

**ORDINANCE 2018-01**

**AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, CREATING SECTION 23-355 FOR THE PURPOSE OF ESTABLISHING REQUIREMENTS FOR COMMUNICATIONS FACILITIES IN CITY RIGHTS-OF-WAY; PROVIDING FOR PERMITTING, REGISTRATION, ADMINISTRATIVE VARIANCES, INSPECTIONS, ABANDONMENT AND MOVING, ALTERING OR RELOCATING EQUIPMENT AND FACILITIES; RENUMBERING SEC 23-356 YARD SALES, PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City of Lake Wales owns, controls and manages land designated as rights-of-way; and

WHEREAS, Florida law recognizes that obstruction of the right-of-way constitutes a public nuisance; and

WHEREAS, Lake Wales has used its rights-of-way for the purpose of vehicular and pedestrian traffic, and the placement of public and private utility systems to facilitate the delivery of utility services and maintenance of utility services; and

WHEREAS, the City's rights-of-way are a limited resource which must be managed to handle both current uses and planned and expected future uses; and

WHEREAS, the technological changes and advances have resulted in an alternative method of delivery of communications services known as "small cell" or "distributed antennae systems (DAS)" which requires the placement of shorter, but more numerous poles and related infrastructure; and

WHEREAS, the City seeks to ensure adequate protection of the public's health, safety, and welfare and to minimize the impacts of communication facilities on surrounding areas by establishing standards for location, landscape screening and compatibility.

**THEREFORE, BE IT ORDAINED BY THE LAKE WALES CITY COMMISSION:**

**SECTION 1.** This ordinance amends Chapter 23. Zoning, Land Use and Development Regulation, by creating Section 23-355 relating to and entitled "Communications Facilities in the Public Right-of-Way."

**SECTION 2.** § 23-355 COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY is created as follows:

Sec. 23-355.1 Definitions. The following words and phrases shall have the meanings respectively ascribed to them:

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

(2) Applicant shall mean a person who submits an application and is a wireless provider.

(3) Collocate or collocation 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.

(4) Communication Services means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, as per Florida Statutes § 202.11, as amended. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

(b) Installation or maintenance of wiring or equipment on a customer's premises.

(c) The sale or rental of tangible personal property.

(d) The sale of advertising, including, but not limited to, directory advertising.

(e) Bad check charges

(f) Late payment charges

(g) Billing and collection services

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.

(5) Communication Services Provider shall mean a person who provides Communication Services and is chartered by the State of Florida, pursuant to Florida Statutes § 362.01, as amended. A certificate to provide Competitive Local Exchange Telecommunications (CLEC) service to provide Alternative Access Vender (AAV) services granted by the Public Service Commission does not grant the right to provide Wireless Services.

(6) Communications Facility a facility that may be used to provide Communications Services, including Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, and Utility Poles that contain communications elements. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one Communications Facility for purpose of this Section.

(7) City Rights-of-Way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, pier, easement, public easement, or similar property in the City, in which the City holds a property interest or over which the City exercises legal control, and for which the City may lawfully grant a right of use to any person for placement of any equipment or facility or similar use. The term "City Rights-of-Way",

shall not include any other property owned or controlled by the City, including any building, fixture, structure, or other improvement, regardless of whether it is situated in the City Rights-of-Way.

(8) *Emergency* means a condition which poses clear and immediate danger to the life, safety, or health of one or more persons, or poses clear and immediate danger of significant damage to property.

(9) *Emergency Action* means any action in the public right-of-way, including repair, replacement, or maintenance of any existing equipment, which is necessary to alleviate an emergency.

(10) *Equipment or Facility* means any line, conduit or duct, utility pole, transmission or distribution equipment (e.g., an amplifier, power equipment, optical or electronic equipment, a transmission station, switch or routing equipment), cabinet or pedestal, handhole, manhole, vault, drain, location marker, appurtenance, or other equipment or facility associated with communication services located in the City Rights-of-Way.

(11) *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.

(12) *Routine Maintenance or Repair* shall mean:

(a) Ordinary upkeep, fixing, mending, replacement, or removal of any existing Wireless Facility, Wireless Support Structure, or Utility Pole; or

(b) Installation of a service connection to the premises of a customer.

However, routine maintenance or repair shall not include any work which involves:

(a) Any excavation in the City Rights-of-Way or making any breaks or cut in the surface of the public right-of-way;

(b) Any installation of a new Utility Pole or extension of an existing Utility Pole;

(c) Any installation of a Communications Facility, Wireless Facility, or Wireless Support Structure on any paved surface or other ground-level location in the City Rights-of-Way;

(d) Any modification, impairment, or disturbance of the normal flow of vehicular or pedestrian traffic or use of the City Rights-of-Way by any other person for 30 minutes or more; or

(e) Any activity which may result in any damage to the City Rights-of-Way or any other City property.

(13) *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 six (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 six (6) cubic feet in volume; and

(b) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (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.

(14) 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 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 fifteen (15) feet in height or less.

#### Sec. 23-355.2 General Permitting Requirements.

(1) Applicability. The provisions of the Section shall apply to City Rights-of-Way. The placement of Communications Facilities within City Rights-of-Way shall in all cases be subject to the discretionary City Rights-of-Way permit process in accordance with Lake Wales Land Development Regulations.

(2) Permits Required. Except for those exempt activities specifically listed below, it shall be unlawful for any person to make any excavation in the City Rights-of-Way, make any break or cut in any surface of the City Rights-of-Way, place any equipment or facility in the City Rights-of-Way, modify or remove any equipment or facility, or perform any other work in the City Rights-of-Way, without first obtaining a written permit from the City.

(3) Exemptions. The following activities are exempt from the requirements of the Section:

(a) Emergency Actions, but the City reserves authority to require an after-the-fact permit;

(b) Routine Maintenance and Repair of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles authorized to be located within the City Rights-of-Way.

(c) Installation, construction, or modification of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles by governmental entities or approved as part of a government-initiated project within the City Rights-of-Way.

(d) Placement or operation of Communications Facilities in the rights-of-way by a Communications Services Provider authorized by state law to operate in the rights-of-way. Under Section 362.01, Florida Statutes, any telegraph or telephone company chartered by this or another state, or any individual operating or desiring to operate a telegraph or telephone line, or lines, in this state, may erect posts, wires and other fixtures for telegraph

or telephone purposes on or beside any public road or highway; provided, however, that the same shall not be set as to obstruct or interfere with the common uses of said roads or highways.

(4) Emergency Action. Any person who performs work in the City Rights-of-Way in connection with an Emergency Action without a permit shall immediately notify the City of the Emergency Action. The person shall cease all work immediately upon completion of Emergency Action. The person shall also cease all work immediately upon receipt of a City stop work order determining the situation does not involve an emergency or that the Emergency Action is no longer warranted.

(5) Revocation. The City may revoke any permit granted pursuant to the Section, without refunding any fees, if it finds that an Applicant has not complied with applicable law, including provision of a permit, the Code, or any franchise, license, or other authorization, or that revocation is necessary to protect the public health, safety, or welfare.

