

## **ORDINANCE 18-26**

**AN ORDINANCE RELATING TO DEPLOYMENT OF COMMUNICATIONS INFRASTRUCTURE; AMENDING DIVISIONS 2 AND 3 OF ARTICLE X OF CHAPTER 78 OF PART I OF THE DUNEDIN CITY CODE CONCERNING RIGHT-OF-WAY USE BY UTILITIES AND COMMUNICATIONS SERVICES; CREATING DIVISION 4 OF ARTICLE X OF CHAPTER 78 OF PART I OF THE DUNEDIN CITY CODE CONCERNING RIGHT-OF-WAY USE BY SMALL AND MICRO CELL FACILITIES; AMENDING DIVISION 4 OF CHAPTER 107 OF PART I OF THE DUNEDIN CITY CODE CONCERNING TELECOMMUNICATIONS ANTENNAS AND TOWERS; PROVIDING FOR DEFINITIONS; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Dunedin (the City) owns or holds in public trust certain lands, commonly referred to as right-of-way, for the placement of transportation and utility system infrastructure in, on, under or above such lands; and

**WHEREAS**, Florida Statutes § 362.01 has, since 1927, given telegraph and telephone companies the special powers to install poles, wires and other fixtures on or beside public roads where permission is first obtained from the local government; and

**WHEREAS**, in the ensuing years, the telecommunications industry landscape has changed in substantial ways, on the regulatory, business model, and technology fronts; and

**WHEREAS**, the federal Telecommunications Act of 1996, at 47 U.S.C. § 332, prohibits local government regulations which unreasonably discriminate among providers of telecommunication services, have the effect of prohibiting the provision of personal wireless services, and which regulate based on health or environmental effects of radio frequency emissions; and

**WHEREAS**, the City adopted Ordinance 10-19 on November 20<sup>th</sup> 2000, to update its regulatory scheme for right-of-way management and cell towers and associated wireless service equipment placement within the City; and

**WHEREAS**, in 2003, the Florida Legislature adopted Florida Statutes § 364.0361, which prohibits local governments from directly or indirectly regulating the provision of voice-over-internet protocol services; and

**WHEREAS**, in 2003, the Florida Legislature adopted Florida Statutes § 365.172, which places significant constraints on local governments with respect to the permitting and approval process for cellular towers and antennae; and

**WHEREAS**, Florida Statutes § 337.401 provides certain authority, and limitations on authority, for local governments to manage the occupation of their rights-of-way by utilities; and

**WHEREAS**, on March 22<sup>nd</sup> 2018, the Federal Communications Commission approved an order to streamline the national approval process for deploying small cell technology, which is advanced radio hardware required for use of next-generation 5G cellular networks; and

**WHEREAS**, the Florida Legislature has adopted the Advanced Wireless Infrastructure Deployment Act (the “Act”), codified at Florida Statutes § 337.401(7), which as of July 1<sup>st</sup> 2017, places certain limitations on local government authority to regulate small or micro wireless communications facilities within the public right-of-way and requires local governments to expedite review of permit applications for such facilities; and

**WHEREAS**, the Act authorizes local governments to adopt objective design standards that may require wireless facilities in the right-of-way to meet reasonable location context, color, stealth, and concealment requirements, and spacing and location requirements for ground-mounted equipment; and

**WHEREAS**, passage of the Act, along with the other legal and technological changes in the wireless industry since the City last regulated on this topic, necessitates that the City amend its current cell tower and right-of-way regulations to ensure they comply with the law and properly address new technologies seeking to occupy its right-of-way; and

**WHEREAS**, the City finds that the regulatory revisions adopted hereby will advance the public health, safety, and welfare, and help protect the unique aesthetic qualities of the City, while complying with all state and federal laws, rules and regulations governing communications facilities.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DUNEDIN, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:**

**Section 1.** Divisions 2 and 3 of Article X (Rights-of-Way) of Chapter 78 (Utilities) of Subpart A (General Ordinances) of Part I of the Dunedin City Code is amended as follows:

**DIVISION 2. - USE BY UTILITIES**

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**Sec. 78-511. - Scope of division.**

This division shall govern the use of rights-of-way in the city by utilities.

**Sec. 78-512. - Purpose of division.**

The purpose of this division is to:

- (1) Establish a competitively neutral policy for use of the rights-of-way for the provision of electric service, gas service, cable service, telecommunications service, and other utility service by private companies and providers of utilities other than the city;
- (2) Preserve the public's traditional use of the rights-of-way while allowing access to the rights-of-way to utilities;
- (3) Protect the city's investment in the rights-of-way by providing for payment of nondiscriminatory fees for the compensation of the administrative process in issuing permits for construction in the rights-of-way by utilities;
- (4) Regulate the placement of structures and facilities in the rights-of-way pursuant to Florida Statutes Chapter 166, and the constitution of the state;
- (5) Prescribe reasonable rules for such uses pursuant to Chapters 337 and 364, Florida Statutes, so as to minimize disruption of services in the rights-of-way, to regulate the use of the rights-of-way by utilities, and to regulate the construction, installation, maintenance, repair, removal and replacement of facilities in the rights-of-way;
- (6) Enhance and improve the appearance of the rights-of-way;
- (7) Avoid the dangers associated with traffic and weather of having many overhead and aboveground facilities in the rights-of-way;
- (8) Prevent damage to persons and property, including death, and to avoid unnecessary safety hazards to law enforcement, fire, and EMS personnel during adverse weather conditions;
- (9) Prevent traffic hazards caused by having many construction projects in an area and many trenches opened at the same time;
- (10) Avoid permanent damages and obstructions in the rights-of-way located within the city; and
- (11) Ensure that there is adequate space in the rights-of-way to safely, efficiently, and economically accommodate public utilities supplied by the city.

**Sec. 78-513. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Annual general permit* means an annual permit issued to a utility governing routine maintenance and repair activities and providing expedited customer service as described in section 78-515.

*Antenna* means any outdoor apparatus designed for telephonic, radio or television communications through the sending or receiving of electromagnetic waves.

*Cable service* shall be defined as in 47 USC 522.

*Camouflage* means disguising an object with paint, structural elements or foliage; concealment by means of encasement within or placement upon a different object in a manner which conceals the object so placed.

*City staff* means the director of public works and utilities or her or his designee.

*Collocate* means 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 right-of-way.

*Communications services* means the transmission, conveyance or routing of voice, data, audio, video or any other information or signals, including cable 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 and regardless of the protocol used for such transmission or conveyance.

*Communications services provider* means any person who transmits, conveys, or routes voice, data, audio, video, or any other information or signals, including cable 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. This term does not include any utility holding a valid franchise or registration with the city that provides any of the above-mentioned services for use only by its employees or contractors who construct facilities for that utility in the rights-of-way.

*Conduit* means a device through which a wire, pipe or cable may be channeled.

*Construct* and *construction* mean any repair, alteration, pavement cut, grading, excavation, filling, relocation, replacement, placement of new facilities, or other type of improvement in the rights-of-way.

*Economically unreasonable* means the cost of performing the activity required by this division would place an unreasonable economic hardship on the utility.

*Emergency* means a situation when a repair is needed to be completed immediately because of a danger to individuals or interruption in service.

*Expedited permit* means a permit issued to a utility on an expedited basis to meet state PSC in service standards. Expedited permit requirements are described in section 78-516.

*Facilities* means any device used or to be used for transmission of communications, electricity, gas, television broadcasts, or any other facility used by a utility in the process of delivering service to its customers.

