

**TOWN OF DUNDEE, FLORIDA**

**ORDINANCE NO. 20-06**

**AN ORDINANCE OF THE TOWN OF DUNDEE, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE BY AMENDING CHAPTER 55, ARTICLE I (TELECOMMUNICATIONS), SECTIONS 55-1 – 55-30, THE “COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE,” AS PROVIDED HEREIN; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION ; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR BONDS; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Town of Dundee (“Town”) staff periodically reviews Town Ordinances and makes recommendations to the Town Commission to revise its Ordinances; and

**WHEREAS**, the Town Commission of the Town of Dundee has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the Town of Dundee by regulating the siting of communications facilities and utility poles for such facilities within the public rights-of-way; and

**WHEREAS**, this Ordinance accommodates the growing needs and demand for communications services; and

**WHEREAS**, this Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist; and

**WHEREAS**, this Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist; and

**WHEREAS**, F.S. § 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

**WHEREAS**, in 2017, Florida enacted the Advanced Wireless Infrastructure Deployment Act, F.S. § 337.401(7) (“Wireless Act”); and

**WHEREAS**, the Wireless Act addresses local government regulation of the installation of utility poles in the public rights-of-way to collocate small wireless facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way; and

**WHEREAS**, in 2018, the Town Commission adopted Ordinance No. 18-05 to regulate the placement and maintenance of communications facilities in the Town public rights-of-way, consistent with F.S. § 337.401 and applicable law; and

**WHEREAS**, in 2019, the Florida Legislature enacted and the Governor approved CS/CS/CS/SB 1000 ("SB 1000"), amending F.S. § 337.401, including portions of the Wireless Act; and

**WHEREAS**, it is the Town Commission's intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and

**WHEREAS**, it is the Town Commission's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; and,

**WHEREAS**, the Town's rights-of-way are essential for the travel of persons and the transport of goods throughout the Town and are a unique and physically limited resource requiring proper management by the Town to ensure public safety, maximize efficiency, minimize costs to Town taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

**WHEREAS**, a duly noticed public hearing as required by law was held by the Town Commission of the Town of Dundee, at which public hearing all residents and interested persons were given an opportunity to be heard; and,

**WHEREAS**, the Town Clerk submitted the proposed ordinance to the Secretary of State pursuant to F.S. § 337.401(3)(d); and

**WHEREAS**, the Town Commission for the Town of Dundee, Florida finds and declares that this ordinance is in the best interest of the public health, safety and welfare of the citizens and residents of the Town of Dundee, Florida and that it advances a significant and important governmental interest,

**NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE TOWN OF DUNDEE, FLORIDA, THAT:**

**SECTION 1.** The above recitals to this Ordinance (WHEREAS clauses) are hereby incorporated as a factual basis for the passage of this Ordinance and adopted by the Town Commission as the legislative findings and intent pertaining to this Ordinance.

**SECTION 2.** The Town Commission hereby amends Chapter 55, Article I, Sections 55-1- 55-30 of the Code of Ordinances, Town of Dundee, Florida, as follows<sup>1</sup>:

## **Chapter 55. – TELECOMMUNICATIONS**

### **ARTICLE I. COMMUNICATIONS RIGHTS-OF-WAY**

Sec. 55-1. Short title.

This article shall be known and cited as the Communications Rights-of-Way Ordinance.

Sec. 55-2. Purpose.

The purpose of this article is:

- (1) To establish a competitively neutral policy for the use of public rights-of-way for communications facilities;
- (2) To protect the Town's investment in the public right-of-way by providing for the payment of nondiscriminatory fees for the use of the right-of-way by communications companies;
- (3) To regulate the placement and maintenance of structures and facilities in the public rights-of-way pursuant to F.S. § 337.401; and
- (4) To adopt and to administer reasonable rules and regulations not inconsistent with state and federal law, including the United States and Florida Constitutions, F.S. § 337.401, as it may be amended, the Town's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, § 6409(a) of the Spectrum Act of 2012, (codified as 47 U.S.C. § 1455(a)), FCC regulations, and other federal and state law; to establish reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this section; and to minimize disruption to the public rights-of-way.
- (5) Applicability.
  - a. This Ordinance shall apply to all facilities for communications services placed or maintained in the Town public rights-of-way pursuant to Section 337.401, F.S., including but not limited to any person holding a certificate of franchise authority pursuant to Section 610.103, Florida Statutes, communications services providers, pass-through providers, and wireless providers. Persons seeking to place or maintain communications facilities on private property or other property to which the Town, any municipality, Polk County, or any governmental entity has a fee simple or leasehold, not within and exclusive of the public rights-of-way, located

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<sup>1</sup> Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

within the jurisdictional boundaries of the Town shall comply with the applicable provisions of the Town Code, Land Development Code of Dundee, Article III, Section 3.07.13, Communications Tower, as it may be amended, to the extent it applies, unless such property is addressed expressly in this Ordinance. This Ordinance is not applicable to communication facilities outside the public rights-of-way, unless addressed expressly herein. Pursuant to this Ordinance, a person may be authorized to place or to maintain small wireless facilities, micro wireless facilities, or utility poles for collocation of small wireless facilities in the Town public rights-of-way. Wireless support structures, telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law. This Ordinance applies to the placement of conduit, fiber or cable for the purpose of providing backhaul or communications service. Consistent with Section 337.401, *Florida Statutes*, this Ordinance applies to a cable or video service provider that has been issued and holds a certificate of franchise authority from the Florida Department of State pursuant to Chapter 610, Florida Statutes, that places or maintains a cable system or wireline facilities in the Town's public rights-of-way. Rules or regulations imposed by the Town relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way shall be generally applicable to all providers of communications services, to the extent federal or Florida law does not require different treatment. Florida law requires that the Town's rules and regulations take into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities. Accordingly, in the exercise of the Town's authority, as required by Florida law, this Ordinance provides different regulations applicable to various communications facilities. This Ordinance shall not apply to wireless or communications facilities owned by the Town, and shall not apply to communications or wireless facilities owned by a person, including an electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis by said person. This Ordinance does not apply to the placement of electric utility poles for an electric distribution system located within the Town public rights-of-way pursuant to a valid franchise agreement with the Town. However, collocation of small wireless facilities on such utility poles and any other utility poles placed or maintained by a Town franchised utility in the public rights-of-way will be governed by the applicable provisions of this Ordinance. Ordinances approving a franchise agreement with an electric utility shall remain in full force and effect, notwithstanding any provision of this Ordinance.

- b. This Ordinance implements *inter alia*, the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), F.S. ("Wireless Act"). By adopting this Ordinance, the Town does not waive any rights with respect to the Wireless Act including any rights that may exist under federal law, the Florida Constitution and the U.S. Constitution. In the event ~~the Wireless Act, Section 337.401(7), F.S., is~~ repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law or regulation, in whole or in part, provisions

of this Ordinance may no longer apply, in which case pending and future applications for small wireless facilities or utility poles intended to support the collocation of small wireless facilities in the public rights-of-way, will be governed by applicable law. In addition, permits issued pursuant to this Ordinance may be suspended or revoked, and facilities installed pursuant to this Ordinance or the Wireless Act may be required to be removed at the facility owner's expense, to the extent consistent with applicable law. It is the Town's intent not to create any vested rights in placing and maintaining facilities addressed in the Wireless Act in the public rights-of-way as a result of this Ordinance or any permit issued pursuant to this Ordinance, to the extent not inconsistent with applicable law.

- c. To the extent any provision of this Ordinance conflicts with the Code of Ordinances of the Town of Dundee and/or the Land Development Code of the Town of Dundee, this Ordinance shall control.
- d. This Ordinance shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Ordinance, all pending applications for permits subject to this Ordinance, and shall apply to all existing communications facilities placed in the public rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law. A person with existing communications facilities in the public rights-of-way shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance or prior to the issuance of a permit pursuant to this Ordinance. This provision shall not require removal or modification of communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed.
- c. Reservation of rights. The Town reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
- (6) Authority to implement Ordinance. The Town Manager is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent and purposes of this Ordinance.
- (7) Calculation of time periods. The calculation of the number of days that have passed during any time period prescribed under this Ordinance shall be based on calendar days (unless specified otherwise). Unless otherwise specified, the calculation of the number of days that have passed during any time period prescribed shall commence on the day immediately following the event triggering such time period. If the tolling of such a time period is not contingent upon an action or event, the calculation of the number of days that have passed during such time period prescribed shall commence on the day immediately following the effective date of this Ordinance.

#### Sec. 55-3. Definitions.

As used in this article: the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and “may” is permissive. Words not otherwise defined in this Ordinance or in any permit that may be granted pursuant to this Ordinance shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §151 *et seq.*, as amended or the Spectrum Act, 47 U.S.C. §1455(a) (collectively the “Communications Act”), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the Code of Ordinances of the Town of Dundee (the “Town Code”), and if not defined in the Town Code, shall be construed to mean the common and ordinary meaning.

*Abandonment* or *Abandoned* shall mean the cessation of all uses of a communications facility for a period of one hundred eighty (180) or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be *Abandonment* of a communications facility. A wireless infrastructure provider’s failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine (9) months after the application is approved in accordance with Section 337.401(7)(j), F.S., shall constitute abandonment. The terms *Abandonment* or *Abandoned* are not intended to include a dropped line from a potential or existing customer in the event the communications services provider reasonably anticipates future use of the dropped line.

*Abut* shall mean, when used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot line or boundary line with another lot or parcel of land or public right-of-way.

*Adjacent Properties* or *Properties Adjacent* shall mean (i) those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

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

*Applicable Codes* shall mean uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including, but not limited expressly to the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2017~~0~~ Florida Department of Transportation Utility Accommodation Manual, the Florida Department of Transportation Manual on Traffic Control and Safe Practices, the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for

Streets and Highways, the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, and Town codes or ordinances adopted to implement Section 337.401, *Florida Statutes*, including but not limited to this Ordinance to the extent not inconsistent with applicable law. ~~The term includes objective design standards adopted by this Ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by this Ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the Town upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense.~~

*Applicant* shall mean a registrant who submits an application ~~for a permit to place or to maintain a communications facility or utility pole within the public rights-of-way.~~

*Application* shall mean request submitted by an applicant to the Town for a permit to collocate small wireless facilities or to place a new utility pole used to support a small wireless facility in the public rights-of-way for any relief pursuant to this Ordinance.

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

*Authority* shall mean the Town to the extent it has jurisdiction and control of the rights-of-way of any public road. The term does not include the Florida Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from this Ordinance.

*Authority or Town Utility Pole* shall mean utility pole owned by the Town in the public rights-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the rights-of-way within:

- (a) A retirement community that:
  - (i) Is deed restricted as housing for older persons as defined in Section 760.29(4)(b), *Florida Statutes*.
  - (ii) Has more than 5,000 residents; and
  - (iii) Has underground utilities for electric transmission or distribution.