#### Sec. 23-355.3. Registration Requirements.

(1) Registration Required. Any Communications Services Provider, Wireless Provider, or Wireless Infrastructure Provider that places or seeks to place facilities in the City right-of-way shall register.

(2) Registration Information. Any Communications Services Provider, Wireless Provider, of Wireless Infrastructure Provider shall provide the following information to the Administrative Official in a format acceptable to the City:

(a) name of registrant;

(b) name, address, telephone number, and electronic mail address of a contact person for the registrant;

(c) the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; and

(d) proof of insurance or self-insuring status adequate to defend and cover claims.

#### Sec. 23-355.4 Permitting Requirements for Small Wireless Facilities.

(1) Alternate Location Review. Upon receipt of a permit application to install a Small Wireless Facility, the Administrative Official shall have thirty (30) days to review the application to determine whether the proposed Small Wireless Facility shall be placed on an alternative Utility Pole or may place a new Utility Pole. In making such a determination, the Administrative Official shall consider the following objective design standards and reasonable spacing requirements for ground-based equipment:

(a) All Small Wireless Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in aesthetically with the surrounding environment.

(b) New and replacement Wireless Support Structures and Utility Poles that support Small Wireless Facilities shall match the style, design, and color of existing Utility Poles in the surrounding area. Further, all Wireless Support Structures and Utility Poles shall meet current safety standards in all applicable Codes.

(c) Ground-based equipment boxes for Small Wireless Facilities must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the City right-of-way must be approved by the Administrative Official, who may require a Landscape Maintenance Agreement to be executed prior to approval.

(d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.

(e) No exposed wiring or conduit is permitted.

(f) The grounding rod may not extend above the top of 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.

(g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.

(2) *Alternate Location Negotiation.* The Administrative Official shall negotiate any alternate location with the Applicant. If an agreement is not reached within thirty days after the date the Administrative Official requests an alternate location, the Applicant must notify the Administrative Official of such non-agreement and the Administrative Official must grant or deny the original application within 90 days after the date the application was filed. A request for an alternate location, and acceptance of an alternate location, or a rejection of an alternate location must be in writing and provided by electronic mail. Additionally, the design standards may be waived by the Administrative Official upon a showing by the Applicant that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within thirty (30) days after the date of request.

(3) *Height Limitations for Small Wireless Facilities.* The height of Small Wireless Facilities shall not exceed ten (10) feet above the Utility Pole, or Wireless Support Structure on which the Small Wireless Facility is to Collocated.

(4) *Height of Utility Poles.* The height of a new Utility Pole is limited to the tallest existing Utility Pole as of January 1, 2018, located in the same right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the height of the new Utility Pole shall be limited to 50 feet.

(5) Time for Completing Completeness Review of Applications. For applications in which the Administrative Official does not request use of an alternate locations, the Administrative Official must make a determination as to whether an application is complete within 14 days. If an application is deemed incomplete, the Administrative Official must specifically identify the missing information. An application is deemed complete if the Administrative Official fails to provide notification to the Applicant within 14 days.

(6) Applications Processed on a Nondiscriminatory Basis. The Administrative Official shall process applications on a nondiscriminatory basis. Thus, applications shall be processed on a first-come, first-served basis.

(7) Time for Completing Approval or Denial. The Administrative Official shall grant or deny an application within sixty (60) days after receipt of the application. If the Administrative Official fails to take action on a complete application within 60 days, the application shall be deemed approved. If the Administrative Official elects not to negotiate an alternate location, the Applicant and Administrative Official may mutually agree to extend the review period. The Administrative Official shall grant or deny the application at the end of the extended period.

(8) Effective Life of Approved Permit Application. A permit issued pursuant to an approved application shall remain effective for one year unless extended by the Administrative Official for an additional year. The Administrative Official may only grant a single extension.

(9) Notification of Approval or Denial. The Administrative Official shall notify an Applicant of any approval or denial by electronic mail on the same day a decision is made. If the Administrative Official denies an application, the denial must state in writing the basis for the denial, including specific code provisions on which the denial was based. In the event of a denial, the Applicant may cure the deficiencies identified by the Administrative Official and resubmit the application within 30 days after notice of the denial. The Administrative Official shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(10) Permitting Criteria. The Administrative Official may deny a proposed Collocation of a Small Wireless Facility in the City Right-of-Way if the proposed Collocation:

(a) materially interferes with the safe operation of traffic control equipment;

(b) materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;

(c) materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(d) materially fails to comply with the most current edition of the Florida Department of Transportation Utility Accommodation Manual; and

(e) materially fails to comply with any Applicable Codes.

(11) Collocation on City Utility Poles. Collocation of Small Wireless Facilities on City Utility Poles shall meet the following requirements:

(a) The City may not enter into an exclusive arrangement with any person for the right to attach equipment to City Utility Poles.

(b) The rates and fees for Collocation on City Utility Poles must be nondiscriminatory, regardless of services provided by the Collocating person.

(c) The rate to Collocate a Small Wireless Facility on a City Utility Pole shall be at least \$150 per pole annually.

(d) Agreements between the City and Wireless Providers that are in effect on January 1, 2018, and that relate to the Collocation of Small Wireless Facilities in the City right-of-way, including the collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to application of termination provisions.

(12) Attestation of Wireless Services. A Wireless Infrastructure Provider must include within its application to place a Utility Pole in the City right-of-way an attestation that the Small Wireless Facility will be used by a Wireless Services Provider for the provision of Communication Services within 9 months of the date of the application is approved. In the event a Wireless Services Provider fails to provide Communications Services with the 9 months, the City may begin proceedings for revocation.

(13) Historic Preservation. The City may require an Applicant to obtain a Certificate of Appropriateness from the Historic Preservation Board under Section 23-653 of the Code where an application may impact an Historic Resource, as that term is defined under this Chapter.

(14) Privately-Owned Utility Poles. Nothing in this section authorizes 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.

(15) Limitation on Permitting of Small Wireless Facilities. Any permit approval by the City for the installation, placement, maintenance, or operation of a Small Wireless Facility under this section does not authorize the provision of any voice, data, or video Communications Services or the installation, placement, maintenance, or operation of any Communications Facilities other than Small Wireless Facilities in the City rights-of-way.

Sec. 23-355.5 Permitting Requirements for New Communications Facilities, Wireless Facilities, and Wireless Support Structures.

(1) Permits Required. Unless otherwise governed by the exemptions in Sec. 23-355.2(3) or the permitting requirements for Small Wireless Facilities outlined in Sec.23.355.4, new Communications Facilities, Wireless Facilities, and Wireless Support Structures in City rights-of-way shall meet the following permitting requirements, as determined by the Administrative Official



using the best professional judgement, which may include consultation with the City Engineer, or other appropriate City staff:

(a) All new Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located to avoid any physical or visual obstruction to pedestrians or vehicular traffic, or to otherwise create safety hazards to pedestrians, bicyclists, or motorists.

(b) The separation distance between new and existing Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be a minimum of 120 feet.

(c) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall avoid being placed in a City right-of-way in Residential or Conservation zoning districts, as defined in this Chapter, to the greatest extent possible. An Applicant shall demonstrate through an engineering analysis why it is unable to locate new Communication Facilities, Wireless Facilities, and Wireless Support Structures outside a Residential or Conservation zoning district.