*FCC* means the Federal Communications Commission.

*FDOT* means the Florida Department of Transportation.

*Franchise* means any agreement between a utility and the city for use and occupation of the rights-of-way.

*Greenery* means trees that are protected under section 105-43 of the LDC, and other types of plant life, except for undesirable and exotic plant life.

*New facilities* means any facilities to be placed in the rights-of-way by a utility where no facilities owned by that utility existed prior to the construction. The term "new facilities" expressly excludes replacement of existing facilities and emplacement of parallel facilities in order to provide service to new customers.

*Person* includes individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

*PSC* means the Florida Public Service Commission.

*Public land* means any property owned by the city that is not considered a rights-of-way under state statutes.

*Registrant* means a communications service provider that has registered with the city in accordance with the provisions of division 3 of this article.

*Rights-of-way* means a right-of-way, easement, highway, street, bridge, tunnel or alley owned by the city or in which the city holds a property interest and exercises rights of management or control, and includes the surface, the air space over the surface and the area below the surface. The term does not include parks, open space and other public lands not designated for utility use. The term includes any privately-owned area within the city which has not yet become a public street but is a proposed public street on any subdivision map approved by the city. Any portion of driveways located in or on a right-of-way shall be considered a part of that right-of-way.

*Technically impossible* means that the facility will not function as required if the utility does as required by this division.

*Trench* means an opening in or along the rights-of-way that is dug for the purpose of placing wires, cables, or pipes in the rights-of-way.

*Utility* means any communications service provider, electric utility, gas utility or other utility provider not owned by the city, and any authorized agent of any of the aforementioned.

*Utility pole* means 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.

*Utility service* means any service provided by a utility to the persons within the corporate limits of the city, including, but not limited to, electric service, gas service, cable service, voice communication services, wireless data service, fiber optic service, and internet service.

*Video service provider* means any person who provides transmission of video, audio, or other programming service to a purchaser, including any purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services, and including point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises (not including direct-to-home satellite service), and including basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

*Wireless facility* means 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.

*Wireless infrastructure provider* means a person who has been certificated to provide telecommunications service in Florida and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

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

*Wireless support structure* means 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.

#### **Sec. 78-514. - Permits required.**

- (a) Forty-five days prior to any construction, except that construction which required an annual general permit, an expedited permit or is an emergency, the utility shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, conduit use agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of the particular type of utility service that the utility provides. A utility shall not begin any construction prior to the procurement of the necessary permits.

- (b) No person shall begin any construction within a rights-of-way without first obtaining a rights-of-way construction permit, an annual general permit or an expedited permit from the city. This requirement shall also apply to all contractors and/or utilities performing work within the city's rights-of-way. Such permits are in addition to any other approvals that may be required.
- (c) Construction in the rights-of-way is expressly allowed in the event of an emergency without a permit.

**Sec. 78-515. - Annual general permit.**

A utility shall apply for an annual general permit no later than November 1 of each year, and the effective dates of that permit shall be from January 1 until December 31 of the subsequent year. A utility annual general permit shall be required of utilities existing within the rights-of-way prior to January 1 of the effective year of the permit for the following activities:

- (1) Communications services providers. New customer service within 1,000 feet of existing service:
  - a. Installation of service drops from service location.
  - b. Installation of a new buried distribution cable that does not cross or begin in the pavement.
  - c. Extension of a buried distribution cable that does not cross or begin in the pavement.
  - d. Extension of two-way four-inch conduit system that does not cross or begin in the pavement.
  - e. Addition of a new terminal to existing cable.
  - f. Pulling new underground feeder cables in or on existing permitted conduit or manhole and conduit system.
  - g. Digging of a splice hole to splice a new cable or adding a terminal.
  - h. Digging of a splice hole for cable acceptance testing for quality.
  - i. Digging of a splice hole to change the count of a cable leg for new service.
  - j. Extension of existing aerial distribution cable from existing poles providing other aerial utility service still exists and providing it does not cross the pavement.
- (2) Communications services providers. Maintenance of existing facilities:
  - a. Replacement of existing service drops.
  - b. Replacement/repair of existing terminals.
  - c. Replacement/repair of existing aerial cable providing other aerial utility service still exists and providing it does not cross the pavement.

- d. Replacement/repair of existing underground feeder cable in an existing permitted manhole and conduit system.
  - e. Pumping water out of a manhole to maintain underground cables in conduit system.
  - f. Digging of splice holes to locate and repair air leaks in cables.
  - g. Digging of a splice hole to change the count of a cable.
  - h. Digging of a splice hole to add a side leg off feeder cable.
  - i. Digging of a hole to repair broken conduits.
  - j. Digging of a splice hole for cable acceptance testing for quality.
  - k. Digging of a splice hole to repair wet or damaged cable.
  - l. Digging of a hole to verify the location of buried facilities.
  - m. Removal of facilities no longer needed for services.
  - n. Adjust aerial facilities to meet National Electric Safety Code.
  - o. Any facility relocations required for city improvements.
- (3) Natural gas providers:
- a. Extend and/or replace existing facilities parallel to the rights-of-way provided it does not cross a city road no more than 1,000 feet.
  - b. Install five-eighths-inch and up to one and one-quarter-inch service and connect to the existing main, so long as it does not extend more than 1,000 feet.
  - c. Maintain anodes, rectifiers, and telemetering stations.
  - d. Repair existing facilities providing they do not cross pavement.
  - e. Retire services and mains.
  - f. Install and maintain valves, regulator stations, and insulators.
  - g. Install test stations, gas markers and vents.
  - h. Perform field inspections for conditions and locations of gas facilities.
  - i. Perform miscellaneous minor maintenance related work.
  - j. Install gas facilities in existing casing/pipe.
  - k. Any facility relocations required for city improvements.
- (4) Cable service providers and electric utilities:
- a. Routine maintenance of equipment, including, but not limited to, poles, overhead/underground transformers, streetlights and brackets, wire and cable (aerial or underground), pedestals, switches, arresters, risers, fuses and all associated hardware.

- b. Installation of equipment in order to provide new customer service within 1,000 feet, providing it does not cross the pavement.
  - c. Extend and/or replace existing facilities within 1,000 feet parallel to the rights-of-way, provided it does not cross pavement.
  - d. Replace, repair, or upgrade existing facilities, provided it does not cross pavement and provided it does not exceed 1,000 feet.
  - e. Retire services and mains.
  - f. Install monitoring devices as necessary.
  - g. Perform field inspections for conditions and locations of electric facilities.
  - h. Perform miscellaneous minor maintenance related work.
  - i. Install electric facilities in existing casing/pipe or conduit system.
  - j. Removal of facilities no longer needed for service.
  - k. Adjust aerial facilities to meet National Electrical Safety Code.
  - l. Any facility relocations required for city improvements.
- (5) A utility operating under an annual general permit shall provide the city with weekly locations and schedule of construction in the rights-of-way or shall notify the city within 60 minutes of any construction in the rights-of-way, if no map is provided or if construction is required to facilities not on the weekly map and schedule.
- (6) If a utility is operating under an annual general permit and the construction is not on the provided weekly map and schedule, the utility must notify the city within 24 hours of completion of construction in the rights-of-way pursuant to this subsection.
- (7) A utility must submit the following to obtain an annual general permit:
- a. Name and address of the utility;
  - b. A maintenance of traffic control plan (MOT));
  - c. A statement verifying the applicant's status as a utility authorized by this article and Florida law to install and maintain facilities, and to operate in the public's right-of-way;
  - d. Proof of valid Communications Registration indicating number and names of registrants current certificate of authorizations issued by the State of Florida;
  - e. Repair Guarantee pursuant to section 78-519 (a);
  - f. Valid Certificate of Insurance pursuant to section 78-550;
  - g. Any other information as the city staff shall find reasonably necessary to the determination of whether a permit should be issued under this section.