*Backhaul Facilities* shall mean a physical transmission path, all or part of which is within the public rights-of-way controlled by the Town or any government entity, used for the transport of communications data by wire or fiber from a wireless facility to a network. A Backhaul Facility

may also consist of an antenna, including a microwave antenna, installed in the public rights-of-way pursuant to a permit, used for the transport of communications data wirelessly from a wireless facility to a network.

*Below-Grade Communications Facility* shall mean a communications facility, including manholes or access points that are entirely contained below grade within the public rights-of-way.

*Business day(s)* shall mean each calendar day which is not a Saturday, Sunday or a recognized holiday by the Town of Dundee, Florida.

*Clear Zone* shall mean the roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

*Collocation* or *Collocate* shall mean to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

*Communications facilities* or *facility* or *system* shall mean the permanent or temporary plant, equipment, and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, and other equipment or pathway used to transmit, receive, distribute, provide or offer communications services. A utility pole intended for collocation of a small wireless facility shall be considered a facility for purposes of this Ordinance.

*Communications Services* shall mean the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable service and video service as defined in F.S. §§610.103(1) and (11), to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission or conveyance.

*Communications Services Provider* shall mean any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider. A certificateholder as defined in Section 610.103(4), F.S. is a communications services provider pursuant to this Ordinance.

*Communications Services Tax* shall mean local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to Section 202.19, F.S. as amended.

*Consolidated Permit Application* shall mean a single permit application that would



otherwise require individual permit applications for the collocation of between two (2) and thirty (30) small wireless facilities to existing structures within the public rights-of-way.

*Calendar day(s)* shall mean any and all day(s) in a 365 day calendar year.

*Day(s)* shall mean calendar day(s) unless specifically stated otherwise.

*Excavate or Excavation* shall mean any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in Section 373.019(22), Florida Statutes, and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

*Extension of Existing Facilities or Extension* shall mean those extensions from the public rights-of-way into a customer's private property for purposes of placing a service drop or those extensions from the public rights-of-way into a utility easement to provide service to a discreet identifiable customer or group of customers. An extension of fiber or cable to serve a property with multiple customers, for example, a commercial building with multiple tenants, shall not constitute an extension of existing facilities unless all tenants are served by the owner of the facilities under one agreement.

*FCC* shall mean the Federal Communications Commission.

*Florida Building Code* shall mean the Florida Building Code promulgated under Chapter 553, Florida Statutes and includes the applicable amendments thereto as both may be amended from time to time.

*Florida Greenbook* shall mean the latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

*Force Majeure Event* shall mean a cause or event not within a person's control that shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots, insurrection, war or civil disturbances, sabotage, strikes and/or other reason(s) beyond that person's reasonable control. Causes or events within a person's control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person's directors, officers, employees, contractors or agents.

*Graffiti* shall mean any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility. A wrap shall not be considered graffiti.

*Historic Property* shall mean any historic resource and/or historically significant structure defined by the Land Development Code of the Town of Dundee, prehistoric or historic district, site, building, object or other real or personal property, of historical, architectural or archaeological value. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, or culture of the Town.

*Homeowners' Association* shall mean an incorporated association whose members consist of owners of single family homes or condominium units that manage or control property owned by the association.

*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.

*Licensed Engineer* means a Florida Registered Professional Engineer, or a person who is exempt from such registration requirements as provided in F.S. § 471.003.

*Lot* shall mean a designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

*Micro Wireless Facility* shall mean a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

*Ordinance or Article* shall mean this Ordinance or Article of the Town Code.

*Parcel* shall mean any piece of real property that has a single parcel identification number assigned to it by the Polk County Property Appraiser.

*Pass-through Provider*, as defined in Section 337.401(6)(a)1., Florida Statutes, shall mean any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the Town pursuant to Chapter 202, F.S., as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this ordinance.

*Permit* shall mean the public right-of-way permit that must be obtained before a person may construct in the public right-of-way and shall include, but not be limited to, right-of-way engineering and construction permits issued by the Town.

*Person* shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the Town.

*Place or Maintain or Placement or Maintenance or Placing or Maintaining* shall mean to

erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is *placing or maintaining* the facilities. To the extent required by applicable law, 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.

*PSC* shall mean the Florida Public Service Commission.

Public right-of-way or right-of-way shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley owned by the Town or for which the Town 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 of all public roads, streets, highways, alleys, boulevards, bridges, tunnels, public utility easements, and all public grounds. *Public rights-of-way* shall not include private property. *Public rights-of-way* shall not include any real or personal Town property except as described above, and shall not include Town parks, buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the *public rights-of-way*.

*Registrant* or *Facility Owner* shall mean a communications services provider or other person that has registered with the Town in accordance with the terms of this article.

*Registration* and *Register* shall mean the process described in this ordinance whereby a communications services provider provides certain information to the Town.

*Requester shall mean a person who submits a request pursuant to this Ordinance.*

*Request shall mean any request other than an Application submitted by a person, associated with the placement or maintenance of a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way. A Request includes, but shall not be limited to, a request for approval of a registration, a request to place or maintain a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way and includes for example, but is not limited to, a permit to construct cable, fiber, conduit, backhaul facilities, pedestals, or a support structure that does not constitute a utility pole for the collocation of a small wireless facility in the public rights-of-way.*

*Shroud* shall mean a covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure or wireless support structure.

*Signage* shall mean any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term *Signage* shall not include identification of the owner and contact

information of the wireless facility provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

*Small Wireless Facility* shall mean a wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

*Smart Technology shall mean the Town's present and future technology to support the Town's smart technology initiatives, including but not limited to, sensors and smart lights, fiber, CCTV cameras, digital signage, data sharing with traffic applications, smart solar-powered charging stations, emergency alert applications and other initiatives over time.*

*Stealth Design* shall mean a method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole which is designed to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

*Surrounding Neighborhood* shall mean the area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

*Town* shall mean the Town of Dundee, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

*Town Code* shall mean the Code of Ordinances of the Town of Dundee, Florida.

*Town Manager* shall mean the Town of Dundee, Florida, Town Manager or his/her designee.

*Utility* shall mean any person or entity that is a local exchange carrier or an electric, gas, water, steam or other public utility, and who owns or operates appurtenant facilities or equipment that is situated within the public rights-of-way for transmission of such utility's goods, commodities or services.

*Utility Pole* shall mean a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar

function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

*Wireless Facility* shall mean equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

- (a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (b) Wireline backhaul facilities; or
- (c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

*Wireless Infrastructure Provider* shall mean a person who has been certificated under Chapter 364, Florida Statutes, to provide telecommunications service or under Chapter 610, Florida Statutes, to provide cable or video services in the state and such person's affiliate, and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

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

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

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

*Wireless Support Structure* shall mean a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than five (5) feet in height.

*Wrap* shall mean an aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

Sec. 55-4. Registration For Placing Or Maintaining Communications Facilities in Public Rights-Of-Way.

- (a) All persons seeking to place or maintain a communications facility, including but

not limited to a cable system, fiber, backhaul facility, or utility pole for collocation of a small wireless facility in the public rights-of-way in the Town pursuant to this Ordinance shall first register with the Town in accordance with this Ordinance before being eligible to receive a permit. Subject to the terms and conditions prescribed in this Ordinance and approval of a permit if necessary, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless infrastructure provider with an existing communications facility in the public rights-of-way of the Town as of the effective date of this Ordinance shall comply with the terms of this Ordinance, including, but not limited to obtaining an effective registration, or be in violation thereof, by the earlier of the following: ninety (90) days from the effective date of this Ordinance or prior to the issuance of a permit by the Town pursuant to this Ordinance. This provision shall not require removal or modification of communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed.

- (b) Requirements for an effective registration. A person that desires to place or maintain a communications facility, backhaul facilities and an infrastructure provider that seeks to apply to install a utility pole for collocation of a small wireless facility in the public rights-of-way in the Town shall file four complete originals in a format designated by the Town that shall include all of 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 name, address, telephone number and email addresses of the registrant's primary contact person in the event of an emergency or issue involving its facilities, which shall be monitored 24 hours per day, 7 days per week.
  - (3) ~~The type of communications services that the registrant provides or intends to provide within the Town (if more than one, state all that apply), or, if none, indicate that the registrant is a communications facility provider, wireless infrastructure provider, or pass-through provider, as the case may be, and whether the registrant currently remits or intends to remit Communications Service Tax for distribution to the Town, as authorized in Ch. 202, F.S. A statement of whether the registrant is a pass-through provider in the Town as defined in Section 337.401(6)(a)1, Florida Statutes, and this Ordinance;~~
  - (4) Evidence of the insurance coverage required under this Ordinance;
  - (5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;

- (6) A copy showing the number of the registrant's current certificate of authorization, ~~public convenience and necessity, or other similar certification or licenses~~ issued by the Florida Public Service Commission, the Florida Department of State, or the FCC, ~~or other federal authority~~. ~~A copy of federal or state certification authorizing the registrant to provide communications services, if any; and~~
  - (7) The registrant's federal employer identification number. Documentation demonstrating that if the registrant is an individual, that the registrant is a resident of Florida, or if the registrant is a corporation that the registrant is organized under the laws of Florida or licensed to do business within Florida, or, as applicable, a statement that the registrant is not a resident or organized or licensed to do business within Florida; and
  - (8) ~~A permanent performance bond as described herein to guarantee compliance in accordance with this Ordinance.~~
- (c) Insurance.
- (1) Registrant shall provide, pay for and maintain satisfactory to the Town, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Insurance Guide of A or better, or having a rating acceptable to the Town. All liability policies shall provide that the Town is an additional insured in the endorsement. Thirty-days advance written notice by registered or certified mail must be given to the Town of any cancellation, intent not to renew, or reduction in the policy coverages. As evidence of compliance with the insurance required herein, the registrant shall furnish the Town with a fully completed satisfactory Certificate of Insurance evidencing all coverage required. Also, the registrant shall provide a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of the Town of Dundee and its members, officials, officers and employees as additional insureds in the Commercial General Liability coverage. Such documents shall be filed and maintained with the Town annually. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the Town. A registrant may add the Town to any existing insurance policy and the Town shall accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the Town is a party.
  - (2) The limits of coverage of insurance required shall be not less than the following:

- i. Worker's compensation and employer's liability. Insurance employer's liability: Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$1,000,000	(Each Accident)
	\$1,000,000	(Disease-Policy Limit)
	\$1,000,000	(Disease-Each Employee)

The Workers' Compensation Policy must be endorsed to waive the insurer's right to subrogate against the Town and the Town's board members, officials, officers, agents and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right to Recover From Others Endorsement (Advisory Form WC 00 03 13) with Town and the Town's board members, officials, officers, agents and employees scheduled thereon.