(d) New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located on Collector roadways and Arterial roadways to the greatest extent possible.

(e) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall maintain a clear zone from the back-of-curb to the inward edge of a Communication Facility, Wireless Facility, or Wireless Support Structure. Unless otherwise determined by the Administrative Official, a minimum six (6) foot wide pedestrian clear zone between back-of-curb and the outward edge of a Communications Facility, Wireless Facility, or Wireless Support Structure.

(f) New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located at least ten (10) feet from a driveway and at least thirty (30) feet from the center of existing trees with matured diameter of eight (8) inches or greater.

(g) The size and height of new Communications Facilities, Wireless Facilities, and Wireless Support Structures in the City right-of-way shall be no greater than the maximum size and height of any other Utility Pole, Communications Facility, Wireless Facility or Wireless Support Structure located in the City rights-of-way within 250 feet of the proposed structure.

(h) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be placed along side-lot lines and in front of residences, buildings, or places of business.

(i) Any new proposal to construct a new Communication Facility, Wireless Facility, or Wireless Support Structure must first demonstrate why services cannot be Collocated on and existing Communication Facility, Wireless Facility, Wireless Support Structure, or Utility Pole in the City right-of-way.

(2) Design Requirements. New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall meet the following design requirements:

(a) All Communications Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in with the surrounding environment.

(b) New and replacement poles that support Communication Facilities shall match the style, design, and color of existing poles in the surrounding area. Further, all poles shall meet current safety standards such as using breakaway connections and the like.

(c) Ground-based equipment boxes must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the City right-of-way must be approved by the Administrative Official, who may require a Landscape Maintenance Agreement to be executed prior to approval.

(d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.

(e) No exposed wiring or conduit is permitted.

(f) The grounding rod may not extend above the top of 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.

(g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.

(3) Written Application Requirements. No permit shall be issued unless an Applicant submits a written application to the City in accordance with this Chapter. An application for a permit shall be filed in the form and manner specified by the City and contain such information as may be required by the City, including, at a minimum, the information contained in this section. The City may require the Applicant to provide such additional information as the City deems necessary to complete its review of a requested permit. At a minimum, the Applicant shall submit the following information:

(a) The name and address of the Applicant who is requesting the permit and written evidence that such Applicant has legal authority to place, maintain, or remove the Equipment or Facilities covered by the requested permit in the City right-of-way and will own and control all such Equipment and Facilities after completion of construction;

(b) A description of the functions, dimensions, and proposed locations for all Equipment and Facilities covered by the requested permit;

(c) The specific location, depth, dimensions, and length of each proposed new or replacement duct, conduit, or other underground facility and the specific location, depth, dimensions, and height of any utility pole covered by the requested permit;

(d) A description of the manner in which the work covered by the requested permit is to be undertaken (i.e., proposed construction methods and techniques) and a proposed date for commencement of work and an estimate of the time required to complete all such work;

(e) A City approved traffic control plan for vehicular and pedestrian traffic in the area to be affected by the proposed work;

(f) Proof of insurance;

(g) Identification and description of any utility or other distribution or transmission system to which any Equipment or Facility covered by the requested permit is to be connected or attached.

(h) Drawings (in such detail and form as may be specified by the City) which show: (i) City rights-of-way in the area of the proposed construction; (ii) locations of all existing Equipment and Facilities in the area of proposed construction; (iii) all Equipment and Facilities to be installed or removed; (iv) the routes of all transmission and distribution lines to be installed or removed; and (v) the sites of all other Equipment and Facilities to be installed or removed in the City rights-of-way; and

(i) Construction and/or engineering drawings signed and sealed by a structural engineer (in sufficient detail and form as may be specified by the City to demonstrate structural stability of the Communications Facilities) which show the locations of all new Equipment and Facilities in the City which the applicant plans to place in the City rights-of-way in the next 12 months or such other time period as may be specified by the City.

(j) Photographic or video documentation of the condition of the City rights-of-way in the area to be affected by the proposed work pre construction.

(4) Fees. To the extent allowed by state law, the City is authorized to set reasonable fees and charges for the implementation of this Section. Such fees shall be set by resolution. Fees charged will substantially cover the expenditures of administering this Section. No permit shall be granted until such time as all applicable fees are paid to the City.

#### Sec. 23-355.6 Administrative Variances

(1) Authority to Grant Administrative Variances. The Planning and Development Services Director, or their designee, has the authority to grant an administrative variance up to ten (10) percent of the separation requirements contained herein for replacement of existing or new Communications Facilities, Wireless Facilities or Wireless Support Structures. In making such a determination, the Director shall consider the following:

(a) The permitting standards outlined in this Section.

(b) Any hardship associated with the land, including size, shape, and dimensions of lots, and the presence of protected native habitats as specified by the Comprehensive Plan that affect the configuration of roads on the property.

(c) The risk of creating unfavorable precedent.

(d) The technology in use for Communications Facilities.

(e) The current available technology for Communications Facilities.

(f) Any costs associated with upgrading Communications Facilities.

(g) The risk of confusion that may cause or create delay in response time.

(h) All applicable city, state, and federal regulations.

(2) Fees. To the extent allowed by state law, the City is authorized to set reasonable fees and to process an administrative variance application. Such fees shall be set by resolution. Fees charged will substantially cover the expenditures of administering this Section. No administrative variance shall be granted until such time as all applicable fees are paid.

#### Sec. 23-355.7 Uniform Permit Conditions

(1) Discretion to Include Conditions. The City may include conditions on permits to ensure adherence to the City Code of Ordinances and adequate protection of the public's health, safety and welfare. These conditions may include, but are not limited to, interim or temporary restoration, patching, or resurfacing of the City right-of-way during the construction period.

(2) Uniform Permit Conditions: All permits issued pursuant to this Section shall contain the following conditions:

(a) The Applicant shall remove any rubbish, excess earth, rock, or other debris arising from or associated with any work performed in the City rights-of-way and any other property affected by such work on a frequent or regular basis (or as specifically directed by the City), to the satisfaction of the City, and the expense of the Applicant.

(b) Unless otherwise specified by the City, the Applicant shall illuminate through use of red lanterns, red lights, or red torches any building material, machinery, motor vehicle, equipment, facility, or other object placed in the City rights-of-way in connection with any work performed in the City rights-of-way, between sunset and sunrise. The permittee shall place illumination at a distance of not more than five (5) feet from each other along the width of any affected portion of the City rights-of-way (or as may otherwise be specified by the City) and not more than 15 feet from each other along the length of the affected portion of the City rights-of-way (or as may otherwise be specified by the City).

(c) Any work performed by the Applicant in the City rights-of-way, including restoration, shall be complete by the completion date specified in the permit or as otherwise specified or provided by the City. Upon completion of the work (or at such time as may be specified by the City if construction is not completed by the completion date or construction is

terminated for any reason, including revocation of the permit), the Applicant shall restore the City rights-of-way to a condition which is at least as good as its condition prior to commencement of work. The Applicant shall perform restoration to the City rights-of-way in accordance with any specifications or standards regarding materials or any other matter specified by the City. The City may establish generally applicable restoration standards, which apply unless the City specifies other standards in a particular situation or may establish restoration standards on a case-by-case basis.

