submit a report to the city no later than ten days after such meeting, detailing the public comments received and any responses provided by the registrant. The registrant shall meet with city staff as soon as practical to review comments received at the public information meeting, and attempt to resolve all negative comments or issues raised. No permits shall be issued by the city until this process, if required, has been completed.
 - (13) Application fee, as set by resolution of the city commission, to cover the city's actual costs of reviewing and processing the permit application;
 - (14) A security fund, pursuant to sec.78-404; and
 - (15) Such additional information requested by the city that the city finds reasonably necessary to review the permit application.
- (b) An applicant shall not have more than 15 open permits for wireless communication facilities in the public rights-of-way pending at any given time.

Sec. 78-404. – Fees, charges and security.

- (a) *Application fee.* Fees for all applications required by this chapter shall be established by resolution of the city commission, as may be amended from time to time.

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(b) *Security fund.* At the time of registration and as a condition of receiving its first permit to place or maintain a wireless communications facility in public rights-of-way, a registrant shall file with the city, a security fund in the form of an annual bond, cash deposit or irrevocable letter of credit, in form acceptable to the city, in the sum of \$50,000. 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 or renewed 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, there shall be recoverable, jointly and severally from the security fund and/or from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund.

(c) The city may withhold the issuance of any permits to a registrant until any amount past due from registrant to city is paid in full.

(d) *Supplemental review.* The city reserves the right to require a supplemental review for any other type of collocation, attachment, mitigated tower, new tower, or antenna element replacement when determined by the city to be necessary due to the complexity of the methodology or analysis required to review an application for any proposed or existing wireless communications facility. The cost to the city for such supplemental technical review shall be borne by the registrant/applicant and be in addition to other applicable fees.

Sec. 78-405 - Indemnification.

A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the city, its commissioners, officials, employees and agents, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the city arising out of the placement or maintenance of the registrant's wireless communications facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation hereunder shall not extend to any damages caused solely by the negligence, gross negligence or wanton or willful acts of the city. This provision includes, but is not limited to, the city's reasonable attorneys' fees 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: (1) as denying to either party any remedy or defense available to such party under the laws of the state of Florida; (2) as consent by the city to be sued; or (3) as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.

Sec. 78-406 - Insurance.

A registrant, including pass-through providers, that places or maintains wireless communications facilities in the public rights-of-way shall be required to maintain, at its own expense, commercial general liability insurance in the amount of \$1,000,000.00 per occurrence, or in such other amount specified by the city's risk management division, for bodily injury and property

damage. The city must be named as an additional insured on this policy, and a certificate of insurance containing such endorsement must be issued as part of the policy. The registrant must provide, and have approved by the city, an original certificate of insurance as evidence that this requirement has been met prior to commencing operations.

Sec. 78-407 - Abandonment.

Abandonment of wireless communications facility in right-of-way. Upon a registrant's abandonment of a wireless communications facility in the city public rights-of-way, the registrant shall notify the city of such abandonment within 90 calendar days. 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 makes one or more of the following determinations regarding the abandoned facilities:

- (1) The facilities compromise safety for any public rights-of-way user or during construction or maintenance in public rights-of-way;
- (2) The facilities prevent or will prevent another registrant from locating facilities in the area of public rights-of-way where the abandoned facility is located; or
- (3) The facilities create a maintenance condition that is disruptive to the public rights-of-way's use.

(c) In the event that the city does not direct the removal of the abandoned facilities, 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 wireless communications facility as directed by the city within 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.

SECTION 5: A wireless communications services provider or pass-through provider with an existing wireless communications facility in the public rights-of-way of the city as of the effective date of this Ordinance has sixty (60) days from the effective date of this article to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

SECTION 6: The zoning in progress and moratorium as to the issuance of permits for new above-ground wireless communications facilities and DAS systems shall remain in effect until this Ordinance takes effect.

SECTION 7: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8: Should any section or provision of this Ordinance or any portion, paragraph, sentence or word thereof be declared by a court of competent jurisdiction to be invalid, such decision shall not effect the validity of the remainder of this Ordinance.

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SECTION 9: Authority is hereby granted to codify the amendments set forth in Sections 2, 3 and 4 of this Ordinance.

SECTION 10: This Ordinance shall take effect in ten days, in accordance with law.

FIRST READING THIS 26th DAY OF MAY, 2015.

SECOND READING AND PASSAGE THIS 8th DAY OF JUNE, 2015.