- ii. Comprehensive general liability. Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements, other than those required by ISO or the State of Florida. Said coverage shall not exclude contractual liability, products/completed operations, independent or contractors. The Town of Dundee, and its members, officials, officers and employees shall be included as "Additional Insureds" on a form no more restrictive than the latest edition of ISO Form CG 20 10 (Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

General Aggregate	\$3,000,000
Products/Completed Operations Aggregate	\$3,000,000
Personal and Advertising Injury	\$3,000,000
Each Occurrence	\$3,000,000

The insurance provided by Registrant shall apply on a primary basis. Any insurance, or self-insurance, maintained by the Town of Dundee shall be excess of, and shall not contribute with, the insurance provided by Registrant.

- iii. Automobile liability. Such insurance shall be no more restrictive



than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed. The policy shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined	\$3,000,000
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- iv. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The Town shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
- (3) Right to review. Town, by and through its risk manager, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this division. Town reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally. Neither the Town's approval or failure to disapprove the insurance furnished by the registrant shall relieve the registrant's responsibility to procure the insurance required under this Ordinance; and the registrant's compliance with the insurance requirements under this Ordinance shall not limit the liability of the registrant.
  - (4) This Ordinance shall not be construed to affect in any way the Town's rights, privileges and immunities as set forth in F.S. §768.28. It is understood and agreed that the Town does not intend to waive any sovereign immunity it may have as provided by Florida law. Insurance under this Ordinance shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this Ordinance. Notwithstanding the foregoing, the Town may, in its sole discretion, require increased or decreased levels of insurance.
- (d) ~~Reserved. Permanent Performance Bond to Guarantee Compliance. For an effective registration, a registrant shall file with the Town, for Town approval, the~~

~~amount of ten thousand dollars (\$10,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a Town account and used only for the purposes contained in this Ordinance. The letter of credit shall be issued by a financial institution within Polk County and shall be in a form and issued by a financial institution acceptable to the Town Attorney. The permanent performance bond shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon the registrant by the provisions of this Ordinance, including but not limited to requirements to restore the public rights of way and guarantee such restoration, remove any abandoned communications facilities, pay appropriate compensation to the Town, and pay for any damage to Town or other facilities in the public rights-of-way. The permanent performance bond is not a fee or tax for access to the public rights-of-way. Should the Town draw upon the bond, the Town shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Ordinance, subject to provisions for notice in this Ordinance, there shall be recoverable from the permanent performance bond, any damages or loss suffered by the Town 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. The cash deposit and letter of credit shall be furnished as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. A registrant may request that the Town return the cash deposit, letter of credit and approve the cancellation of the permanent performance bond upon the expiration of a registrant's obligations pursuant to the Town Code but in no event while a registrant maintains obligations with respect to facilities in the public rights-of-way. If the Town determines that a cash deposit should be returned, it shall return the cash deposit to the Registrant without interest.~~

- (c) ~~Review of Registration. The Town shall review the information submitted for by the registration applicant. If the applicant submits information is submitted in accordance with this subsection, the Town shall notify the applicantregistrant of the effectiveness of registration in writing. If the Town determines that the information has not been submitted in accordance with this subsection, the Town shall notify the requesterapplicant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The Town shall provide such notification so notify an applicant within 30 days after receipt of registration information from the applicant. A notice of non-effectiveness of a registration shall not preclude filing another request for registrationan applicant from reapplying.~~
- (f) ~~Regulations Applicable to Registrations.~~
  - (1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Within 30 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the Town.

- (2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any particular area in public rights-of-way within the Town. Registrations are expressly subject to any future amendment to or replacement of this Ordinance, and further subject to any additional Town ordinances, as well as any applicable state or federal laws.
- (3) Unregistered use of public rights of way. To the extent that a person with communications facilities in the public rights-of-way, is not registered as required herein, said person shall register with the Town pursuant to this Ordinance within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way.
- (4) Registration renewal. ~~Except a registrant that initially registers during an even-numbered year when renewal is due or odd-numbered year immediately preceding such even-numbered year, a~~ A registrant shall renew its registration with the Town no later than every five (5) years following April 1, after the effective date of the registration of even-numbered years. By way of example, if a registration is effective September 1, 2020, the registrant shall renew its registration no later than April 1, 2026. 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 Town restricting the issuance of additional permits. An existing effective registration pursuant to the Town Code shall continue to be effective, however the registrant shall comply with the requirements herein for an effective registration by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration, or prior to applying for or requesting a permit.
- (5) Indemnification. A registrant shall, at its sole cost and expense, indemnify, defend and hold harmless the Town, its officials, boards, members, agents and employees, against any and all claims, demands, suits, causes of action of any kind or nature, proceedings, judgments, and the resulting losses, costs, expenses, including reasonable attorneys' fees and costs, liabilities, damages, taxes, orders, judgments, decrees, or equitable relief, brought against and/or sustained by the Town arising out of the placement and/or maintenance of its communications system or facilities in public rights-of-way, or otherwise caused by the registrant, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, provided however, that a registrant's obligations herein shall not extend to any damages caused solely by the negligence, gross negligence or willful acts of the Town. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. Town agrees to notify the registrant, in writing,

within a reasonable time of Town receiving notice of any issue it determines may require indemnification. This indemnification shall not expire and/or terminate. Nothing in this Ordinance shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost, if in the Town's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Ordinance shall be construed or interpreted:

- i. as denying to either party any remedy or defense available to such party under the laws of the state of Florida;
  - ii. as consent by the Town to be sued; or
  - iii. as a waiver of sovereign immunity beyond the waiver provided in F.S. §768.28, as it may be amended.
- (6) A registrant may cancel a registration upon written notice to the Town that the registrant will no longer place or maintain any communications facilities in public rights-of-way. No liens shall apply to public rights-of-way or Town property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or on a Town utility pole. In the event any liens are filed on the Town property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the Town may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.
- (7) A registrant shall pay or reimburse the Town, as applicable, for any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on a Town utility pole as a result of a registrant's collocation.
- (8) Reports and records.
  - (a) A registrant shall provide the following documents to the Town as received or filed:
    - i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the Town to protect its interests under this Ordinance.
    - ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
  - (b) The Town shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.
- (9) Termination of Registration. The Town may terminate a registration if:
  - (a) A federal or state authority suspends, denies, or revokes a registrant's certification or license required to provide communications services;

- (b) The Town determines, in its sole discretion, the registrant's placement or maintenance of a communications facility in the public rights-of-way presents either an emergency (as defined in Section 55-5(b)(1), Town Code) and/or extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;
  - (c) The registrant abandons its facilities in the public rights-of-way; or
  - (d) The registrant commits substantial and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.
- (10) Notice of intent to terminate. Prior to termination, the Town shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The registrant shall have thirty (30) days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the Town, to accomplish the same and to take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way safe. If the plan is rejected by the Town, the Town shall provide written notice of such rejection within fifteen (15) days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.
- (11) Post termination action. In the event of termination, following any appeal period, the former registrant shall: (a) in accordance with the provisions of this Ordinance and as may otherwise be provided under state law, notify the Town of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in the public rights-of-way; or (b) provide the Town with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the communications facilities are deemed to be abandoned and the Town may exercise any remedies or rights it has at law or in equity as well as the Town's remedies pursuant to this Ordinance. The obligations of the registrant hereunder shall survive the termination of a registration. A registrant that has its registration terminated by the Town under this Ordinance may reapply for registration one (1) year after the termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the Town.
- (12) In the event of termination of a registration, this Ordinance does not authorize the Town to cause the removal of communications facilities used

to provide another service for which the registrant or another person who owns or exercises physical control over the communications facilities holds a valid certification or license with the governing federal or state agency, if required, for the provision of such service, and is registered with the Town, if required.

- (13) If a registrant transfers, sells or assigns its registration or its 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 be obligated to comply with the terms of this Ordinance. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, and is in compliance with the provisions of this Ordinance, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Ordinance as it may have been amended, then the transferee, buyer or assignee shall register as provided in this Ordinance within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate Town officials that the transferee, buyer or assignee is the new applicant.
- (14) Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications facilities. Any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this Ordinance shall affect the Town's authority to add, vacate or abandon public rights-of-way, and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.
- (15) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the Town for such activities as may be required by applicable law which includes, but shall not be limited to, the Town Code.
- (16) Facilities Outside of Town Public Rights-of-Way. To the extent not inconsistent with applicable law, registrants shall provide a copy to the Town Manager of a request or application for a permit submitted to the Florida Department of Transportation or Polk County, to place or to maintain a communications facility below grade, or to install a small wireless facility at grade or a new utility pole for collocation of a small wireless facility, in a location within the jurisdictional boundaries of the Town. The intent of this provision is to provide the Town with notice of

construction of facilities that may impact Town utilities or otherwise be subject to requirements of the Town Code. This requirement does not apply to an application for a permit to collocate a small wireless facility on an existing utility pole. Failure to comply with this requirement may result in revocation of a registration, denial of permits including but not limited to ancillary permits such as an electrical permit, or other enforcement remedies consistent with the Town Code. Nothing herein shall restrict the Town from enforcing its Code with respect to facilities located outside of the Town's public rights-of-way.

Sec. 55-5. Requirement of a Permit.

- (a) In accordance with applicable law, Town ordinances, codes and regulations, including this Ordinance, a right-of-way use permit issued by the Town shall be required for any person to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this Ordinance. An effective registration shall be a condition of obtaining a permit. A permit may be obtained by or on behalf of a registrant if all permitting requirements are met. The Town may grant to any person who is a resident of Florida, or to any corporation which is organized under the laws of Florida or licensed to do business within Florida, the use of a right-of-way for the communications facility in accordance with such rules or regulations as the Town may adopt. No communications facility shall be installed, located, or relocated unless authorized by a written permit issued by the Town or otherwise authorized by this Ordinance.— Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The Town may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements.

(b) Limited Exceptions to Permit Requirement.

- (1) A registrant that has an effective registration and permanent performance bond on file as required by this Ordinance shall be allowed to perform emergency maintenance within the public rights-of-way without first obtaining a permit or providing a construction performance bond. The term “emergency” shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service, service restoration work on existing facilities, or repair work, including but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers. Upon the determination of an emergency, the registrant shall notify the Town and/or Town Manager of the placement or maintenance of a communications facility in public rights-of-way. Thereafter, the registrant shall, within ten (10) days of completing the emergency maintenance, apply for a permit if such activity required a permit. The registrant shall document all restoration or emergency work performed without a permit with photographs and video, including of the public rights-of-way prior to and following performing such construction, and shall provide such

documentation to the Town when requested, but in no event later than fifteen (15) days following such work. Any maintenance of traffic required for emergency work shall meet the requirements of the latest edition of the FDOT 600 Series Standard Drawings and the Manual on Uniform Traffic Devices.