- (8) Unless deemed an emergency, a utility engaging in construction in the rights-of-way under an annual general permit is subject to every section of this division, with the exception of section 78-517 and subsections 78-518(a)—(c), 78-521(7), (8) and (12) and subsection 78-523(4).

**Sec. 78-516. - Expedited permit.**

- (a) A utility that is required by the public service commission to provide new customer service or guarantees service to new customers within a specified time period that is less than 45 days shall apply for an expedited permit if it is necessary to cross the paved area of the rights-of-way. The utility must apply for the permit as soon as reasonably possible.
- (b) The following items are required to be included in the application for an expedited permit:
  - (1) The name and address of the utility;
  - (2) The name and address of the contractor performing the work, if applicable;
  - (3) An MOT;
  - (4) Type of facilities to be installed;
  - (5) Proposed location of the facilities;
  - (6) Description of the pavement to be crossed;
  - (7) Estimated length of time necessary to complete construction;
  - (8) Unless the utility has an annual general permit, a statement verifying the applicant's status as a utility authorized by this article and Florida law to install and maintain facilities, and to operate in the public's right-of-way;
  - (9) Any other information the city staff shall find reasonably necessary to the determination of whether a permit should be granted under this section.
- (c) If all of subsection (b) of this section is included in the application and is acceptable, the city staff shall approve the expedited permit as soon as possible, in order for the utility to meet its service deadline.
- (d) A utility constructing under an expedited permit shall notify the city at least 60 minutes after arrival at the site that construction has commenced.
- (e) If requested by city staff, within a reasonable time, the utility shall provide a map of the proposed areas of construction in the rights-of-way within the city.
- (f) Unless deemed an emergency, a utility engaging in construction within the rights-of-way under an expedited permit is subject to every section of this division, with the exception of sections 78-517, 78-518(a)—(c), 78-521(4), (9) and 78-523(4).

**Sec. 78-517. - Notice requirements for utility construction in the rights-of-way.**

- (a) The city staff may develop a utility accommodations guide that will provide an outline of the procedures and requirements, as provided in this section, that a utility shall follow in order to be considered for approval from the city.
- (b) Commencement of construction shall take place as soon as possible after issuance of a permit by the city, but not later than 20 days after line location, unless the utility notifies the city staff and provides a good faith reason for not proceeding with construction. The utility shall comply in all respects with the requirements of Florida Statutes Chapter 556, including the state one-call system. If construction of an approved plan is not commenced within three months of the issuance of the necessary permit or a shorter time to be determined by the city staff for good cause, unless the utility provides good cause in writing for the delay, it is presumed that the utility failed to proceed expeditiously, and the city staff shall revoke any permits issued to the utility.
- (c) Nothing in this section shall prevent early completion of construction of facilities. Once commenced, construction within the rights-of-way shall not exceed ten working days, unless otherwise provided for in the permit. On the final day of scheduled construction, an inspection by the city shall take place, and if construction is completed, the permit shall expire and any further construction shall be a violation of this section. If construction is not completed on the final day of scheduled construction, the utility shall provide reasons for the delay, and if the city staff determines that there is good cause for the delay, the permit shall be extended for a reasonable amount of time, as determined by the city staff.
- (d) Within three working days after completion of construction in the rights-of-way, the utility shall notify the city staff of completion via facsimile or via telephone. After notification is received, the permit issued automatically expires.

**Sec. 78-518. - Rights-of-way construction permit; fees.**

- (a) *When required.* Unless operating under an annual general permit, expedited permit or in the case of an emergency, a utility shall obtain a rights-of-way construction permit prior to any construction in the rights-of-way.
- (b) *Procedure for acquiring; denial.* The process for acquiring a rights-of-way construction permit is as follows:
  - (1) The utility shall apply for a permit through the city staff at least 45 days before construction is scheduled to commence, and the utility shall provide:
    - a. The addresses of the property located at the termination points of the proposed work area;

- b. Name and business address of the employees, contractors or other agents retained to perform the work;
  - c. Name and business address of the agent of the utility applying for the permit on the utility's behalf, if the utility is not directly applying for the permit;
  - d. Location of the work area;
  - e. A site map for the construction detailing the proposed work;
  - f. A MOT plan;
  - g. A proposed timetable which contains a detailed description of each phase of construction;
  - h. Unless operating under an annual general or expedited permit, a statement verifying the applicant's status as a utility authorized by this article and Florida law to install and maintain facilities, and to operate in the public's right-of-way; and
  - i. Any other information as the city staff shall find reasonably necessary to the determination of whether a permit should be issued under this section.
- (2) Any plans submitted shall not unreasonably or unnecessarily conflict with, create access difficulty, or otherwise adversely affect the city's use and construction of any of its utilities.
  - (3) The city shall, not less than 15 days before construction is scheduled to commence, issue a decision regarding a permit request. If the permit is not issued, the city shall provide the utility with reasons why the permit was not issued. The utility shall have three days to cure the defects in their application for a permit for construction in the rights-of-way, and if the defects are cured, the city shall approve the scheduled construction.
  - (4) If the utility does not cure the defects in its application for permit, the city shall deny the issuance of the permit. The utility may reapply for a permit at any time after a final denial.
  - (5) A utility shall contact the city engineer at least 24 hours before construction will begin.
  - (6) Right-of-way permits are issued to permit utilities to occupy and work in city right-of-way, and for no other purpose. Therefore, every permit application must clearly identify the utility for which the work is to be performed, and shall contain a statement under penalty of perjury that the person completing and filing the application is an authorized agent of the utility with the authority to submit the application on the utility's behalf. City staff are prohibited from processing permit applications which do not contain the foregoing content.
- (c) *Application fee; exemptions.* Each application shall be accompanied by a permit application fee, which shall be set at a reasonable amount by the city

commission from time to time, to defray the city's costs of filing, engineering and inspection.

- (1) Communications services providers paying the communications services tax pursuant to Florida Statutes Chapter 202 are exempt from this fee.
- (2) A utility possessing a franchise with the city on the effective date of this division is exempt from this fee. Any utility negotiating with the city for a franchise after the effective date of this division shall have the ability to be exempt from the permit fee if the franchise fee represents the maximum fee allowed by law for use of the rights-of-way or if the franchise states that the franchise fee represents full or total compensation for the use and occupation of the rights-of-way.

**Sec. 78-519. - Guarantees required of the applicant.**

- (a) Subject to subsection (c) of this section, the following guarantee is required prior to the approval of an application for a rights-of-way construction permit under this division:

*Repair guarantee.* Prior to November 1 of every year, the applicant shall provide a repair guarantee for the subsequent year of no less than \$5,000.00 to be submitted to the city guaranteeing that the construction has not damaged any utility owned by the city or other property, public or private. The amount of the guarantee will vary according to the scope of construction at the discretion of the city staff. The guarantee may be in the form of an acceptable irrevocable letter of credit or a bond approved by the city attorney, a cashier's check, or cash deposited with the city. Such guarantee will be written in favor of the city. If any damage is discovered, the repair guarantee will be used to repair any damage to utilities owned by the city or other property caused by the utility's construction. If there is no damage to any property caused by the utility found within the city, the repair guarantee may be released to the utility or, at the option of the utility, may be utilized by the utility as the repair guarantee for the subsequent year.