(d) If an Applicant fails to restore the City rights-of-way, including any paved surface, curbs, or fixtures, to a condition at least as good as its condition prior to commencement of construction or to complete such restoration work by the completion date specified in the permit or as otherwise specified or provided by the City, the City may perform any work or undertake any other activity which it deems necessary to complete such work and/or restore the City rights-of-way. The Applicant shall reimburse the City for any such costs in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City plus 25 percent of such cost as compensation to the City for general overhead and administrative expense associated with such work and shall pay such costs as directed by the City and not later than 20 calendar days after receipt of a bill.

(e) An Applicant shall guarantee and maintain any City rights-of-way which the City determines has been affected or altered by any excavation in the City rights-of-way or any break or cut in any surface of the City rights-of-way made by such Applicant for the 24 months following the date of completion of restoration of the affected or altered City rights-of-way either by the Applicant or by the City. Such Applicant shall take such action as the City deems necessary to correct any deficiencies in such restoration work within such 24-month period, shall commence such action not later than five calendar days after receipt of notice from the City or such other date as may be specified by the City, and complete such action promptly but not later than the date or any other deadline established by the city. The City may elect to perform any such work itself or undertake any other activity, which it deems necessary to correct any such deficiency during such 24-month period. Such Applicant or person shall be liable to the City for any costs incurred in connection with any such corrective action in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City and shall make pay such costs as directed by the City and not later than 20 calendar days after receipt of a bill.

(f) An Applicant must provide photographic or video documentation of the condition of the City rights-of-way in the area affected by the proposed work post construction.

(g) An Applicant must provide as-built drawings (in such detail and form as may be specified by the City) which show the locations of all the Applicant's existing equipment and facilities in the City.

(h) No Applicant may permanently activate or place in service any Equipment or Facility in the City rights-of-way until such time as the City has approved such activation from the City. The Applicant provide notice of completion of construction of such Equipment or Facility.

### Sec. 23.355.8 Inspections

The City may conduct any inspection it deems necessary to administer and enforce this Section or any other City Codes, ordinances, or regulations, or to enforce the conditions of any permit granted, or to enforce related regulations or policies. The City may order a work stoppage or revoke a permit, as it deems necessary in the case of failure to comply with the provisions of the Section or the conditions of any permit, or to otherwise protect the public health, safety, and welfare.

### Sec. 23-355.9 Abandonment

(1) *Discontinuance of Use.* In the event that an Applicant discontinues the use of any communications Facility, Wireless Facility, Small Wireless Facility, Micro Wireless Facility, or Utility Pole for a period of one hundred eighty (180) consecutive days, the City shall deem it to be abandoned. The Administrative Official shall determine the date of abandonment. In reaching such a determination, the Administrative Official may request documentation and/or affidavits from the Applicant regarding the active use of the facility/pole. If the Applicant fails to provide the requested documentation, a rebuttable presumption shall exist that the Applicant has abandoned the Communications Facility. The Applicant shall have ninety (90) days from the date of notice of the Administrative Official's determination of abandonment to do one of the following:

(a) reactivate the use;

(b) transfer ownership to another Applicant who makes actual use; or

(c) dismantle and remove the use.

(2) *Expiration of Permit or Administrative Variance upon Removal.* After the expiration of the ninety (90) day period, or upon completion of dismantling and removal, any permit or administrative variance shall expire.

### Sec. 23-355.10 Moving, altering, or relocating equipment and facilities.

(1) *Demand by City.* Upon demand by the City, and Applicant at their own costs shall move, alter, relocate, or remove equipment or facilities and restore affected City rights-of-way as may be required by the City and shall complete any such work promptly or by such date as may be specified by the City.

(2) *Emergency Actions.* In the event of an emergency, the City may in its sole discretion, move, alter, relocate, or remove any equipment or facility and restore the affected City rights-of-way. The Applicant shall be responsible for repairing or replacing any affected equipment or facility at its own cost and shall reimburse the City for any costs incurred by the City in moving, altering, relocating, or removing any equipment or facility and in restoring the affected City rights-of-way in a amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facility and restoring the affected City rights-of-way associated with such work and shall make any payment due as directed by the City and not later than 20 calendar days after receipt of a bill.

(3) Failure to Timely Comply with Demand. If an Applicant fails to fully comply with a demand by the City pursuant to the section promptly or by the date specified by the City, the City shall have the right to:

(a) declare that all rights and title to and interest in the affected equipment or facilities are the property of the City; and/or

(b) move, alter, relocate, or remove any such equipment or facilities and restore the affected City rights-of-way as it deems necessary. The Applicant shall reimburse the City for any costs incurred in moving, altering, relocating, or removing any equipment or facilities and restoring the affected City rights-of-way in an amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facilities and restoring affected City rights-of-way associated with such work and shall make payment due as directed by the City and not later than 20 calendar days after receipt of a bill.

Sec. 23-355.11 Communication Facility Previously in Existence.

Communication Facilities in City rights-of-way legally permitted or installed on or before the effective date this Ordinance was enacted shall be considered a permitted and lawful use. In the event that such Communication Facilities are destroyed or voluntarily removed, any new Communication Facility shall meet the requirements of this Section.

Sec. 23-355.12 Indemnification

Any Applicant who makes any excavation in the City rights-of-way, makes any break or cut in any surface of the City rights-of-way, deposits any earth or other material in the City rights-of-way, places any equipment or facility in the City rights-of-way, modifies any Equipment or Facility, or performs any other work in the City rights-of-way shall defend, indemnify, and hold harmless the City from and against any liability or claim for damages or any other relief, including reasonable costs and expense arising from or in connection with any act or failure to act by such Applicant in the City rights-of-way. Issuance of a permit or inspection of work shall not affect the City's right to indemnification. This section does not constitute a waiver of any defense or immunity as to any third party, which would otherwise be available to the City.

**SECTION 3. Sec 23-355 Yard sales**

Section is renumbered as follows:

Sec. 23-356 Yard sales.

**SECTION 4. Severability:** If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated.

**SECTION 5. Effective date:** This ordinance shall become effective immediately upon its passage by the city commission.