- (2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way without a permit if such proposed routine maintenance does not involve excavation, construction, or disruption of transportation in the public rights-of-way. In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the Town identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. If routine maintenance requires the closure of the public rights-of-way for any duration, a permit shall be required.
- (3) A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size. Any maintenance or replacement that involves a Town Utility Pole or Town utility shall not be performed without providing reasonable prior notice to the Town.
- (4) A registrant that has an effective registration and the permanent performance bond on file as required by this Ordinance shall be allowed to perform maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way without a permit~~place or to maintain a service drop within the public rights-of-way without first obtaining a permit~~ if such proposed work does not involve excavation, construction, or the temporary closure of the public rights of way. All underground work without a permit shall be documented with photographs and video, and such documentation shall be provided to the Town when requested but in no event later than fifteen (15) days following such work.
- (5) A registrant shall not be required to obtain a permit for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under Chapter 202, Florida Statutes. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, ~~at least thirty (30) days prior to commencing said work~~, the registrant shall submit a ~~certification or manufacturer's specifications~~ a letter under oath to the Town Manager from or on behalf of the communications provider, which shall be effective upon filing, attesting with the micro wireless facility's dimensions comply with



F.S. § 337.401(7), and this Ordinance to the Town for review. A registrant's filed letter attesting submission to demonstrate a micro wireless facility's dimensions may apply to all the registrant's identical, substantially similar, or smaller size micro wireless facilities sought to be placed in the public rights-of-way by such registrant, and the registrant is not required to submit a new certification or manufacturer's specifications unless the registrant seeks to place a micro wireless facility by a different manufacturer or with different dimensions in the public rights-of-way. If the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way without a permit.

- (6) Notwithstanding the exceptions to permit requirements contained in this subsection, a registrant shall obtain a right-of-way permit from the Town for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane, regardless of the duration of such closure, unless the registrant is a communications services provider that is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, including but not limited to, the requirement to notify Sunshine 811 prior to any excavation or demolition activities in accordance with Chapter 556, Florida Statutes, and to comply with all City Codes. In such instance, the communications services provider shall provide information acceptable to the Town detailing the service restoration that is needed on an existing facility and shall provide reasonable advance notice to the Town of at least three (3) business days, so that the Town may have an observer present. The Town may require a specific method of excavation and a maintenance of traffic or sidewalk closure plan, as applicable. In addition, the registrant shall file for an after the fact permit within fifteen (15) days after completing restoration of the public rights-of-way. A registrant performing work without a permit shall ensure that the work is documented with photographs and videotape, including of the area of the public rights-of way impacted, and such photograph and videotape documentation shall be provided to the Town.

- (c) The Town Manager may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable, to appropriate enforcement remedies as set forth in this Ordinance and applicable law.

Sec. 55-6. Permit Application Information Requirements and Review Procedures. Consistent with Florida law, this Ordinance provides different requirements and procedures for applications and for requests, as defined in this Ordinance.

Applications may not be combined with requests and requests may not be combined with applications, unless allowed by the Town Manager.

- (a) Pre-application meeting. To minimize issues related to a permit application, prior to applying for a permit, a registrant is strongly encouraged to ~~shall~~ conduct a pre-submittal meeting with the Town to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way, including all Town permits and approvals that may be required based on the proposed work. To minimize issues related to a permit request, prior to submitting a permit request, a registrant shall conduct a pre-submittal meeting with the Town to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way including all Town permits or approvals that may be required based on the nature of the registrant's proposed work. A registrant is encouraged to be prepared to discuss its network needs and planned locations, design of facilities and other issues that may arise under this Ordinance. At a registrant's request, the Town, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this Ordinance. The Town shall undertake efforts to accommodate a registrant's request for a pre-submittal meeting within ten (10) business days of a request. At a registrant's request, the Town, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this Ordinance. In no event shall a pre-submittal meeting be waived for a consolidated permit request that involves excavation of over 50 feet of public rights-of-way.
- (b) Application and request requirements for all communications facilities in the public rights-of-way. As part of any permit application or request to place or maintain any facility pursuant to this Ordinance in the public rights-of-way, a registrant or a registrant's agent or contractor shall provide four originals of a permit application or request in the designated format consistent with the Town's ~~application~~ form, including, at a minimum, the following:
- (1) If the applicant or requester for the permit is not the registrant, a statement of authority by the registrant ~~for the applicant~~ to act on behalf of the registrant. In addition, if the applicant or requester is a contractor, the contractor's license or registration and insurance information confirming authority to perform construction in the Town and whether the contractor has any open permits with the Town, and if so, the permit identification number or information.
  - (2) Confirmation that the applicant or requester engaged in a pre-submission meeting or such meeting was waived by the Town and that the applicant or requester has an effective registration.
  - (3) Engineering plan. An engineering plan signed and sealed by a licensed engineer, that includes the following:

- (a) Except for applications to collocate small wireless facilities on existing utility poles in the public rights-of-way, an American Land Title Association (ALTA) survey or other survey pursuant to the Town's application form demonstrating that the proposed location of the facility or utility pole is within the public rights-of-way;
- (b) The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, stealth design, and concealment features of the proposed facility;
- (c) The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six (6) decimal point precision;
- (d) Whether the proposed facility is proposed within a location subject to restrictions pursuant to this Ordinance;
- (e) Distances between the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way within a 100 foot radius of the proposed location;
- (f) For new communications facilities, a sketch showing pavement, sidewalks, driveways, ramps, trees, below-grade utilities, and other above-grade and below-grade structures and facilities within the public rights-of-way located within a fifty (50) foot radius;
- (g) Sufficient specificity demonstrating compliance with applicable codes, including the Florida Building Code, most current edition, specifically including but not limited to terms of compliance with the High Velocity Zone Criteria specified therein, the 2010<sup>7</sup> Florida Department of Transportation Utility Accommodation Manual, as applicable; National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended;
- (h) The routes of all new transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);
- (i) Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;
- (j) Certification that the proposed facility is compliant with applicable

- provision(s) of Article 3 of the Land Development Code of the Town of Dundee, Florida, as it may be amended, for transportation, pedestrians, or public safety purposes or would not result in the public rights-of-way being inconsistent with the Florida Greenbook or with engineering requirements adopted by the Town;
- (k) Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and
  - (l) Other engineering information requested by the Town.
- (4) Trees or landscaping proposed to be removed or impacted upon the placement or maintenance of the proposed facility.
  - (5) Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.
  - (6) Description of installation or construction and timetable. A description of the method by which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques) and timetable for construction.
  - (7) Temporary sidewalk closure plan. The applicantregistrant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
  - (8) Temporary maintenance of traffic (MOT) plan. The applicantregistrant shall provide a temporary traffic lane closure and maintenance of traffic (MOT) plan, if appropriate, to accommodate placement or maintenance of the facility.
  - (9) Restoration plan and estimated cost of restoration of the public rights-of-way. A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way. Unless the Town determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way, the good faith estimate shall be accepted by the Town. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition or better. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced. Tree or landscaping removal shown on the permit shall not be considered damage or impairment to be restored to the original condition provided the applicantregistrant complies with the

approved mitigation plan, if any.

- (10) Indemnification. A statement shall be included with the permit application or request that, by execution of the application or request and by applying for the permit, the ~~applicant~~registrant shall be bound to the Town with respect to the indemnification provision(s) set forth in this Ordinance which shall not expire and/or terminate.
- (11) Airport airspace protection. If applicable, the ~~applicant~~registrant shall confirm compliance with Chapter 333, F.S. and all Town codes, State and federal laws and regulations pertaining to airport airspace protections.
- (12) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an officer of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine (9) months after the date the application is approved.
- (13) Pole attachment agreement. If applicable for the proposed facility, the ~~registrant~~applicant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the registrant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the Town, and indicating the registrant is authorized to install its facility on the identified utility pole. By submitting an application or request to collocate on a utility pole, the registrant is certifying to the Town that it has the utility pole owner's authority.
- (14) Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the location and height of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade in place within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.
- (15) If the permit application or request includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfies the requirement(s) prescribed by applicable law.
- (16) In addition to the requirements herein, as part of any permit application to

place or maintain a small wireless facility in the public rights-of-way, the applicant shall provide the following:

- (a) Documentation to the satisfaction of the Town from a licensed engineer, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;
  - (b) A description by the applicant to the satisfaction of the Town how the proposed small wireless facility complies with the objective design standards set forth in this Ordinance. For a proposed ground-mounted small wireless facility, such information shall include whether the proposed small wireless facility includes a wrap that has been approved by the Town or is of an architectural design that is substantially similar to other infrastructure in the area of the public rights-of-way or has been approved by the Town.
  - (c) Accurate photo simulations of the proposed small wireless facility and if applicable, as collocated on the utility pole.
- (17) ~~Consolidated permit application and single application for multiple locations. A registrant may submit a single application to place or to maintain multiple facilities in the public rights-of-way, where it would be more efficient for the registrant and the Town to address multiple facilities in one permit application.~~ An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application for each of the proposed small wireless facilities. If the application includes multiple small wireless facilities, the Town may separately address small wireless facility collocations for which incomplete information has been received or which are denied.
- (18) To the extent not inconsistent with applicable law, such additional information requested by the Town reasonably necessary for the permit application or request.
- (19) The Town may, in its sole discretion, require that an applicant or requester for a permit perform the inspection(s) of the work authorized by the permit to close out the permit at its cost and expense and provide certification by a licensed engineer, at the applicant's or requester's cost and expense, that such work was performed consistent with the requirements of the permit.
- (c) Application Review and Procedures for Small Wireless Facilities, ~~and~~ Utility Poles for Collocation of Small Wireless Facilities and Other Communications Facilities.
- (1) Time periods within this subsection may be extended for the period of time

impacted by a force majeure event or by a declared State of Emergency by the Town or Governor of the State that impacts the Town (“force majeure extension”). If an ~~applicant~~ registrant opposes a force majeure extension pursuant to this subsection, it shall notify the Town within 24 hours of such extension becoming effective or the ~~applicant~~registrant shall be deemed to have consented to the extension.

(a) Unless extended by mutual consent of the applicant and Town, within 14 business days after receiving an application or request, the Town Manager will notify the ~~registrant~~applicant by electronic mail as to whether the application or request is complete. If an application or request is deemed incomplete, the Town will specifically identify the missing information. An application or request is deemed complete if the Town fails to provide notification to the ~~registrant~~applicant within 14 business days.

(b) Negotiation Process.