- (b) The following guarantees may be required in the city's sole discretion to accompany an application for a rights-of-way construction permit under this division:
  - (1) *Performance guarantee.* In cases where the estimated cost of the project exceeds \$500.00 and the utility is not currently occupying any rights-of-way in the city, the city may require a performance guarantee to be filed with the application for a permit under this division in an amount equal to 100 percent of the estimated cost of the project. The guarantee may be in the form of irrevocable letter of credit or bond approved by the city attorney, cashier's check, or cash deposited with the city. Such guarantees will be written in the favor of the city and will be conditioned on the completion of the project within the time limit on the face of the permit.

The amount of the performance guarantee shall be based on standard construction cost determining methods and approved by the city staff. No guarantee shall be released until a final inspection by the city staff determines that the installations are acceptable.

- (2) *Maintenance guarantee.* In cases where the estimated cost of the project exceeds \$5,000.00, the city may require a maintenance guarantee to be submitted to the city guaranteeing the improvement for a period of not less than 18 months. The guarantee may be in the form of an acceptable irrevocable letter of credit or a bond approved by the city attorney, a cashier's check, or cash deposited with the city. Such guarantee will be written in favor of the city. The applicant shall request an inspection of the guaranteed facilities three months prior to the expiration of the 18-month guarantee period, and no security shall be released until an acceptable inspection has been conducted by the city staff.
- (c) A utility currently possessing a franchise with the city and with established facilities in the city's rights-of-way as of the effective date of this division shall be exempt from the guarantees of this section. A utility who negotiates a new or renews a franchise with the city in which the utility provides bonds to the city or in which it states that the compensation is full and total compensation for use and occupation of the rights-of-way shall not be required to provide these guarantees.

#### **Sec. 78-520. - Appeals process for denial of permits.**

The utility may submit a notice of appeal to the city clerk no later than 30 days after the denial of the permit by the city staff. Failure to file an appeal in a timely manner shall render the decision final and shall foreclose further review of the matter. The appeal must state with specificity each fact relevant to the appeal, and each provision of city code or state or federal law the applicant contends would be violated by the denial. The city commission shall hear the appeal at the next regularly scheduled meeting of the commission. At the hearing, the applicant is entitled to be represented by counsel, to call witnesses and to introduce any evidence it contends is relevant to the appeal. The city commission shall render a decision on the appeal in writing within 10 days after hearing the appeal. The decision of the commission shall be final. Appeals from the commission's decision may be taken in the circuit court by way of a petition for writ of certiorari as provided for by general law and court rules.

#### **Sec. 78-521. - Construction specifications.**

The following are the construction specifications for use by utilities under this division:

- (1) All construction of any facilities in the rights-of-way by any utility shall be performed in an orderly and professional manner.

- (2) The city reserves the right to limit the work of the utility to assure a minimum of inconvenience to the traveling public and the citizens living and/or working in the area.
- (3) Unless state or federal law or a state or federal agency with jurisdiction over the utility require otherwise, the city may request that a utility locate its facilities within a specific portion of the rights-of-way, so long as the request is not technically impossible or economically unreasonable.
- (4) If any utility seeks to place any new facilities in the rights-of-way, those facilities shall be placed underground, unless federal or state law or a federal or state agency preempt the city's right to require the utility to place facilities underground or unless it is technically impossible or economically unreasonable to do so.
- (5) Conduits shall be stacked or bundled so as to occupy as little space as possible in the rights-of-way.
- (6) Except as otherwise provided by state or federal law or a state or federal agency with jurisdiction over the utility, poles that meet the definition of new facilities shall not be emplaced in the rights-of-way by a utility.
- (7) If any underground facilities are to be constructed under pavement in the rights-of-way, the utility constructing such facilities shall use a boring technique. If boring is economically unreasonable or technically impossible, the utility may seek approval from the city staff to cut any pavement or excavate in order to construct facilities. Pavement shall not be cut unless no other reasonable construction alternatives are available and no alternative exists as to the desired route that will avoid the cutting of the pavement.
- (8) If there is an active plan to resurface any rights-of-way within 12 months, a utility may cut the pavement of a rights-of-way despite the provisions of subsection (6) of this section.
- (9) All construction of facilities shall be pursuant to section 78-522, unless otherwise approved by the city, or in the event of an emergency.
- (10) Prior to the commencement of any construction, the utility shall obtain all required permits from the city engineering, building, or other appropriate departments prior to any construction being performed in the city's rights-of-way. Permits will be issued to a utility or its qualified contractors only on approved plans, which shall be submitted on or before the request for construction permit. All work shall be done in accordance with the city's specifications.
- (11) The city reserves the right to require relocation and construction of such portions of the utility's facilities as public safety may dictate.
- (12) An inspector hired by the city shall be present at various times during construction of facilities in order to ensure compliance with any permits or approvals issued. The utility and/or its contractor is responsible for safety and is required to meet all federal, state, and local construction standards.

- (13) At all times, at least one individual performing construction on facilities shall speak English.
- (14) All utilities, not more than 20 days prior to commencement of construction, shall locate their facilities located in the path of construction. At the city's discretion, the city may require the utility to perform any physical line location. At the discretion of the city, if facilities are impossible or extremely difficult to locate through the customary techniques, the city may require the use of the most precise locational technology available, including, but not limited to, the use of Global Positioning System (GPS) or more effective or accurate technology.
- (15) If any terminals, cross connect boxes, pedestals, junction boxes or other like facilities are to be placed in the rights-of-way, they shall be placed on the property lines as they exist at the time of construction of the junction boxes or as close to the property lines as possible of adjacent private property. Unless otherwise required by state or federal law or state or federal agency, and unless technically impossible or economically unreasonable, all new construction of terminals, cross connect boxes, pedestals, junction boxes or other like facilities shall be placed at or below grade. If state or federal law or state or federal agency requires a different method due to rate regulation, at the option of the city, the city may require the undergrounding of the junction box at the city's expense, pursuant to state or federal law or state or federal agency. If the new terminals, cross connect boxes, pedestals, junction boxes or other like facilities are placed above grade, the utility shall provide some camouflage reasonably related to the size of the facility, which shall be approved by the city during the permitting process. The smallest and least obtrusive terminals, cross connect boxes, pedestals, junction boxes or other like facilities shall be exclusively used.

**Sec. 78-522. - Emergencies.**

- (a) If an emergency arises, a utility may repair any facilities affected without obtaining the usual necessary permits.
- (b) The following sections do not apply in an emergency: 78-514; 78-515; 78-516; 78-517; 78-518; 78-519, 78-521(2), (3), (4), (5), (9), (10) and (14); 78-523; 78-524; 78-525; and 78-526. All other sections of this division are applicable in the case of an emergency.
- (c) If a utility begins any construction in the rights-of-way due to an emergency, the utility or its designee shall notify the city within 60 minutes of arrival on the site.