**CERTIFIED AS TO PASSAGE** this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

ATTEST:

\_\_\_\_\_  
Eugene Fultz, Mayor

\_\_\_\_\_  
Jennifer Nanek, City Clerk



ORDINANCE 2018-01

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, CREATING SECTION 23-355 FOR THE PURPOSE OF ESTABLISHING REQUIREMENTS FOR COMMUNICATIONS FACILITIES IN CITY RIGHTS-OF-WAY; PROVIDING FOR PERMITTING, REGISTRATION, ADMINISTRATIVE VARIANCES, INSPECTIONS, ABANDONMENT AND MOVING, ALTERING OR RELOCATING EQUIPMENT AND FACILITIES; RENUMBERING SEC 23-356 YARD SALES, PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Lake Wales owns, controls and manages land designated as rights-of-way; and

WHEREAS, Florida law recognizes that obstruction of the right-of-way constitutes a public nuisance; and

WHEREAS, Lake Wales has used its rights-of-way for the purpose of vehicular and pedestrian traffic, and the placement of public and private utility systems to facilitate the delivery of utility services and maintenance of utility services; and

WHEREAS, the City's rights-of-way are a limited resource which must be managed to handle both current uses and planned and expected future uses; and

WHEREAS, the technological changes and advances have resulted in an alternative method of delivery of communications services known as "small cell" or "distributed antennae systems (DAS)" which requires the placement of shorter, but more numerous poles and related infrastructure; and

WHEREAS, the City seeks to ensure adequate protection of the public's health, safety, and welfare and to minimize the impacts of communication facilities on surrounding areas by establishing standards for location, landscape screening and compatibility.

**THEREFORE, BE IT ORDAINED BY THE LAKE WALES CITY COMMISSION:**

**SECTION 1.** This ordinance amends Chapter 23. Zoning, Land Use and Development Regulation, by creating Section 23-355 relating to and entitled "Communications Facilities in the Public Right-of-Way."

**SECTION 2.** § 23-355 COMMUNICATION FACILITIES IN THE PUBLIC RIGHT-OF-WAY is created as follows:

Sec. 23-355.1 Definitions. The following words and phrases shall have the meanings respectively ascribed to them:

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

(2) Applicant shall mean a person who submits an application and is a wireless provider.

(3) Collocate or collocation 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.

(4) Communication Services means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, as per Florida Statutes § 202.11, as amended. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

(b) Installation or maintenance of wiring or equipment on a customer's premises.

(c) The sale or rental of tangible personal property.

(d) The sale of advertising, including, but not limited to, directory advertising.

(e) Bad check charges

(f) Late payment charges

(g) Billing and collection services

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.

(5) Communication Services Provider shall mean a person who provides Communication Services and is chartered by the State of Florida, pursuant to Florida Statutes § 362.01, as amended. A certificate to provide Competitive Local Exchange Telecommunications (CLEC) service to provide Alternative Access Vender (AAV) services granted by the Public Service Commission does not grant the right to provide Wireless Services.

(6) Communications Facility a facility that may be used to provide Communications Services, including Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, and Utility Poles that contain communications elements. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one Communications Facility for purpose of this Section.

(7) City Rights-of-Way means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, pier, easement, public easement, or similar property in the City, in which the City holds a property interest or over which the City exercises legal control, and for which the City may lawfully grant a right of use to any person for placement of any equipment or facility or similar use. The term "City Rights-of-Way",

shall not include any other property owned or controlled by the City, including any building, fixture, structure, or other improvement, regardless of whether it is situated in the City Rights-of-Way.

(8) *Emergency* means a condition which poses clear and immediate danger to the life, safety, or health of one or more persons, or poses clear and immediate danger of significant damage to property.

(9) *Emergency Action* means any action in the public right-of-way, including repair, replacement, or maintenance of any existing equipment, which is necessary to alleviate an emergency.

(10) *Equipment or Facility* means any line, conduit or duct, utility pole, transmission or distribution equipment (e.g., an amplifier, power equipment, optical or electronic equipment, a transmission station, switch or routing equipment), cabinet or pedestal, handhole, manhole, vault, drain, location marker, appurtenance, or other equipment or facility associated with communication services located in the City Rights-of-Way.

(11) *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.

(12) *Routine Maintenance or Repair* shall mean:

(a) Ordinary upkeep, fixing, mending, replacement, or removal of any existing Wireless Facility, Wireless Support Structure, or Utility Pole; or

(b) Installation of a service connection to the premises of a customer.

However, routine maintenance or repair shall not include any work which involves:

(a) Any excavation in the City Rights-of-Way or making any breaks or cut in the surface of the public right-of-way;

(b) Any installation of a new Utility Pole or extension of an existing Utility Pole;

(c) Any installation of a Communications Facility, Wireless Facility, or Wireless Support Structure on any paved surface or other ground-level location in the City Rights-of-Way;

(d) Any modification, impairment, or disturbance of the normal flow of vehicular or pedestrian traffic or use of the City Rights-of-Way by any other person for 30 minutes or more; or

(e) Any activity which may result in any damage to the City Rights-of-Way or any other City property.

(13) *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 six (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 six (6) cubic feet in volume; and

(b) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (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.

(14) 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 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 fifteen (15) feet in height or less.

#### Sec. 23-355.2 General Permitting Requirements.

(1) Applicability. The provisions of the Section shall apply to City Rights-of-Way. The placement of Communications Facilities within City Rights-of-Way shall in all cases be subject to the discretionary City Rights-of-Way permit process in accordance with Lake Wales Land Development Regulations.

(2) Permits Required. Except for those exempt activities specifically listed below, it shall be unlawful for any person to make any excavation in the City Rights-of-Way, make any break or cut in any surface of the City Rights-of-Way, place any equipment or facility in the City Rights-of-Way, modify or remove any equipment or facility, or perform any other work in the City Rights-of-Way, without first obtaining a written permit from the City.

(3) Exemptions. The following activities are exempt from the requirements of the Section:

(a) Emergency Actions, but the City reserves authority to require an after-the-fact permit;

(b) Routine Maintenance and Repair of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles authorized to be located within the City Rights-of-Way.

(c) Installation, construction, or modification of Communications Facilities, Wireless Facilities, Small Wireless Facilities, Micro Wireless Facilities, Wireless Support Structures, or Utility Poles by governmental entities or approved as part of a government-initiated project within the City Rights-of-Way.

(d) Placement or operation of Communications Facilities in the rights-of-way by a Communications Services Provider authorized by state law to operate in the rights-of-way. Under Section 362.01, Florida Statutes, any telegraph or telephone company chartered by this or another state, or any individual operating or desiring to operate a telegraph or telephone line, or lines, in this state, may erect posts, wires and other fixtures for telegraph

or telephone purposes on or beside any public road or highway; provided, however, that the same shall not be set as to obstruct or interfere with the common uses of said roads or highways.

(4) Emergency Action. Any person who performs work in the City Rights-of-Way in connection with an Emergency Action without a permit shall immediately notify the City of the Emergency Action. The person shall cease all work immediately upon completion of Emergency Action. The person shall also cease all work immediately upon receipt of a City stop work order determining the situation does not involve an emergency or that the Emergency Action is no longer warranted.

(5) Revocation. The City may revoke any permit granted pursuant to the Section, without refunding any fees, if it finds that an Applicant has not complied with applicable law, including provision of a permit, the Code, or any franchise, license, or other authorization, or that revocation is necessary to protect the public health, safety, or welfare.

#### Sec. 23-355.3. Registration Requirements.

(1) Registration Required. Any Communications Services Provider, Wireless Provider, or Wireless Infrastructure Provider that places or seeks to place facilities in the City right-of-way shall register.

(2) Registration Information. Any Communications Services Provider, Wireless Provider, of Wireless Infrastructure Provider shall provide the following information to the Administrative Official in a format acceptable to the City:

(a) name of registrant;

(b) name, address, telephone number, and electronic mail address of a contact person for the registrant;

(c) the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; and

(d) proof of insurance or self-insuring status adequate to defend and cover claims.