(1) Unless extended by mutual consent of the ~~registrant~~applicant and the Town, within 14 business days after the date of filing the application, the Town may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative Town utility pole or support structure or may place a new utility pole. The Town and the ~~registrant~~applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request.

(2) At the conclusion of the negotiation period, if the alternative location is accepted by the ~~registrant~~applicant, the ~~registrant~~applicant must notify the Town of such acceptance and the application shall be deemed granted for any new location for which there is agreement.

(3) If an agreement is not reached, the ~~registrant~~applicant must notify the Town of such non-agreement and the Town must grant or deny the original application within 90 days after the date the application was filed unless extended by mutual consent of the ~~registrant~~applicant and Town. Failure of the ~~registrant~~applicant to so notify the Town as required herein shall be deemed to constitute the ~~applicant's~~ rejection of the Town's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

- (c) The Town processes all applications and requests on a nondiscriminatory basis. Unless the Town and the ~~registrant~~applicant engage in negotiations as provided above, the Town will approve or deny the application or request and will notify the ~~registrant~~applicant by electronic mail whether the application or request is approved or denied within 60 days after the receipt of a completed application or request.
- (d) Extension of time. If the Town and the ~~registrant~~applicant do not engage in negotiations, the ~~registrant~~applicant and Town may mutually agree to extend the 60-day ~~application~~-review period. Following the expiration of any extension(s), the Town shall grant or deny the application or request at the end of the extended period(s).
- (e) The Town may deny an application for a proposed collocation of a small wireless facility or a utility to accommodate a small wireless facility in the public rights-of-way if the proposed collocation or utility pole:
  - (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Materially fails to comply with the 2017~~0~~ edition of the Florida Department of Transportation Utility Accommodation Manual; ~~or~~
  - (5) Fails to comply with applicable codes;
  - (6) Fails to comply with objective design standards set forth in this Ordinance; or
  - (7) Fails to comply with the Town Code, to the extent not inconsistent with applicable law.
- (f) Basis for Denial of Requests. The Town shall review and process ~~applications~~requests for permits for communications facilities other than small wireless facilities and utility poles for collocation of



small wireless facilities, consistent with applicable law and Town procedures. The Town may deny ~~an application~~ a request for a communications facility, ~~other than a utility pole for collocation of a small wireless facility or a small wireless facility~~, in the public rights-of-way if such facility does not comply with applicable codes, the Town Code including this Ordinance, or for any reason consistent with applicable law, including but not limited to, interference with utilities or access to such utilities, unreasonable disruption of public rights-of-way, unreasonable interference with public improvement projects, insufficient space in public rights-of-way, or unreasonable interference with abutting property.

(g) Cure Procedure.

- (1) If the application or request is denied, the Town will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the Town denies the application or request.
- (2) The applicant may cure the deficiencies identified by the Town and resubmit the application within 30 days after the notice of denial is sent.
- (3) If an attempt to cure is made by the applicant, the Town will approve or deny the revised application within 30 days after receipt of the revised application. If the applicant revises any information in the application other than to address expressly the deficiencies identified by the Town, the applicant shall submit a new application.
- (4) The Town's second and subsequent reviews of revised applications will be limited to the deficiencies cited in the denial notice.

(h) A permit issued pursuant to an approved application or request shall remain in effect for one (1) year unless otherwise extended, suspended, or revoked by the Town pursuant to this Ordinance. Such permit shall terminate no later than one year after approval unless extended. If a communications facility, including a small wireless facility or utility pole is installed without a permit pursuant to applicable state or federal law, the ~~applicant~~ registrant shall nevertheless be required to have an effective registration, comply with development and construction standards and provide the performance construction bond and permanent performance bond required in this Ordinance prior to performing construction.

(i) A permit from the Town constitutes authorization to undertake only

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

- (2) Review procedures for wireless facilities modifications pursuant to the Spectrum Act. A registrant may file an eligible facilities request to modify an existing tower or base station in the public rights-of-way, that does not substantially change the physical dimensions of such tower or base station, pursuant to Section 6409(a) of the Spectrum Act of 2012, 47 U.S.C. §1455(a), and FCC regulations adopted thereto, 47 C.F.R. §1.6100, as amended. Such request shall include the following: (1) confirmation that the registrant possesses an effective registration and submitted a permanent performance bond with the Town; (2) a statement that it is an eligible facilities request, (3) a report, signed and sealed by a licensed engineer, that addresses the factors set forth in the FCC regulations, including a description of proposed modifications and the factors regarding whether it constitutes a substantial change, and (4) a certified copy of the permit for the existing tower or base station that is proposed to be modified. The Town shall review such request pursuant to the procedures set forth in the FCC regulations, notwithstanding other provisions of this Ordinance. The procedures in this Ordinance for appeal shall apply. Review procedures for applications for all communications facilities other than small cell facilities and utility poles for collocation of small wireless facilities. The Town shall review and process applications for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities consistent with applicable law and Town procedures. The Town may deny an application for a communications facility in the public rights-of-way if such facility does not comply with applicable codes, including this Ordinance.
- (3) Suspension and revocation of permits.
  - (a) The Town may order the suspension of work under a permit and ultimately may suspend or revoke any permit, in the event of a material breach of the terms and conditions of any applicable codes including but not limited to this Ordinance, state and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:
    - (1) The violation of any material provision of the permit;
    - (2) The violation of applicable codes;
    - (3) An evasion or attempt to evade any material provision of the permit;
    - (4) The perpetration or attempt to perpetrate any fraud or deceit upon the Town;
    - (5) Any material misrepresentation of fact in the process of

- permittee's request or application for a permit or registration;
  - (6) The failure to maintain the required permanent performance bond and/or insurance;
  - (7) The failure to properly restore the public rights-of-way;
  - (8) The failure to comply with a time period specified and/or required by the Town;
  - (9) The failure to register, renew a registration, or provide notice of transfer in accordance with this Ordinance;
  - (10) The failure to relocate or remove facilities pursuant to this Ordinance and Sections 337.402, 337.403 and 337.404, F.S., as may be amended;
  - (11) Conducting work in the public rights-of-way without a permit, if required.
- (b) If the Town determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes including but not limited to this Ordinance, the Town shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the Town may place additional or revised permit conditions following a substantial breach. In addition, the Town may refuse to issue new permits to a registrant or registrant's contractor that has materially violated any provisions of a permit or applicable codes including but not limited to this Ordinance, until such time as the registrant cures the violation to the satisfaction of the Town, including paying any damages, costs or penalties that may have been assessed.
- (c) Within thirty (30) days of receiving notification of the breach, the permittee shall contact the Town and provide a plan to cure the breach, acceptable to the Town. The Town shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the Town, the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the Town's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens the health, safety or welfare of persons or property.
- (d) If a permit is revoked, the permittee shall reimburse the Town for the Town's reasonable costs, including restoration costs,

administrative costs which include reasonable attorneys' fees and costs, and the cost(s) of collection. These costs may also be deducted from the registrant's permanent performance bond in the Town's discretion.

- (e) The Town may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.
  - (f) In the event of an emergency, if a registrant fails to cure the emergency in an expeditious and/or commercially reasonable manner, the Town may perform any work involving a communications facility in the public rights-of-way to prevent a threat to the health, safety or welfare of the public and charge any and all costs, including collection costs, to the registrant.
  - (g) Nothing herein shall operate as a waiver of the Town's police powers.
- (4) Requests for waivers.
- (a) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.
  - (b) The Town may, in its sole discretion, grant a waiver in those circumstances where a competitively neutral use of the public rights-of-way is impaired by strict application of the requirements of this Ordinance in violation of applicable law.
  - (c) A request for a waiver shall be filed either prior to or contemporaneously with the permit application or request. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:
    - (1) A detailed explanation, with supporting engineering information by a Florida licensed engineer and/or other data, identifying to the reason(s) which a waiver from the requirement(s) of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;

- (2) Nature and characteristics of the surrounding neighborhood;
  - (3) Any special conditions and circumstances affecting the proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;
  - (4) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
  - (5) Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;
  - (6) Certification that the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. §12101, *et seq.*, and applicable codes;
  - (7) A request for waiver of the objective design standards contained herein shall include a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole, or are technically infeasible with supporting information from a licensed engineer, or that the design standards impose an excessive expense on the registrant with information as to the additional costs of compliance with the standards and the registrant's anticipated revenue from the proposed facility or assets. The Town shall grant or deny a request for a waiver of objective design standards within forty-five (45) days after receiving the request for waiver unless the registrant and Town consent to an extension, or such time period is extended as a result of a force majeure event.
  - (8) Any other information the Town may require in order to process the request for waiver.
- (d) The Town shall grant or deny a request for a waiver of Town Code requirements, other than a waiver of objective design standards, consistent with the Town's procedures for processing waivers to the Town Code and applicable law within forty five (45) days after receiving the request for waiver or time frame under applicable law unless the applicant and Town consent to an extension. In granting any waiver, the Town may impose conditions to the extent the Town determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public. In the event

the Town does not process a request for a waiver before the 60-day or 90-day deadline to grant or to deny an application or request for a permit for a communications facility, unless extended by mutual consent of the Town and the registrant, such application or request shall be denied based on the denial of the waiver.

- (e) Should a request for waiver, and ultimately a permit, be denied by the Town, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Ordinance.
- (5) Appeals.
- (a) Final, written decisions of a designee of the Town Manager, including but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration, denying a waiver, or imposing costs or a fine, are subject to appeal to the Town Manager. An appeal must be filed with the Town Manager within thirty (30) days of the date of the final, written decision to be appealed. ~~An applicant shall waive any~~ appeal that is not timely filed as set forth herein shall be waived. The Town Manager shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the Town and no new information shall be considered. Subject to a force majeure event, the hearing shall occur within 30 days of the receipt of the appeal, unless waived by the ~~registrant~~ applicant, and a written decision shall be rendered within 20 days of the hearing.
  - (b) An appeal from a decision of the Town Manager or a hearing officer may be appealed to the Town Commission within 30 days, by filing a written notice of appeal with the Town Clerk and providing copies to the Town Manager and the Town Attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee to be established by Resolution of the Town Commission. The Town Commission may affirm, modify or reverse the decision of the Town Manager or hearing officer. The Town Manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the Town Commission. Nothing contained herein shall preclude the Town Commission from seeking additional information prior to rendering a final decision. The decision of the Town Commission shall be by resolution and a copy of the decision shall be forwarded to the Town Manager and the appealing party. Within the time prescribed by Florida law

and/or the applicable Florida Rules of Appellate Procedure, a party aggrieved by a decision of the Town Commission may appeal an adverse decision to the Circuit Court In And For Polk County or applicable federal district court. The party making the appeal shall be required to pay to the Town clerk a fee to be established by Resolution of the Town Commission, to defray the costs of preparing the record on appeal. To the extent required by applicable law, the Town shall waive any claim or defense based on failure to exhaust administrative remedies if the Town's administrative review is not complete within 45 days after a person files a complete request for review.