**Sec. 78-523. - Collocation and cooperation requirement.**

Collocation and cooperation requirements are as follows:

- (1) All utilities shall occupy one trench, unless technically impossible or economically unreasonable. If a utility cannot occupy the same trench, that utility shall create a new trench into which all utilities thereafter installed shall collocate unless technically impossible or economically unreasonable or until there is no space remaining for any additional utilities.
- (2) Unless technically impossible, a communications services provider shall install its facilities within an existing conduit, if space is available in an existing conduit and agreeable terms can be reached between the owner of the conduit and the communications services provider seeking to enter onto the conduit. The owner of a conduit may reserve inner ducts and conduits for future use, and if the only available space is a conduit reserved for future use or inner ducts reserved for future use, it is deemed that there is no space in the existing conduit. If there is no space in an existing conduit, a communications services provider may construct a new conduit or direct bury its facilities within an existing trench, as provided in subsection (1) of this section. The communications services provider may charge a reasonable rental fee or divide the cost of construction and maintenance pro rata with any new communications services providers required by this division to locate within its conduit.
- (3) If there is sufficient space available in an existing conduit, and it is not technically impossible to place the facilities in the conduit and no reasonable arrangement can be made with the owner of the conduit for use of that space, the utility seeking to locate its facilities in that portion of the rights-of-way may apply for a variance to the city commission. A variance may be granted only if the utility owning the conduit refuses to charge a reasonable rental fee or construction and maintenance fee or if the utility owning the conduit places unreasonable conditions or restrictions upon the utility seeking to enter the rights-of-way.
- (4) A utility shall install its facilities simultaneously with other utilities whenever possible. The city shall notify in writing all other utilities currently located in a portion of the rights-of-way that a utility has submitted an application for a right-of-way construction permit or expedited permit.
  - (a) Any utilities wishing to perform construction in that portion of the rights-of-way in which another utility is planning construction, under an annual general or expedited permit, in coordination with the utility applying for a rights-of-way construction or expedited permit shall notify the city staff at least 48 hours prior to the scheduled date for commencement of construction.
  - (b) Any utilities wishing to perform joint construction in a portion of the rights-of-way for which another utility is planning construction, under a rights-of-way construction permit, shall notify the city staff within five business days of receipt of the notification.
  - (c) The city shall issue a schedule of construction in writing to all utilities wishing to perform joint construction under rights-of-way construction permits at the issuance of the permits.

- (d) The city shall amend the schedule as needed to accommodate those utilities that are engaging in construction under the annual general or expedited permits.
- (5) A utility unwilling to collocate its facilities as required in this section shall not be issued a permit.

**Sec. 78-524. - Retrospective undergrounding.**

- (a) It is the desire of the city to eliminate overhead utility facilities. In furtherance of this goal, the city and all utilities currently owning or using facilities in the rights-of-way shall attempt to create an undergrounding agreement acceptable to all parties involved. The city and the utilities currently owning or using facilities in the rights-of-way shall negotiate in good faith, and the utilities currently owning or using facilities in the rights-of-way shall cooperate with each other to the extent possible in creating this undergrounding agreement.
- (b) In furtherance of the city's goal, the city shall notify all utilities currently owning or using facilities in the rights-of-way and any utilities operating under a franchise or registration, who have not yet placed their facilities in the rights-of-way at least 45 days prior to the opening of a trench to construct city-owned utilities. The affected utilities may place underground facilities for current or future use in the open trench if the city staff approves a permit to do so.

**Sec. 78-525. - Damage or injury caused by utility construction in the rights-of-way.**

- (a) If a utility, during construction of facilities under any of the permits issued pursuant to this article or as otherwise authorized by this article causes damage to pavements, sidewalks, driveways, facilities owned by the city, facilities owned by other utilities, or other property, public or private, the utility shall notify the city and the owner of the damaged property, if not the city, within 24 hours of such damage. Pursuant to Florida Statutes § 337.401(2), the permit holder which caused the damage or its authorized agent shall, at its own expense and in a manor approved by the city, replace and restore such places to an as good or better condition than existed before such work was commenced within a reasonable time period acceptable to the city staff. If the owner of the damaged property requests that the owner repair the damage caused by the permit holder, and repairs the damage in a reasonable time period acceptable to city staff, the permit holder shall reimburse the owner for the reasonable cost and labor of repairs resulting from the damage. The permit holder shall further maintain all such restoration in the condition approved by the city for a period of one year following such restoration.
- (b) In addition to the foregoing, and pursuant to Florida Statutes § 337.402, should any public road be damaged or impaired in any way because of the installation, inspection, or repair of a utility located on such road, the owner of the utility

shall, at its own expense, restore the road to its original condition before such damage. If the owner fails to make such restoration, the city is authorized to undertake the work and to charge the cost thereof against the owner.

- (c) At the time a utility submits its application for an annual general permit, or if the utility does not apply for an annual general permit, prior to being issued a site-specific permit, that utility shall sign an acknowledgment stating the following:

If, during construction of a utility's facilities by the utility or its agents, a claim arises against the city as a result of the utility's negligent or intentional acts, the utility will indemnify, defend and hold harmless the city against all such claims.

- (d) The city may require a utility to present proof of insurance prior to the commencement of construction in the rights-of-way.
- (e) To ensure that property owners are not required to pursue subcontractors and sub-subcontractors in order to have their damaged property repaired, the utility for which the work is being performed shall be deemed to be a co-permit holder, along with its contractor and any of its contractor's subcontractors. Any property owner who is not afforded the repair work required by this section is authorized to file a civil action in the appropriate court to enforce the terms of this section.

**Sec. 78-526. – Trimming, maintenance or removal of greenery.**

- (a) If a utility seeks to permanently or temporarily remove any greenery from the rights-of-way, the utility seeking to remove the greenery shall consult with the city's arborist.
- (b) Any permanent removal of greenery from rights-of-way or public land is specifically prohibited unless it is necessary. Permanent removal of greenery is presumed unnecessary and specific facts regarding the necessity of removal shall be provided to the arborist. For purposes of this subsection, necessity shall mean that the wires or cables cannot pass clearly without any branches or roots touching them and that the branches or roots threatening to touch the wires or cables are major structural branches or roots that may cause a safety hazard or the death of the tree if removed.
- (c) If any utility seeks to temporarily remove greenery from rights-of-way or public lands to install underground facilities or otherwise construct facilities, the utility shall submit a plan to the city's arborist that proposes to restore the disturbed area to its previous state, or as close as possible to its previous state, to the city arborist. If the plan is acceptable, the utility may remove the greenery and restore the area according to its plans. If the plan is unacceptable, the city arborist shall state the defects in the plan within 30 days of the proposed construction. If the utility resubmits a plan for restoration correcting the defects,

the city arborist shall approve the plan, unless the city has inappropriately applied its requirements.

- (d) If any utility finds it necessary to trim trees or greenery in the rights-of-way or on public land in order to avoid contact between wires or cables and branches, the utility shall notify the city arborist at least 24 hours prior to the proposed trimming. At the option of the city, the trees or greenery may be trimmed either by the city at the expense and under the supervision of the utility or by the utility under the supervision of the city. When authorized, tree trimming of trees and greenery shall be limited to the area required for clear cable passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. Any greenery may not be trimmed in a manner that would adversely affect its natural growth pattern or cause the tree to appear unnatural. The utility shall be responsible for any and all damages to any greenery as a result of trimming or to the land surrounding any tree or greenery.
- (e) To the extent the City requires a utility, as a condition of permitting the installation of utility infrastructure in the right-of-way, to install trees, shrubs or other greenery, the utility shall continue to maintain such greenery to the standards set forth in the permit and the city's landscaping code.
- (f) The provisions of division 6 of chapter 105 of the LDC shall be complied with in their entirety.