#### Sec. 23-355.4 Permitting Requirements for Small Wireless Facilities.

(1) Alternate Location Review. Upon receipt of a permit application to install a Small Wireless Facility, the Administrative Official shall have thirty (30) days to review the application to determine whether the proposed Small Wireless Facility shall be placed on an alternative Utility Pole or may place a new Utility Pole. In making such a determination, the Administrative Official shall consider the following objective design standards and reasonable spacing requirements for ground-based equipment:

(a) All Small Wireless Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in aesthetically with the surrounding environment.

(b) New and replacement Wireless Support Structures and Utility Poles that support Small Wireless Facilities shall match the style, design, and color of existing Utility Poles in the surrounding area. Further, all Wireless Support Structures and Utility Poles shall meet current safety standards in all applicable Codes.

(c) Ground-based equipment boxes for Small Wireless Facilities must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the City right-of-way must be approved by the Administrative Official, who may require a Landscape Maintenance Agreement to be executed prior to approval.

(d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.

(e) No exposed wiring or conduit is permitted.

(f) The grounding rod may not extend above the top of 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.

(g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.

(2) Alternate Location Negotiation. The Administrative Official shall negotiate any alternate location with the Applicant. If an agreement is not reached within thirty days after the date the Administrative Official requests an alternate location, the Applicant must notify the Administrative Official of such non-agreement and the Administrative Official must grant or deny the original application within 90 days after the date the application was filed. A request for an alternate location, and acceptance of an alternate location, or a rejection of an alternate location must be in writing and provided by electronic mail. Additionally, the design standards may be waived by the Administrative Official upon a showing by the Applicant that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within thirty (30) days after the date of request.

(3) Height Limitations for Small Wireless Facilities. The height of Small Wireless Facilities shall not exceed ten (10) feet above the Utility Pole, or Wireless Support Structure on which the Small Wireless Facility is to Collocated.

(4) Height of Utility Poles. The height of a new Utility Pole is limited to the tallest existing Utility Pole as of January 1, 2018, located in the same right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the height of the new Utility Pole shall be limited to 50 feet.

(5) Time for Completing Completeness Review of Applications. For applications in which the Administrative Official does not request use of an alternate locations, the Administrative Official must make a determination as to whether an application is complete within 14 days. If an application is deemed incomplete, the Administrative Official must specifically identify the missing information. An application is deemed complete if the Administrative Official fails to provide notification to the Applicant within 14 days.

(6) Applications Processed on a Nondiscriminatory Basis. The Administrative Official shall process applications on a nondiscriminatory basis. Thus, applications shall be processed on a first-come, first-served basis.

(7) Time for Completing Approval or Denial. The Administrative Official shall grant or deny an application within sixty (60) days after receipt of the application. If the Administrative Official fails to take action on a complete application within 60 days, the application shall be deemed approved. If the Administrative Official elects not to negotiate an alternate location, the Applicant and Administrative Official may mutually agree to extend the review period. The Administrative Official shall grant or deny the application at the end of the extended period.

(8) Effective Life of Approved Permit Application. A permit issued pursuant to an approved application shall remain effective for one year unless extended by the Administrative Official for an additional year. The Administrative Official may only grant a single extension.

(9) Notification of Approval or Denial. The Administrative Official shall notify an Applicant of any approval or denial by electronic mail on the same day a decision is made. If the Administrative Official denies an application, the denial must state in writing the basis for the denial, including specific code provisions on which the denial was based. In the event of a denial, the Applicant may cure the deficiencies identified by the Administrative Official and resubmit the application within 30 days after notice of the denial. The Administrative Official shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(10) Permitting Criteria. The Administrative Official may deny a proposed Collocation of a Small Wireless Facility in the City Right-of-Way if the proposed Collocation:

(a) materially interferes with the safe operation of traffic control equipment;

(b) materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;

(c) materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(d) materially fails to comply with the most current edition of the Florida Department of Transportation Utility Accommodation Manual; and

(e) materially fails to comply with any Applicable Codes.

(11) Collocation on City Utility Poles. Collocation of Small Wireless Facilities on City Utility Poles shall meet the following requirements:

(a) The City may not enter into an exclusive arrangement with any person for the right to attach equipment to City Utility Poles.

(b) The rates and fees for Collocation on City Utility Poles must be nondiscriminatory, regardless of services provided by the Collocating person.

(c) The rate to Collocate a Small Wireless Facility on a City Utility Pole shall be at least \$150 per pole annually.

(d) Agreements between the City and Wireless Providers that are in effect on January 1, 2018, and that relate to the Collocation of Small Wireless Facilities in the City right-of-way, including the collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to application of termination provisions.

(12) Attestation of Wireless Services. A Wireless Infrastructure Provider must include within its application to place a Utility Pole in the City right-of-way an attestation that the Small Wireless Facility will be used by a Wireless Services Provider for the provision of Communication Services within 9 months of the date of the application is approved. In the event a Wireless Services Provider fails to provide Communications Services with the 9 months, the City may begin proceedings for revocation.

(13) Historic Preservation. The City may require an Applicant to obtain a Certificate of Appropriateness from the Historic Preservation Board under Section 23-653 of the Code where an application may impact an Historic Resource, as that term is defined under this Chapter.

(14) Privately-Owned Utility Poles. Nothing in this section authorizes 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.

(15) Limitation on Permitting of Small Wireless Facilities. Any permit approval by the City for the installation, placement, maintenance, or operation of a Small Wireless Facility under this section does not authorize the provision of any voice, data, or video Communications Services or the installation, placement, maintenance, or operation of any Communications Facilities other than Small Wireless Facilities in the City rights-of-way.

Sec. 23-355.5 Permitting Requirements for New Communications Facilities, Wireless Facilities, and Wireless Support Structures.

(1) Permits Required. Unless otherwise governed by the exemptions in Sec. 23-355.2(3) or the permitting requirements for Small Wireless Facilities outlined in Sec.23.355.4, new Communications Facilities, Wireless Facilities, and Wireless Support Structures in City rights-of-way shall meet the following permitting requirements, as determined by the Administrative Official



using the best professional judgement, which may include consultation with the City Engineer, or other appropriate City staff:

(a) All new Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located to avoid any physical or visual obstruction to pedestrians or vehicular traffic, or to otherwise create safety hazards to pedestrians, bicyclists, or motorists.

(b) The separation distance between new and existing Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be a minimum of 120 feet.

(c) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall avoid being placed in a City right-of-way in Residential or Conservation zoning districts, as defined in this Chapter, to the greatest extent possible. An Applicant shall demonstrate through an engineering analysis why it is unable to locate new Communication Facilities, Wireless Facilities, and Wireless Support Structures outside a Residential or Conservation zoning district.

(d) New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located on Collector roadways and Arterial roadways to the greatest extent possible.

(e) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall maintain a clear zone from the back-of-curb to the inward edge of a Communication Facility, Wireless Facility, or Wireless Support Structure. Unless otherwise determined by the Administrative Official, a minimum six (6) foot wide pedestrian clear zone between back-of-curb and the outward edge of a Communications Facility, Wireless Facility, or Wireless Support Structure.