Sec. 55-7. Performance construction bond and Permanent Performance Bond.

- (a) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to this Ordinance, a registrant shall establish in the Town's favor a performance construction bond to secure the restoration of the public rights-of-way, and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the Town Code. The performance construction bond must name the Town as obligee and be conditioned upon the full and faithful compliance by the registrant with all requirements, duties, and obligations imposed by the permit and provisions of this Ordinance during and through completion of the placement or maintenance project. The performance construction bond shall be in an amount as determined by the Town based on 110% of the estimated costs of the restoration of the public rights-of-way. No performance bond is required if the estimated costs of the restoration of the public rights-of-way is less than one thousand dollars (\$1,000) provided the registrant has a fully replenished permanent performance bond on file with the Town. For a consolidated permit, the registrant shall provide a performance construction bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event shall be less than ten thousand dollars (\$10,000). The minimum amount of the performance construction bond for a new or replaced utility pole or ground mounted small wireless facility up to twenty eight (28) cubic feet shall be twenty-five thousand (\$25,000) dollars. The bond shall be issued by a surety licensed to operate in Florida having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney and may be administratively accepted by the Town Manager.
- (b) In the event a registrant subject to such a performance construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit or Town code, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation,

indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond. The performance bond must be issued as non-cancelable and shall provide the following: "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

- (c) The performance bond must be issued as non-cancelable and shall provide the following: "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew." The performance bond shall be for a term of not less than one-year but not more than 18 months after the anticipated date of the later of completion of construction, restoration and Town inspection. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to ~~one-year~~ 18 months after the completion of construction, restoration and Town inspection, the registrant shall immediately obtain, pay for, and file with the Town a replacement performance bond. No less than 18 months~~one-year~~ after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request that the Town remove the requirement to continue the performance bond. Notwithstanding, the Town may require a new bond for any subsequent work performed in the public rights-of-way. Notwithstanding this provision, to the extent required by applicable law, the Town shall accept a letter of credit or similar financial instrument as a construction bond issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add the Town to any existing bond, or other relevant financial instrument, and the Town shall accept such proof of coverage without any conditions other than consent to venue in Polk County for purposes of any litigation to which the Town is a party.

- (d) Permanent Performance Bond.

(1) The Town is concerned that, based on past experience in the Town and throughout the State, the placement and maintenance of communications facilities in the public rights-of-way has the potential to cause significant damage to the public rights-of-way and to utilities within the public rights-of-way, creating disruption to the Town residents, businesses and the travelling public. In addition, the Town is concerned that it will not be able to obtain adequate security to address damage to public rights-of-way or to utilities, because of restrictions on construction bonds, placement and maintenance of facilities lawfully or unlawfully without permits, inaccurate locates, permits issued by other government entities within the Town that could impact Town utilities, and other issues associated with such facilities in the public rights-of-way. Accordingly, pursuant to the Town's authority and obligation to manage the public rights-of-way and to provide for the public safety in the exercise of



its police power, and to the extent not inconsistent with applicable law, the Town shall require all persons that place or maintain communications facilities in the public rights-of-way to establish a permanent performance bond in the Town's favor.

- (2) A registrant or facility owner who places or maintains communications facilities in the public rights-of-way, shall file with the Town, for Town approval, a permanent performance bond in the amount of twenty five thousand dollars (\$25,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a separate account or Town account. The letter of credit shall be issued by a United States financial institution that allows drawing on the letter of credit via electronic means including facsimile, agrees to the jurisdiction of the appropriate court within Polk County, and shall be in a form and issued by a financial institution acceptable to the Town Attorney. The permanent performance bond shall be conditioned on the full and faithful performance by the registrant of all requirements, duties, and obligations imposed by the provisions of this Ordinance and applicable law, including but not limited to requirements to restore the public rights-of-way and to guarantee such restoration, to remove any abandoned communications facilities, to indemnify the Town as required herein, and to pay for any damage to Town or other facilities in the public rights-of-way. The permanent performance bond shall not constitute a fee, tax or other imposition on a dealer of communications services in its capacity as a dealer of communications services or compensation for use of the public rights-of-way and shall not be used by the Town as such. Should the Town draw upon the permanent performance bond, the Town shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed by the provisions of this Ordinance, subject to providing prior notice and a reasonable opportunity to cure the failure, there shall be recoverable, jointly and severally from the principal and surety of the permanent performance bond, including a letter of credit, any damages or loss suffered by the Town as a result, including the full amount of any damages, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees. The cash deposit or letter of credit shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the person's full and faithful performance at all times. A registrant may change the form of the permanent performance bond on file with the Town on an annual basis. A registrant may request that the Town return the permanent performance bond or approve the cancellation of the performance bond upon the expiration of a registrant's obligations pursuant to the Town Code and in no event while a registrant maintains any obligations with respect to facilities in the public rights-of-way. If the Town determines it is appropriate to return the permanent performance bond, a cash deposit retained by the Town shall be returned without interest.

- (3) To the extent that a communications services provider, wireless provider, or pass-through provider with facilities in the public rights-of-way, does not have a permanent performance bond in compliance with this subsection on file with the Town as required herein, the registrant shall submit the permanent performance bond as provided herein, within ninety (90) calendar days from the effective date of this Ordinance. No permits shall be issued to a person for placement or maintenance of facilities within the public rights-of-way without a permanent performance bond on file with the Town. For activity that does not require a permit, no placement or maintenance of a communications facility in the public rights-of-way shall be performed by or on behalf of a registrant that does not have a permanent performance bond on file with the Town. In addition to other remedies provided herein, including but not limited to, revoking a registration, denying or withholding permits, or issuing a stop work order, the Town may pursue code enforcement actions against any person who violates this subsection.
- (4) Any person who seeks a waiver of the requirement of a permanent performance bond or seeks to pursue a challenge to such requirement shall submit an appeal to the Town Manager setting forth the basis for such person's position, pursuant to the procedures set forth in this Ordinance. The Town Manager shall render a decision which the person may appeal, pursuant to the procedures set forth in this Ordinance.
- (e) The rights reserved by the Town with respect to any construction or performance bond established pursuant to this Ordinance ~~division~~ are in addition to all other rights and remedies the Town may have under this Ordinance, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance or construction bond will affect any other right the Town may have.

Sec. 55-8. Construction Methods.

- (a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes and must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. For purpose of complying with the notice and approval requirements contained within the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, the registrant shall provide notice and seek approval from the Town Manager. All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas. A proposed communications facility shall not be placed or maintained in a location that will interfere with sight lines, clear zones or clear visibility triangles, consistent with Article 3, Section 3.02.03(D) for the Town Land Development Code, as it may be amended, for transportation, pedestrians, or public safety

purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook or with engineering requirements adopted by the Town, including provisions for access by physically handicapped persons consistent with Article 3, Section 3.02.00, Transportation Systems, of the Town Land Development Code, as it may be amended;

- (b) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.
- (c) To the extent not inconsistent with applicable codes, underground cables shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") depth of cover for the unpaved portion of roadways, and a thirty inch (30") to thirty-six inch (36") depth of cover in the paved portion of roadways, and shall have a three (3) foot horizontal clearance from other underground utilities and their appurtenances so as to not impede the maintenance or replacement of said utilities. The lowest wire on any poles or micro wireless facility placed in any right-of-way used by vehicle traffic shall not be less than eighteen (18) feet from the ground and whenever telephone and electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States in force at the time of the effective date of this ordinance from which this article derives and as amended.
- (d) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and current FDOT standard specification and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.
- (e) In the event the registrant's work requires the obstruction of Town owned, metered parking spaces, the registrant shall pay a reasonable fee to the Town as prescribed in any existing or subsequently enacted Town ordinance, or policy adopted thereto based on the revenues lost by the Town due to registrant's obstruction of metered parking spaces.
- (f) In the event that work to be conducted by the registrant requires streets or traffic lanes to be closed or obstructed, the registrant shall, pursuant to the requirements of the Town, obtain all permits from, and pay all fees therefor to, and obtain approval of its maintenance-of-traffic plan from, the Town's Engineering Services

Divisions. In no event shall such obstruction be greater than twenty-four (24) hours.

- (g) The Town may require the use of trenchless technology (i.e., directional bore or jack and bore method) for the installation of facilities underground in the public rights-of-way. Underground missile boring shall be prohibited unless waived by the Town. The registrant shall be solely liable for the displacement, damage or destruction of any property, public rights-of-way, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The Town may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this Ordinance and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the Town.
- (h) In an effort to minimize adverse impacts and disruption in the public rights-of-way and to other municipal improvements, the Town may require a communications services provider to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the communications services provider's permit application. The Town may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules. Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers consistent with the federal requirements of 47 U.S.C. §224. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the Town or other appropriate governmental authority, and, where applicable, from the private property owner.
- (i) Limits on excavation in restored rights-of-way. To avoid continual disruption and degradation to the public rights-of-way, an area of the public rights-of-way that has been subject to excavation that has been restored shall not be subject to re-excavation until at least three years following the completion of such restoration, to the extent not inconsistent with applicable codes and law. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way.

- (j) Trees. A registrant shall not prune, remove or materially damage trees during placement or maintenance of small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way unless approved by the Town. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be damaged or removed during placement or maintenance of communications facilities pursuant to a permit issued by the Town. The Town may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan. Any such trimming or removal shall be at registrant's sole expense, and registrant shall remove all trimmings from Town's right-of-way and shall not leave trimmings or debris on any public or private property.
- (k) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the Town's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. If the registrant fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the Town to the registrant.
- (l) The Town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, fiber, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the Town in public rights-of-way occupied by the registrant. The registrant shall not in any way displace, damage or destroy any sewer, water main, pipe or any other facilities belonging to the Town, or to any third party who placed such facilities therein by express authority of the Town, without the consent of the Town, and the registrant shall be liable to the Town or to the third party owner, as the case may be, for the cost of any repairs made necessary by any such displacement, damage or destruction and shall pay such costs upon demand. A registrant shall immediately notify the Town of any damage to Town utilities, Town fiber or other Town facilities as a result of a registrant's construction in the public rights-of-way. The registrant shall repair such damage at its expense within the time frame required by the Town given the nature of the damage and impact on Town services. In its discretion, the Town may repair or arrange for the repair of such damage and charge such expense to the registrant.
- (m) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the Town to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way

shall, upon thirty (30) days written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. § 337.403. The Town may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.