**Sec. 78-527. - Relocation required if requested.**

- (a) If a utility facility that is placed upon, under, over, or within the right-of-way limits of any city road is found by the city to be unreasonably interfering in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of such road or rights-of-way, the facility owner shall, upon 30 days' written notice to the owner or its agent by the city initiate the work necessary to alleviate the interference, including by relocating or removing its facilities, at its own expense, except in those circumstances set forth in Florida Statutes § 337.403(a)-(j).
- (b) The city shall notify all affected utilities in writing at least 90 days prior to construction. The city shall require the utilities to respond within 30 days of receipt of the notice, stating the amount of time, in days, the utilities estimate it will require to remove their facilities. Depending on the scope of the project, the city may grant additional time to the utilities to respond to the notice.
- (c) Pursuant to the information received from the affected utilities, the city shall prepare a removal and relocation plan in writing, and all affected utilities shall remove or relocate their facilities according to that plan. If any facilities are relocated pursuant to this paragraph, the utility shall comply with this article in its entirety, except that the utility shall not need to apply for a permit.

- (d) If a utility fails to comply with an order of the city to relocate its facilities or otherwise to alleviate the interference as required by this section, and the city must undertake the work at its own expense, the city shall first provide the utility owner's chief executive officer or other agent designated by the utility notice that the city will perform the work. Pursuant to Florida Statutes § 337.404, after the work has been completed at the city's expense, the city shall present an order to the utility requiring the payment of the cost of the work, and affording the utility a reasonable time, which shall be not less than twenty (20) days and not more than thirty (30) days, to appear before the city clerk to contest the reasonableness of the order. A utility which does not make an appearance within this time, the order is deemed final. A final order shall constitute a lien on any property of the utility owner and may be enforced in the manner set forth in Florida Statutes § 337.404(2).

**Sec. 78-528. - Removal of facilities not in use.**

- (a) If any utility does not utilize any facilities or portion thereof placed in the rights-of-way within 12 months of location therein, upon written request, the utility shall provide proof to the city staff that the facilities will be used within three months or a written statement that those facilities are reserved for future use. If the utility does not provide such proof, the utility shall remove those facilities not utilized when construction of facilities by another utility takes place in that portion of the rights-of-way where the facilities to be removed are located.
- (b) If any utility abandons any facilities located within the rights-of-way, the utility shall notify the city manager within 60 days of the intent to abandon the facilities. When a notice of intent to abandon facilities is received, the utility has the option of leaving those facilities in place and giving the city a bill of sale for such facilities or removing the facilities. The city shall notify the utility within 60 days from the receipt of the notice of intent to abandon whether the city will purchase the facilities or require them to be removed. Failure of such notice shall not obligate the city to purchase the same and the city may renotify the utility of its preferred alternative at a later date. The abandoned facilities shall be removed at the expense of the utility when construction of facilities by another utility takes place in that portion of the rights-of-way where the abandoned facilities are located.

**DIVISION 3. - USE BY COMMUNICATIONS SERVICES PROVIDERS**

**Sec. 78-542. - Purpose of division.**

The purpose of this division is to:

- (1) Establish a competitively neutral policy for the use of the rights-of-way for the provision of communications services, as defined in Florida Statutes § 202.11.
- (2) Protect the city's investment in the rights-of-way by providing rules and regulations governing communications service providers' access to and use of the rights-of-way by communications service providers to ensure and protect the public health, safety and welfare.
- (3) Regulate the placement of structures and facilities in the rights-of-way pursuant to Florida Statutes § 166.01.
- (4) Prescribe reasonable rules for such uses pursuant to Florida Statutes §§ 337.401 and 364.0361, so as to minimize disruption of services in the rights-of-way, regulate the use of the rights-of-way by communications service providers, and regulate the construction, installation, maintenance, repair, removal and replacement of facilities in the rights-of-way.
- (5) Preserve the public's traditional use of the rights-of-way while allowing access to the rights-of-way to utilities.

**Sec. 78-543. - Registration for construction, installation, maintenance, repair, expansion, or location in rights-of-way.**

- (a) A CSP that desires to construct, install, maintain, repair, expand, or locate any permanent or temporary facilities in, under, over, on or across any rights-of-way in the city shall first register with the city in accordance with the terms of this division. When a CSP occupies or uses the rights-of-way in any manner except to construct, install, maintain, repair, expand, or locate a permanent or temporary facility, the provisions of this division may not apply and the CSP may be subject to other ordinances regulating the occupation or use of the rights-of-way. A CSP which does not have a physical presence in the rights-of-way is not required to register under the provisions of this division.
- (b) Subject to the terms and conditions contained in this division, a registrant may construct, install, maintain, repair, expand, remove, or locate permanent or temporary facilities in, on, over, under, on and across the designated rights-of-way.

**Sec. 78-544. - Nature of registration.**

A registration under this division shall not convey title, equitable or legal, in the rights-of-way. This registration gives a registrant the authority to occupy the rights-of-way only with communications services facilities; if a registrant seeks to enter the rights-of-way of the city for any other purpose, further approval of the city is required. Registration does not excuse a CSP from obtaining appropriate access or pole attachment agreements before locating its facilities on another person's facilities or other equipment

located in the rights-of-way. Registration does not excuse a CSP from complying with all applicable city ordinances, including this division.

**Sec. 78-545. - Registration; effectiveness.**

- (a) *Registration required.* A CSP desiring to construct, install, maintain, repair, expand, remove, or locate facilities in, on, over, under, on and across the designated rights-of-way shall file a registration with the city, which shall include the following information:
  - (1) Name of the applicant.
  - (2) Name, address and telephone number of applicant's primary contact person in connection with the registration.
  - (3) Evidence of insurance coverage required under this division.
  - (4) The number of the registrant's current certificate of authorization issued by the state public service commission or the Federal Communications Commission.
- (b) *Review by the city; notification of effectiveness or non-effectiveness.* The city will review the information submitted by the applicant. Such review will be by the city manager or her or his designee. If the applicant submits information in accordance with subsection (a) of this section, the registration shall be effective and the city shall notify the applicant of the effectiveness of the registration in writing. If the city determines that the information has not been submitted in accordance with subsection (a) of this section, the city shall notify the applicant of the non-effectiveness of the registration, and reasons for non-effectiveness, in writing. The city shall so reply to an applicant within 30 days after receipt of registration information from the applicant.
- (c) *Cancellation of registration by registrant.* A registrant may cancel a registration upon 60 days' written notice to the city noticing that it will no longer own, place, or maintain facilities in the city and will no longer need to obtain permits to perform work in the rights-of-way. A registrant may not cancel a registration if the registrant continues to place, maintain, or own any facilities in the rights-of-way.
- (d) *No priority in registration.* Registration does not establish any priority for the use of the rights-of-way by a registrant or any other registrants.
- (e) *Renewal of registration.* All registrants shall renew their registration with the city no later than November 1 for the subsequent calendar year. Registrants shall notify the city within 30 days of any change in registration information. Registrations are expressly subject to any future amendment to or replacement of this division and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted during the term of the registration. If the city finds that nonrenewal of registration was a good faith error on the part of the CSP, the only penalty for nonregistration shall be the non-issuance or

revocation of permits to work in the rights-of-way; otherwise section 78-552 shall apply.

- (f) *Permits.* In accordance with applicable city codes and ordinances, a permit may be required of a CSP that desires to erect, construct, install, maintain, place, repair, extend, expand, remove, or locate permanent or temporary facilities in the rights-of-way. For CSPs, an effective registration shall be a condition of obtaining a permit. An effective registration with the city shall not be construed to mean that permit requirements shall not apply or that such requirements have been satisfied by the registrant.