(f) New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall be located at least ten (10) feet from a driveway and at least thirty (30) feet from the center of existing trees with matured diameter of eight (8) inches or greater.

(g) The size and height of new Communications Facilities, Wireless Facilities, and Wireless Support Structures in the City right-of-way shall be no greater than the maximum size and height of any other Utility Pole, Communications Facility, Wireless Facility or Wireless Support Structure located in the City rights-of-way within 250 feet of the proposed structure.

(h) New Communication Facilities, Wireless Facilities, and Wireless Support Structures shall be placed along side-lot lines and in front of residences, buildings, or places of business.

(i) Any new proposal to construct a new Communication Facility, Wireless Facility, or Wireless Support Structure must first demonstrate why services cannot be Collocated on and existing Communication Facility, Wireless Facility, Wireless Support Structure, or Utility Pole in the City right-of-way.

(2) Design Requirements. New Communications Facilities, Wireless Facilities, and Wireless Support Structures shall meet the following design requirements:

(a) All Communications Facilities shall use camouflage techniques which incorporate architectural treatment to conceal or screen their presence from public view through design to unobtrusively blend in with the surrounding environment.

(b) New and replacement poles that support Communication Facilities shall match the style, design, and color of existing poles in the surrounding area. Further, all poles shall meet current safety standards such as using breakaway connections and the like.

(c) Ground-based equipment boxes must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment box. Additional plantings may be required to meet this condition. Any new landscaping in the City right-of-way must be approved by the Administrative Official, who may require a Landscape Maintenance Agreement to be executed prior to approval.

(d) With the exception of electric meters and disconnect switches, equipment such as back-haul components shall not be mounted on the exterior of the pole.

(e) No exposed wiring or conduit is permitted.

(f) The grounding rod may not extend above the top of 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.

(g) All pull boxes must be vehicle load bearing, comply with FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete apron must be installed around all pull boxes not located in the sidewalk. No new pull boxes may be located in pedestrian ramps.

(3) Written Application Requirements. No permit shall be issued unless an Applicant submits a written application to the City in accordance with this Chapter. An application for a permit shall be filed in the form and manner specified by the City and contain such information as may be required by the City, including, at a minimum, the information contained in this section. The City may require the Applicant to provide such additional information as the City deems necessary to complete its review of a requested permit. At a minimum, the Applicant shall submit the following information:

(a) The name and address of the Applicant who is requesting the permit and written evidence that such Applicant has legal authority to place, maintain, or remove the Equipment or Facilities covered by the requested permit in the City right-of-way and will own and control all such Equipment and Facilities after completion of construction;

(b) A description of the functions, dimensions, and proposed locations for all Equipment and Facilities covered by the requested permit;

(c) The specific location, depth, dimensions, and length of each proposed new or replacement duct, conduit, or other underground facility and the specific location, depth, dimensions, and height of any utility pole covered by the requested permit;

(d) A description of the manner in which the work covered by the requested permit is to be undertaken (i.e., proposed construction methods and techniques) and a proposed date for commencement of work and an estimate of the time required to complete all such work;

(e) A City approved traffic control plan for vehicular and pedestrian traffic in the area to be affected by the proposed work;

(f) Proof of insurance;

(g) Identification and description of any utility or other distribution or transmission system to which any Equipment or Facility covered by the requested permit is to be connected or attached.

(h) Drawings (in such detail and form as may be specified by the City) which show: (i) City rights-of-way in the area of the proposed construction; (ii) locations of all existing Equipment and Facilities in the area of proposed construction; (iii) all Equipment and Facilities to be installed or removed; (iv) the routes of all transmission and distribution lines to be installed or removed; and (v) the sites of all other Equipment and Facilities to be installed or removed in the City rights-of-way; and

(i) Construction and/or engineering drawings signed and sealed by a structural engineer (in sufficient detail and form as may be specified by the City to demonstrate structural stability of the Communications Facilities) which show the locations of all new Equipment and Facilities in the City which the applicant plans to place in the City rights-of-way in the next 12 months or such other time period as may be specified by the City.

(j) Photographic or video documentation of the condition of the City rights-of-way in the area to be affected by the proposed work pre construction.

(4) Fees. To the extent allowed by state law, the City is authorized to set reasonable fees and charges for the implementation of this Section. Such fees shall be set by resolution. Fees charged will substantially cover the expenditures of administering this Section. No permit shall be granted until such time as all applicable fees are paid to the City.

#### Sec. 23-355.6 Administrative Variances

(1) Authority to Grant Administrative Variances. The Planning and Development Services Director, or their designee, has the authority to grant an administrative variance up to ten (10) percent of the separation requirements contained herein for replacement of existing or new Communications Facilities, Wireless Facilities or Wireless Support Structures. In making such a determination, the Director shall consider the following:

(a) The permitting standards outlined in this Section.

(b) Any hardship associated with the land, including size, shape, and dimensions of lots, and the presence of protected native habitats as specified by the Comprehensive Plan that affect the configuration of roads on the property.

(c) The risk of creating unfavorable precedent.

(d) The technology in use for Communications Facilities.

(e) The current available technology for Communications Facilities.

(f) Any costs associated with upgrading Communications Facilities.

(g) The risk of confusion that may cause or create delay in response time.

(h) All applicable city, state, and federal regulations.

(2) Fees. To the extent allowed by state law, the City is authorized to set reasonable fees and to process an administrative variance application. Such fees shall be set by resolution. Fees charged will substantially cover the expenditures of administering this Section. No administrative variance shall be granted until such time as all applicable fees are paid.

#### Sec. 23-355.7 Uniform Permit Conditions

(1) Discretion to Include Conditions. The City may include conditions on permits to ensure adherence to the City Code of Ordinances and adequate protection of the public's health, safety and welfare. These conditions may include, but are not limited to, interim or temporary restoration, patching, or resurfacing of the City right-of-way during the construction period.

(2) Uniform Permit Conditions: All permits issued pursuant to this Section shall contain the following conditions:

(a) The Applicant shall remove any rubbish, excess earth, rock, or other debris arising from or associated with any work performed in the City rights-of-way and any other property affected by such work on a frequent or regular basis (or as specifically directed by the City), to the satisfaction of the City, and the expense of the Applicant.

(b) Unless otherwise specified by the City, the Applicant shall illuminate through use of red lanterns, red lights, or red torches any building material, machinery, motor vehicle, equipment, facility, or other object placed in the City rights-of-way in connection with any work performed in the City rights-of-way, between sunset and sunrise. The permittee shall place illumination at a distance of not more than five (5) feet from each other along the width of any affected portion of the City rights-of-way (or as may otherwise be specified by the City) and not more than 15 feet from each other along the length of the affected portion of the City rights-of-way (or as may otherwise be specified by the City).