- (n) Removal or relocation at the direction of the Town of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§337.403 and 337.404, as they may be amended. Subject to F.S. §337.403, whenever the Town requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the Town may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. §337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the Town.
- (o) Subject to F.S. §337.403, whenever it shall be necessary for the Town to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and notice of the cost(s) which the registrant shall be required to pay for same, and the registrant shall be given a reasonable time, which shall not be less than twenty (20) days nor more than thirty (30) days in which to appear before the Town Commission to contest the reasonableness of the costs identified in any such notice. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. § 337.404.
- (p) The cost(s) of the Town shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the notice in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's security permanent performance bond.
- (q) The Town retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the Town, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall attempt to notify the registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.
- (r) The Town shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. The Town shall have access without charge to any manholes or handholes at any time, of a communications services provider in which the Town has facilities, provided the Town has given such provider reasonable prior notice so that such provider can have trained personnel present when the Town accesses

such manholes. Notwithstanding the foregoing, the Town, in the proper exercise of its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and handholes without charge of such provider. In the event the Town 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 Town will provide registrant no less than three days written notice setting forth the violation and requesting correction.

- (s) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, the registrant shall promptly provide revised plans and "as-builts" including, but not limited to, horizontal and vertical profiles, within thirty (30) days after 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 Town's geographical database or other format acceptable to the Town. The registrant shall provide such plans at no cost to the Town. The Town shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. §202.195, as it may be amended.
- (t) To the extent not inconsistent with applicable law, a registrant shall allow Town facilities to be collocated within Town's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and Town and may be subjected to other Town rights-of-way requirements. The Town further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the Town and within said limits as same may from time to time be altered.
- (u) A registrant shall, on the request of any person holding a permit issued by the Town, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30-days advance written notice to arrange for such temporary relocation. If the Town requests a temporary raising or lowering of a facility for a public purpose, the Town shall not be charged for the temporary raising or lowering of the facility.
- (v) This Ordinance does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.
- (w) Abandonment. Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-

way is to be abandoned, the provider shall notify the Town no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The Town may independently establish that a communications facility has been abandoned. In reaching such determination, the Town may request documentation and/or affidavits from the communications services provider or registrant regarding the active use of the facility. If the provider or registrant fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant or communications services provider at its expense within thirty (30) days of receipt of notice from the Town. Failure to remove an abandoned facility within the thirty (30) days' period shall be deemed to be the registrant's or communications provider's consent for the Town to remove the facility at the registrant's or provider's expense or for the Town to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection.

- (x) If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

#### Sec. 55-9. Development And Objective Design Standards.

- (a) Terms and conditions for collocation on Town utility poles.
  - (1) The Town shall not enter into an exclusive arrangement with any person for the right to attach equipment to Town utility poles. The Town reserves the right to enter into agreements for collocation on Town utility poles in its discretion. A person shall not use Town owned fiber, conduit, or other Town property without an agreement approved by the Town.
  - (2) Reservation of space on Town utility poles. The Town may reserve space on Town utility poles for future public safety uses. The Town hereby reserves the top one-third of the useable space of the vertical pole component of all Town utility poles in the public rights-of-way for future public safety uses. The Town Manager may waive the reservation of space on Town utility poles. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the Town utility pole is necessary to accommodate the collocation of the small wireless



facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the Town.

- (3) The rate to collocate a small wireless facility on a Town utility pole shall be one-hundred fifty dollars (\$150) per pole annually, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the Town. The fee shall be paid upon the Town's issuance of a permit to collocate a small wireless facility on a Town utility pole and annually thereafter.
- (4) Agreements between the Town and wireless providers that were in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Town utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this Ordinance for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- (5) For a Town utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations. The good faith estimate of the Town for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- (6) For a Town utility pole that does not support an aerial facility used to provide communications services or electric service, the Town shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the Town may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The Town may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall accommodate the Town's facilities on the pole and shall

remain the property of the Town, subject to the Town's acceptance of the replaced or altered pole that complies with these requirements.

- (7) The Town may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.
- (8) A collocation of a small wireless facility on a Town utility pole shall comply with all applicable codes, and shall not compromise the Town utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.
- (9) A collocation of a small wireless facility on a Town utility pole shall not affect the Town's ability to remove or to replace the pole in its sole discretion. Nothing herein shall obligate the Town to repair or to replace a utility pole that has been damaged. Within thirty (30) days after receiving notification that the Town intends to remove or to replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost. If the registrant fails to do so, the Town may remove the facility and charge all costs, including collection costs to the registrant.
- (b) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements. In conjunction with granting such waiver, the Town may require conditions on the permit approving such facility.

  - (1) A registrant shall comply with all applicable provisions of state law and Town ordinances, applicable codes and regulations, quasi-judicially approved conditions for approvals, settlement agreements, applicable contracts, applicable court orders, and applicable provisions of federal statutes, FCC regulations and PSC regulations with respect to locations for placing or maintaining a communications facility in the public rights-of-way. Wireless facilities shall be considered to be structures under the Florida Building Code, Building Risk Category IV, Structures, Chapter 16 Section 1620 – 1621, High Velocity Hurricane Zone Area.
  - (2) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual obstruction to the traveling public's the use of the public rights-of-way, or the use of bicycle lanes or multipurpose trails. To avoid such visual obstructions, no utility poles for collocation of small wireless facilities or ground mounted small wireless facilities shall be located within traffic circles.

- (3) For public safety purposes, aboveground communications facilities, including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on multipurpose trails.
- (4) Communications facilities shall be placed between the property line and the curb line of a street and shall not be located within a clear zone, swale, and/or rain garden.
- (5) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights, ingress and egress, and public safety of property owners who abut any of the public rights-of-way. By way of example, the placement or maintenance of a communications facility in the public rights-of-way shall not cause excessive noise in violation of Article 3 of the Land Development Code of the Town of Dundee, as may be amended, based upon the use occupancy category of the adjacent property, shall not impede ingress and egress to adjacent property, materially block views from or into a business or residence, or materially block visibility of address or other signage on abutting properties
- (6) A registrant shall not place or maintain its communications facilities to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities lawfully occupying the public rights-of-way of the Town.
- (7) The Town may, in its discretion, prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities and utilities in the proposed location of the public rights-of-way, if the proposed communications facility will unreasonably disrupt the public rights-of-way, or to accommodate Town plans for public improvements, capital improvements projects, Town Smart Technology projects, or projects the Town determines are in the public interest.
- (8) Facilities to be installed underground. All facilities shall be subject to the Town's non-discriminatory undergrounding requirements that prohibit above-ground utilities and structures in the public rights-of-way. Consistent with Article III, section 3.04.02(B) and 3.04.03 of the Land Development Code, as it may be amended, all electric, telephone, cable television, and other communication lines (exclusive of transformers or enclosures containing electrical equipment, including, but not limited to, switches, meters, or capacitors that may be pad mounted), shall be placed underground within easements or public rights-of-way, installed in accordance with the Town's adopted design standards unless waived by the

Town.

- (9) All new communications facilities shall be placed underground, to the extent that new utilities other than fire hydrants are required to be located underground, including new electric and communications utilities. In addition, to the extent required by applicable PSC rules and regulations, applicable codes, restrictive covenants, quasi-judicially approved conditions of a development, planned unit development, community development district, or court order, a registrant shall install its facilities underground unless waived by the Town. Additionally, a registrant shall endeavor to place all new facilities underground unless prevented from doing so by existing technology or by the physical characteristics of the installation location.
- a) A registrant shall not place or maintain new utility poles for the collocation of small wireless facilities or small wireless facilities in a location in the public rights-of-way where electric and communications utilities are required to be installed underground, unless waived by the Town.
  - b) Proposed new wireline fiber or coaxial backhaul facilities for small wireless facilities shall be installed underground consistent with applicable codes, unless waived by the Town.
  - c) Conversion of overhead utilities to underground. No utility poles for the collocation of small wireless facilities, micro wireless facilities, ground mounted small wireless facilities, or small wireless facilities collocated on utility poles shall be placed in a location in the public rights-of-way where the Town has determined that existing above ground electric and communications utilities should be removed and relocated underground, unless waived by the Town. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the Town's requirements to convert above ground utilities to underground. To comply with the Town's undergrounding requirements, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within 60 days of being notified by the Town that such facilities must be removed. The Town shall have the right to remove such facilities at the registrant's expense if the registrant fails to do so. For small wireless facilities installed before the Town adopts requirements that public utility lines must be placed underground, the Town, in its discretion, shall: (a) allow a wireless provider to maintain the small wireless facility in place subject to any applicable pole attachment agreement with the pole owner; or (b) allow the wireless provider to replace the associated pole within 50 feet of the prior location in

accordance with the objective design standards contained within this Ordinance.

- d) Notwithstanding the provisions of this subsection, the Town may approve a permit for a new utility pole for collocation of a small wireless facility in an area where all public utility lines must be placed underground, if a wireless provider satisfies the following:
1. The wireless provider provides information from a licensed engineer that demonstrates to the Town's satisfaction that the Town has not allowed structures to remain above ground that are reasonably available to the wireless provider for the collocation of small wireless facility and that may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;
  2. The proposed utility pole otherwise complies with this Ordinance; and
  3. The wireless provider provides information from a licensed engineer that demonstrates to the Town's satisfaction that it is not reasonably able to provide wireless service by collocation on a remaining utility pole or other structure in the public rights-of-way.
- (10) Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities shall not be placed in a location which violates rules and regulations set by Occupational Safety and Health Administration or the National Electrical Safety Code or the North American Electric Reliability Corporation standards. By way of example and not limitation, to the extent consistent with applicable codes, a small wireless facility or utility pole intended to support the collocation of a small wireless facility may not be placed within a ten (10) foot radius of an electric distribution facility or within a twenty (20) foot radius of an electric transmission line.
- (11) No communications facilities, including but not limited to small wireless facilities or utility poles for the collocation of small wireless facilities shall be placed or maintained in any location that is subject to or that would interfere with the Town's drainage plan or that would interfere with the Town's stormwater management facilities, or flood plain management areas.
- (12) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. For purposes of this subsection, a location in a public right-of-way that abuts parcels within a homeowners' association

on both sides of its width shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.

- (13) Placement in relation to adjacent uses of property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design standard, or such spaces do not exist in those locations on existing properties, new communication facilities and new utility poles for collocation of small wireless facilities shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building located on property that abuts the public-rights-of-way.
- (14) A structure granted a permit and installed pursuant to this Ordinance shall comply with Chapter 333, F.S., and any Town code, state and federal regulations pertaining to airport airspace protections.
- (15) Historic preservation. This Ordinance does not limit the Town's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. §332(c)(7), the requirements for facility modifications under 47 U.S.C. §1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws. Communications facilities shall not be permitted to be collocated on or to interfere with historic properties or landmarks that may be within or adjacent to the public rights-of-way unless waived by the Town. The Town shall not allow small wireless facilities, utility poles for the collocation of small wireless facilities or micro wireless facilities to be located in a manner that would impact negatively historic properties or landmarks. Historic properties and landmarks may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in a Town Register of Historic Places, pursuant to Town ordinance.