**Sec. 78-546. - Transfer of registration.**

If the registrant transfers or assigns its registration incident to sale or other transfer of any of the registrant's facilities located within the rights-of-way within the city, the transferee or assignee shall comply with the terms of this division as of the effective date of the transfer or assignment. No later than 20 days after the effective date of the transfer or assignment, the transferee or assignee shall register in its own name in accordance with section 78-545(a).

**Sec. 78-547. - Suspension of permits.**

Subject to section 78-549, the city may suspend a permit for work in the rights-of-way for one or more of the following reasons:

- (1) Violation of permit conditions, including conditions set forth in this division or other applicable city codes, ordinances, or regulations governing use of the rights-of-way;
- (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
- (3) Failure to relocate or remove facilities as may be lawfully required by the city;  
or
- (4) Any other unlawful activity that may affect the city or the rights-of-way.

**Sec. 78-548. - Appeals.**

Final, written decisions of the city manager denying an application for registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the city manager within 30 days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The city commission shall hear the appeal and may affirm or reverse the decision of the city manager. If the decision is reversed, the city manager shall reevaluate the registration information provided, pursuant to section 78-545.

**Sec. 78-549. - Construction in the rights-of-way.**

- (a) *Permits to construct.* The registrant may construct the facilities in the rights-of-way specifically identified in permits obtained in accordance with applicable provisions of this division or other applicable city codes and regulations. The permission to use and construct in the rights-of-way is only for those areas specifically identified in the permit.
- (b) *Compliance with city codes and regulations.* The registrant shall comply with all applicable city codes and regulations in constructing the facilities in the rights-of-way, including, but not limited to, engineering regulations, permit requirements, contractor licensing requirements, landscaping codes, fire codes and zoning codes.
- (c) *Registrant must obtain applicable permits.* The registrant shall not commence any construction in the rights-of-way until all applicable permits have been issued by the city or other appropriate authority, subject to division 2 of this article pertaining to use of rights-of-way by utilities.
- (d) *Construction standards.* The registrant shall construct, maintain, install, remove and/or repair the facilities in the rights-of-way in compliance with all applicable construction standards as established by local, state or federal law and in conformance with the city codes and regulations. The registrant shall use and exercise due caution, care, skill and expertise in performing work in the rights-of-way and shall take all reasonable steps to safeguard work site areas.
- (e) *Maintenance.* A registrant shall maintain its facilities in the rights-of-way in a safe condition.

**Sec. 78-550. - Insurance.**

A registrant shall maintain in full force and effect general liability insurance acceptable to the city, which specifically covers all exposures incident to the intent and responsibilities under this division. The registrant shall add and maintain the city as an additional insured on its general liability insurance. The document shall indicate that the city, a political subdivision of the state, is an additional insured as its interests may appear; and shall also provide that insurance shall not be canceled, limited, or nonrenewed until after 30 days' written notice has been received by the city; however, insurance may be canceled and replaced with a policy that continues to meet the requirements of this division. A registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan. The registrant shall agree to notify the city, or indicate on the certificate of insurance, whether self-insurance is relied upon when a self-insured retention or deductible exceeds \$100,000.00. If a communications services provider is self-insured, in order to assure that the insurance requirements are being met, the city reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statements.

**Sec. 78-551. - Indemnification.**

- (a) In matters related to any actions or activities of the communications services provider arising under this division, the communications services provider shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city, its officers, boards, commissions, charter officials, employees, agents, and volunteers against any and all claims, suits, actions, proceedings, liabilities, and judgments for damages, including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the city in connection therewith, or equitable relief regardless of whether the act or omission complained of is authorized, allowed or prohibited by this division. The communications services provider's indemnification of the city shall include, but not be limited to, all claims, suits, actions, proceedings, liabilities, and judgments for damages arising out of the following:
- (1) To persons or property, in any way arising out of or through the acts or omissions of the communications services provider, its officers, agents, employees, servants, contractors, subcontractors, consultants or volunteers or to which the communications services provider's negligence shall in any way contribute;
  - (2) Arising out of any claim of invasion of the right of privacy, for defamation of any person, firm, or corporation, or the violation or infringement of any copyright, trademark, trade name, service name, patent, or of any other right of any person, firm or corporation; and
  - (3) Arising out of the communications services provider's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the communications services provider in the conduct of its business under this division.
- (b) The city shall be responsible for its own negligence, including that of its elected officials, charter officials, officers, and/or employees resulting from activities arising from its sole responsibilities under this division, but only to the extent provided by the waiver of sovereign immunity in Florida Statutes § 768.28.
- (c) The communications services provider shall have the duty to defend the city in any action to which the city is a part which fails to allege specific actions by the city resulting from its activities under this division, whether or not the same claims damages for which the city is immune under federal or state law, including, but not limited to, Florida Statutes § 768.28.
- (d) The city shall give the communications services provider prompt notice of the making of any claim or the commencements of any action, suit, or other proceeding covered by the provisions of this division. Nothing in this section shall be deemed to prevent the city from cooperating with the communications services provider in participating in the defense of any litigation by its own counsel at its sole cost and expense.

- (e) Nothing in this section shall be construed to abrogate any immunity under federal or state law, including, but not limited to, 47 USC 555a or Florida Statutes § 768.28.

**Sec. 78-552. - Penalties for violation of article.**

- (a) Any violation of this article shall be punishable by a \$500.00 fine. Each day a violation is in place is a separate violation. Fines are not imposed and do not accumulate for any violation under appeal, pursuant to section 78-548.
- (b) In addition, the city can pursue all other lawful action, including filing a complaint with the state public service commission advising of a violation of this division, filing an injunction in the circuit court to enforce the terms of this division or registration or to enjoin the use of the rights-of-way, filing an action in federal court to enforce payment of just compensation pursuant to the Telecommunications Act, pursuing action before the code enforcement board to impose daily fines, and/or denying permits or development orders for other projects or use of the rights-of-way by the utility. These remedies shall be cumulative.

**Section 2.** Division 4 of Article X of Chapter 78 of Part I of the Dunedin City

Code is hereby created as follows:

**DIVISION 4. – SMALL AND MICRO CELL SITES IN CITY RIGHT-OF-WAY**

**Sec. 78-560. – Definitions unique to division.**

For purposes of this part, the following terms shall have the following meanings:

**MICRO WIRELESS FACILITY** – 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.

**SMALL WIRELESS FACILITY** – 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.

**Sec. 78-561. – Preemption of city authority.**

Pursuant to Florida Statutes § 337.401(7)(c) and (d), the city may not:

- (a) prohibit, regulate, or charge for the collocation of small wireless facilities in the right-of-way;
- (b) require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;
- (c) directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the city, including reserving fiber, conduit, or pole space for the city;
- (c) require an applicant to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application;
- (d) limit the placement of small wireless facilities by minimum separation distances.

**Sec. 78-562. – Small wireless facility height and design provisions.**

- (a) The height of a small wireless facility shall be limited to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole is limited to the tallest existing utility pole located in the same contiguous right-of-way as of July 1<sup>st</sup> 2017, measured from a grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole shall be no greater than 50 feet, inclusive of the height of the small wireless facility attached thereto.
- (b) A new utility pole or similar vertical structure to support a small wireless facility installed in public right-of-way must be designed to afford collocation of at least three antennae, and must be of a design which will limit the added visual blight the installation will cause, and/or which will provide alternative functionality to enhance public safety, such as by incorporation of decorative lighting elements.