(c) Any work performed by the Applicant in the City rights-of-way, including restoration, shall be complete by the completion date specified in the permit or as otherwise specified or provided by the City. Upon completion of the work (or at such time as may be specified by the City if construction is not completed by the completion date or construction is

terminated for any reason, including revocation of the permit), the Applicant shall restore the City rights-of-way to a condition which is at least as good as its condition prior to commencement of work. The Applicant shall perform restoration to the City rights-of-way in accordance with any specifications or standards regarding materials or any other matter specified by the City. The City may establish generally applicable restoration standards, which apply unless the City specifies other standards in a particular situation or may establish restoration standards on a case-by-case basis.

(d) If an Applicant fails to restore the City rights-of-way, including any paved surface, curbs, or fixtures, to a condition at least as good as its condition prior to commencement of construction or to complete such restoration work by the completion date specified in the permit or as otherwise specified or provided by the City, the City may perform any work or undertake any other activity which it deems necessary to complete such work and/or restore the City rights-of-way. The Applicant shall reimburse the City for any such costs in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City plus 25 percent of such cost as compensation to the City for general overhead and administrative expense associated with such work and shall pay such costs as directed by the City and not later than 20 calendar days after receipt of a bill.

(e) An Applicant shall guarantee and maintain any City rights-of-way which the City determines has been affected or altered by any excavation in the City rights-of-way or any break or cut in any surface of the City rights-of-way made by such Applicant for the 24 months following the date of completion of restoration of the affected or altered City rights-of-way either by the Applicant or by the City. Such Applicant shall take such action as the City deems necessary to correct any deficiencies in such restoration work within such 24-month period, shall commence such action not later than five calendar days after receipt of notice from the City or such other date as may be specified by the City, and complete such action promptly but not later than the date or any other deadline established by the city. The City may elect to perform any such work itself or undertake any other activity, which it deems necessary to correct any such deficiency during such 24-month period. Such Applicant or person shall be liable to the City for any costs incurred in connection with any such corrective action in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City and shall make pay such costs as directed by the City and not later than 20 calendar days after receipt of a bill.

(f) An Applicant must provide photographic or video documentation of the condition of the City rights-of-way in the area affected by the proposed work post construction.

(g) An Applicant must provide as-built drawings (in such detail and form as may be specified by the City) which show the locations of all the Applicant's existing equipment and facilities in the City.

(h) No Applicant may permanently activate or place in service any Equipment or Facility in the City rights-of-way until such time as the City has approved such activation from the City. The Applicant provide notice of completion of construction of such Equipment or Facility.

#### Sec. 23.355.8 Inspections

The City may conduct any inspection it deems necessary to administer and enforce this Section or any other City Codes, ordinances, or regulations, or to enforce the conditions of any permit granted, or to enforce related regulations or policies. The City may order a work stoppage or revoke a permit, as it deems necessary in the case of failure to comply with the provisions of the Section or the conditions of any permit, or to otherwise protect the public health, safety, and welfare.

#### Sec. 23-355.9 Abandonment

(1) *Discontinuance of Use.* In the event that an Applicant discontinues the use of any communications Facility, Wireless Facility, Small Wireless Facility, Micro Wireless Facility, or Utility Pole for a period of one hundred eighty (180) consecutive days, the City shall deem it to be abandoned. The Administrative Official shall determine the date of abandonment. In reaching such a determination, the Administrative Official may request documentation and/or affidavits from the Applicant regarding the active use of the facility/pole. If the Applicant fails to provide the requested documentation, a rebuttable presumption shall exist that the Applicant has abandoned the Communications Facility. The Applicant shall have ninety (90) days from the date of notice of the Administrative Official's determination of abandonment to do one of the following:

(a) reactivate the use;

(b) transfer ownership to another Applicant who makes actual use; or

(c) dismantle and remove the use.

(2) *Expiration of Permit or Administrative Variance upon Removal.* After the expiration of the ninety (90) day period, or upon completion of dismantling and removal, any permit or administrative variance shall expire.

#### Sec. 23-355.10 Moving, altering, or relocating equipment and facilities.

(1) *Demand by City.* Upon demand by the City, and Applicant at their own costs shall move, alter, relocate, or remove equipment or facilities and restore affected City rights-of-way as may be required by the City and shall complete any such work promptly or by such date as may be specified by the City.

(2) *Emergency Actions.* In the event of an emergency, the City may in its sole discretion, move, alter, relocate, or remove any equipment or facility and restore the affected City rights-of-way. The Applicant shall be responsible for repairing or replacing any affected equipment or facility at its own cost and shall reimburse the City for any costs incurred by the City in moving, altering, relocating, or removing any equipment or facility and in restoring the affected City rights-of-way in a amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facility and restoring the affected City rights-of-way associated with such work and shall make any payment due as directed by the City and not later than 20 calendar days after receipt of a bill.

(3) Failure to Timely Comply with Demand. If an Applicant fails to fully comply with a demand by the City pursuant to the section promptly or by the date specified by the City, the City shall have the right to:

(a) declare that all rights and title to and interest in the affected equipment or facilities are the property of the City; and/or

(b) move, alter, relocate, or remove any such equipment or facilities and restore the affected City rights-of-way as it deems necessary. The Applicant shall reimburse the City for any costs incurred in moving, altering, relocating, or removing any equipment or facilities and restoring the affected City rights-of-way in an amount equal to the sum of the actual cost of moving, altering, relocating, or removing any equipment or facilities and restoring affected City rights-of-way associated with such work and shall make payment due as directed by the City and not later than 20 calendar days after receipt of a bill.

Sec. 23-355.11 Communication Facility Previously in Existence.

Communication Facilities in City rights-of-way legally permitted or installed on or before the effective date this Ordinance was enacted shall be considered a permitted and lawful use. In the event that such Communication Facilities are destroyed or voluntarily removed, any new Communication Facility shall meet the requirements of this Section.

Sec. 23-355.12 Indemnification

Any Applicant who makes any excavation in the City rights-of-way, makes any break or cut in any surface of the City rights-of-way, deposits any earth or other material in the City rights-of-way, places any equipment or facility in the City rights-of-way, modifies any Equipment or Facility, or performs any other work in the City rights-of-way shall defend, indemnify, and hold harmless the City from and against any liability or claim for damages or any other relief, including reasonable costs and expense arising from or in connection with any act or failure to act by such Applicant in the City rights-of-way. Issuance of a permit or inspection of work shall not affect the City's right to indemnification. This section does not constitute a waiver of any defense or immunity as to any third party, which would otherwise be available to the City.

**SECTION 3. Sec 23-355 Yard sales**


Section is renumbered as follows:

Sec. 23-356 Yard sales.

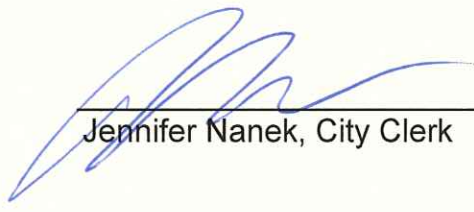
**SECTION 4. Severability:** If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated.

**SECTION 5. Effective date:** This ordinance shall become effective immediately upon its passage by the city commission.

CERTIFIED AS TO PASSAGE this 17<sup>th</sup> day of April 2018.

  
Eugene Fultz, Mayor

ATTEST:

  
Jennifer Nanek, City Clerk