(c) Objective design standards.

- (1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed in such a manner to maximize compatibility and to minimize any negative visual impact on

the surrounding neighborhood. The objective design standards contained in this Ordinance regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the Town.

- (2) Applicants shall not place or maintain signage on communications facilities, in public rights-of-way, unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.
- (3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, a permit issued by the Town, or state and federal laws and regulations.
- (4) Design standards for Utility Poles. Stealth design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall meet the design standards contained in this subsection unless waived by the Town.
  - (a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be in substantially the same hole as the original utility pole.
  - (b) The replaced or restructured utility pole shall be substantially similar in finish, base and pole design, diameter, material and height as the original pole being replaced, unless the Town requires a different design, color or composition to be consistent with applicable Town standards for new utility poles.
  - (c) The height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same right-of-way, measured from grade, in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet in the same public right-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, antennas, masts or other attachments to the utility pole.
  - (d) A new utility pole shall be designed to be substantially similar in design to the predominant type of other utility poles at the proposed location in the same block or vicinity of the public rights-of-way. Such design aspects to follow include the material, base, pole

diameter and style, location and style of attachments, finish, and cap, as applicable. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed substantially similar to such light poles and to the extent consistent with location context regulations, equidistant between existing poles. Unless prohibited by applicable law, any such stealth utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the Town Code, at the cost and expense of the registrant. By way of example, if a registrant installs a utility pole for collocation small wireless facility to resemble a nearby light pole, the registrant shall include a light operated in the same manner as other light poles, at the registrant's expense.

Notwithstanding this subsection, if the proposed location of a new utility pole for collocation of a small wireless facility is within a public right-of-way that is within a particular zoning district, planned unit development, community development district, community redevelopment agency, or a homeowners' association that has design standards applicable to utility poles, or other infrastructure in the public right of way, such proposed utility pole or other small wireless facility shall substantially comply with such design standards.

- (e) If there are no existing utility poles in close proximity to a new utility pole, the new utility pole shall be designed to resemble the predominant type of other utility poles in the public rights-of-way.
- (5) Stealth design for collocation of small wireless facilities.
- (a) Small wireless facilities of 6 cu. feet or less may be collocated on a utility pole and shall not be installed directly on the ground. Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a shroud. No exposed wires or cables are permitted. Conduit shall not be installed on the exterior side of a utility pole.
  - (b) If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side-mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility, to the extent not inconsistent with applicable law. Unless



consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a utility pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.

- (c) Slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole at the level of the antenna attachment by more than twelve (12) inches, or if applicable, six (6) inches on each side, and side mounted enclosures, if any, do not extend more than twenty four (24) inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna. This subsection shall not reduce the maximum dimensions of a small wireless facility as defined herein.
  - (d) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.
- (6) Small wireless facilities not collocated on utility poles or existing structures.
- (a) Ground-mounted small wireless facilities up to twenty eight (28) cu. ft. in dimension shall be located within a ten (10) foot radius of the existing structure or utility pole for the collocated small wireless facility. ~~Ground mounted small wireless facilities that may be no greater than 28 cu. ft. in dimension shall be located with reasonable spacing of at least 200 feet from other ground mounted small wireless facilities up to 28 cu. ft.~~
  - (b) Small wireless facilities may be installed below grade, or ground-mounted small wireless facility shall be architecturally designed and of the same materials and color finish to be substantially similar to other at-grade infrastructure within 500 feet of the proposed location in the public rights-of-way such as waste receptacles or utility facilities. If the ground mounted small wireless facility is not substantially similar to other at-grade infrastructure as set forth herein, the proposed small wireless facility shall be submitted to the Town for review and approval prior to the registrant submitting an application.

- (c) To the extent not inconsistent with applicable codes, at the Town's direction, ground mounted small wireless facilities shall be enclosed in a wrap the design for which has been approved by the Town. The registrant shall maintain the wrap in good condition at its expense.
  - (d) To the extent not inconsistent with applicable codes, at the Town's direction the registrant owner of a ground mounted small wireless facility or other ground mounted communications facility in the public rights-of-way shall conceal the facility with landscaping and plantings— subject to the Town's approval and be maintained by the registrant at its sole cost and expense consistent with the Town Code for so long as the small wireless facility or other communications facility remains in the public rights-of-way.
  - (e) The Town Manager is authorized to create a manual showing figures of acceptable and unacceptable designs for facilities to be placed or maintained in the public rights-of-way.
- (7) Development standards for communications facilities other than small wireless facilities and utility poles.
- (a) Dimensional limits. No communications facility other than small wireless facilities located aboveground, excluding utility poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed on Town public rights-of-way unless:
    - (1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and
    - (2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service

provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and

(3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians: and

(4) The proposed communications facility does not otherwise create a hazard to the public health, safety and welfare

(b) Notice to residential areas. Whenever a communications service provider subject to this subsection submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection within residentially-zoned districts in the Town, the applicant shall provide notice by posting for at least 14 business days, an 18" x 24" sign, satisfactory to the Town, at the proposed location advising residents that they may review the permit application at the Town and provide their comments to the Town.

Sec. 55-10. Fees and Taxes for Access to Public Rights-of-Way.

(a) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay fees and taxes as required by applicable law and ordinances of the Town, including this Ordinance.

(b) Pass-through providers shall pay to the Town on an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Ordinance shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.

(c) The Town shall discontinue charging pass-through provider fees to a person that has ceased being a pass-through provider. Any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits communications services taxes imposed by the Town pursuant to Chapter 202, F.S., as may be amended.

(d) The initial amount of pass-through provider fees shall be paid prior to issuance of a permit based on the facilities authorized to be installed in the public rights-of-way

pursuant to the permit. The amount due may be modified based upon the as-builts submitted by the pass-through provider. Subsequent annual payments of pass-through provider fees shall be due and payable on October 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent (%) per month from the date due until paid. A pass-through provider shall provide an annual notarized statement identifying the total number of linear miles of pass-through facilities in the Town's rights-of-way. Upon request from the Town, limited to no more than once annually, a pass-through provider must provide reasonable access to maps of pass-through facilities located in the rights-of-way of the Town. The scope of the request shall be limited to only those maps of pass-through facilities from which the calculation of the linear miles of pass-through facilities in the public rights-of-way can be determined. The request shall be accompanied by an affidavit that the person making the request is authorized by the Town to review tax information related to the revenue and mileage calculations for pass-through providers. The acceptance of any payment required hereunder by the Town shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the Town may have for additional sums due and payable. All fee payments shall be subject to audit by the Town, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the Town, such additional payment shall be subject to interest at the rate of one (1) percent (%) per month until the date payment is made.

- (e) If the payments required by this Section are not made within ninety (90) days after the due date, the Town may withhold the issuance of permits to the registrant until the amount past due is paid in full, in addition to any other remedies available pursuant to this Ordinance and applicable law, including but not limited to drawing upon a registrant's permanent performance bond.
- (f) To the extent consistent with applicable law, the Town shall not ~~may~~ charge fees for processing registrations and applications for permits pursuant to this Ordinance.

Sec. 55-11. Enforcement Remedies.

- (a) Nothing in this Ordinance shall affect or limit the remedies the Town has available under applicable law. In addition to any other remedies available at law which includes, but shall not be limited to, the Town Code, F.S. §166.0415 (municipalities), Ch. 162, (municipalities and counties), and/or equitable remedies, the Town may apply any one or combination of remedies in the event a person violates this Ordinance, or applicable law or order related to the public rights-of-way.
- (b) In addition to the Town's ability to terminate a registration pursuant to this Ordinance or to deny, suspend or revoke permits, the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible

person to the Town in an amount of not less than \$250.00 per day or part thereof that the violation continues for the first violation, or an amount of not less than \$500.00 per day or part thereof for a repeat violation. A registrant's or person's failure to obtain a permit before commencing work, except where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the Town in an amount of not less than \$250.00 per day or part thereof that the violation continues for the first violation, or an amount of not less than \$500.00 per day or part thereof for a repeat violation.

- (c) In addition to or instead of any other remedy, the Town may seek legal or equitable relief from any court of competent jurisdiction.
- (d) Before imposing a fine, the Town shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the person shall have 30 days either to:
  - i. Cure the violation to the Town's satisfaction, and the Town shall make good faith reasonable efforts to assist in resolving the violation; or
  - ii. File an appeal with the Town to contest the alleged violation pursuant to this Section, which shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30-day period, the Town may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.
- (e) In determining which remedy or remedies are appropriate, the Town shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required to prevent further violations, and such other matters as the Town or hearing officer determines are appropriate to the public interest.
- (f) Failure of the Town to enforce any requirements of this Ordinance shall not constitute a waiver of the Town's rights. Nothing herein shall waive the Town's code enforcement authority, including but not limited to, establishing liens on a violator's property.
- (g) In any proceeding before the Town where there exists an issue with respect to a registrant's performance of its obligations, the registrant shall be given the opportunity to provide such information concerning its compliance with the terms and conditions of this Ordinance. The Town may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by the Town Code~~this Section~~.
- (h) *Force majeure*. In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a *force majeure* cause or event

not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to cure or correct any such inability to comply expeditiously.

Secs. 55-12 through 55-30. Reserved.

**SECTION 3.**        **Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Dundee, Florida, hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

**SECTION 4.**        **Conflicts.** All ordinances and resolutions in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**SECTION 5.**        **Codification.** It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Dundee; and that sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to, "section", or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the Code of Ordinances of the Town of Dundee is accomplished, sections of this Ordinance may be renumbered or re-lettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the Town Manager or his or her designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Town Clerk.

**SECTION 6.**        **Effective Date.** This ordinance shall take effect immediately upon passage after second reading/public hearing.

INTRODUCED AND PASSED on first reading this 14th day of July, 2020.

PASSED AND DULY ADOPTED, on second reading with a quorum present and voting,  
by the Town Commission on this 11 day of August 2020.

**TOWN OF DUNDEE, FLORIDA**

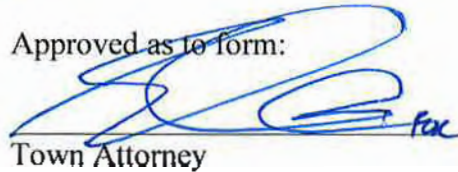


Sam Pennant, Mayor

Attest:

  
Town Clerk

Approved as to form:

  
Town Attorney