**Sec. 78-563. – Small wireless support facilities right-of-way permit process.**

- (a) A permit shall be required prior to the installation in the public right-of-way of a small wireless facility or a utility pole designed to support a small wireless facility. Except as preempted or limited in this part, such permit applications shall be applied for under the same process, and shall be reviewed under the same standards, and shall be subject to the same conditions, as applies to all other utilities seeking right-of-way permits under this article, including but not limited to provisions on insurance coverage, indemnification, performance bonds, security funds, abandonment, landscaping, undergrounding requirements, and city liability. The city staff shall approve a complete application unless it does not meet the city's applicable codes.
- (b) In addition to denial for a failure to satisfy the standards and conditions referenced in subsection (a) above, a permit application for the collocation of a small wireless facility in the right-of-way submitted under this part may be denied if the proposed collocation:
  - (1) Materially interferes with the safe operation of traffic control equipment.
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - (4) Materially fails to comply with the 2010 edition of the FDOT Utility Accommodation Manual.
  - (5) Fails to comply with applicable codes.
- (c) At the applicant's discretion, an applicant seeking to collocate small wireless facilities within the city may file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities.

**Sec. 78-564. – Permit review process.**

- (a) Permit applications submitted under this part must, in addition to the permit information required in this article, contain an email address the applicant has designated for use as the official means for the city to communicate with it concerning the application process.
- (b) Permit applications for the placement of a utility pole designed to support a small wireless facility must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless

services provider to provide service within 9 months after the date the application is approved.

- (c) For permit applications submitted under this part, the city staff must, within 14 days after receiving an application, determine and notify the applicant by electronic mail as to whether the application is complete. If the application is found to be incomplete, the city staff must specifically identify the missing information. An application is deemed complete if the city staff fails to provide notification to the applicant within 14 days.
- (d) A complete application must be reviewed, and either approved or denied, within 60 days after receipt of a complete application. Applications not approved or denied within that period shall be deemed to be approved unless the applicant mutually agrees to extend the review period in writing.
- (e) The city staff shall notify the applicant of approval or denial by electronic mail. If the application is denied, the city staff must specify in writing the basis for the denial, including the specific code provision(s) on which the denial was based, and send the documentation to the applicant by electronic mail on the day the application is denied. To the extent the application is denied due to deficiencies within the application, the applicant shall have 30 days after the notice of denial is sent to cure the deficiencies identified and to resubmit the application. The city staff shall, within 30 days after any such resubmission, grant or deny the application. Any denial of a resubmitted application shall be limited to the deficiencies cited in the initial denial. Resubmitted applications not acted on within 30 days shall be deemed approved. If the applicant fails to resubmit the application within the 30 days provided for above, the application shall be deemed to have been withdrawn.
- (f) A permit approved under this section shall be effective for 1 year unless extended further by the city.

**Sec. 78-565. – Exemptions from permitting.**

- (a) The following actions with respect to small wireless facilities shall not require a permit:
  - (1) Routine maintenance;
  - (2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size, or
  - (3) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services

provider authorized to occupy the rights-of-way and who is remitting communications services tax under Florida Statutes Chapter 202.

- (b) Notwithstanding the foregoing, an application for right-of-way work shall be required whenever excavation, closure of a sidewalk, or closure of a vehicle lane are required.

**Sec. 78-566. – Collocation on city poles.**

- (a) Collocation of small or micro wireless facilities on city-owned poles pursuant to agreement between an applicant and the city is authorized.
- (b) Such collocations on city poles are subject to the following limitations:
  - (1) The city may not enter into an exclusive arrangement with any person for the right to attach equipment to its poles.
  - (2) The rates and fees charged by the city for such collocations on city poles must be nondiscriminatory, regardless of the type of wireless services provided by the collocated facilities.
  - (3) The rate to collocate on city poles shall be no greater than \$150 per pole annually.
- (c) Should the city receive a request to collocate a small or micro wireless facility on a city pole, it must, within three months after receipt of such request, make available to the requestor its rates, fees and terms for such collocation. Such rates, fees and conditions shall not conflict with the limitations and conditions set forth in Florida Statutes § 337.401(7)(f)(5)a-d.

**Section 3.** Division 4 of Chapter 107 (Supplemental Use Regulations) of Subpart B (Land Development Code) of Part I of the Dunedin City Code is hereby amended as follows:

**DIVISION 4: - MISCELLANEOUS USE STANDARDS**

**Sec. 107-43 - Telephone, cable tv and information services access.**

In order to obtain final design review site plan approval, plat approval, or building permit approval, the owner or developer of the property shall dedicate an easement to the city for the use of any telephone, cable television and information service provider, or other technologies requiring physical access in a manner that will allow access by all residents of the project or development to such services. In the case of new construction

or property development where such information service facilities are required to be placed underground, the property owner shall give all appropriate providers reasonable notice of the particular date upon which open trenching will be available for installation of appropriate service facilities.

**Sec. 107-44 - Communications antennae and towers.**

**Sec. 107-44.1 – Purpose.**

The purpose of this division is:

- A) To establish general guidelines for the location of wireless communications antennae (WCA) and wireless communications support facilities (WCSF).
- B) To prohibit where lawful the location of WCSFs in residential areas.
- C) To limit WCSFs to zoning districts outlined within Table 103-60.1-Use Matrix.
- D) To minimize the total number of towers in the city.
- E) To allow the use of existing structures to support provider WCAs as an alternative to new tower construction.
- F) To require the placement of stealth antennae and towers.
- G) To require the joint use of towers through co-location of antennae.
- H) To encourage design and construction of WCAs and WCSFs which minimize adverse visual impacts while enhancing the ability of wireless communications services providers to provide such services within the provider's service area quickly, effectively and efficiently.
- I) To provide for the deployment of small and micro wireless facilities and associated support structures in a manner which preserves the city's aesthetic and minimizes visual blight.

**Sec. 107-44.2 – Applicability.**

- A) This division shall apply to all communication service provider WCSFs and WCAs utilized to provide commercial communications services. The requirements set forth in this division shall govern the height, design and placement of WCAs and WCSFs. The installation of a WCA on a building that is nonconforming in terms of current height or use limitations shall not be deemed to constitute the expansion of the nonconforming use.
- B) The following items are exempt from the provisions of this article; notwithstanding any other provisions contained in city land development regulations:
  - 1. Non-commercial, amateur radio antennas as provided for in Florida Statutes § 166.0435.

2. Satellite earth stations that are one meter (39.37 inches) or less in diameter in all residential districts and two meters or less in all other zoning districts and which are no greater than 20 feet above grade in residential districts and 35 feet above grade in all other zoning districts.
  3. A government owned WCA or WCSF, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the city; except that such facility must comply with all federal and state requirements. No WCA or WCSF shall be exempt from the provisions of this ordinance beyond the duration of the state of emergency.
  4. A temporary commercial, WCA or WCSF, upon the declaration of a state of emergency by federal, state or local government, or determination of public necessity by the city manager or his or her designee and approved by the appropriate building official; except that such facility must comply with all federal and state requirements. The temporary WCA or WCSF may be exempt from the provisions of this article up to three months after the duration of the state of emergency.
  5. Antenna support structures, antennas, and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities that are licensed by the FCC shall be regulated in accordance with federal and other applicable local regulations.
- C) Pursuant to Florida Statutes § 365.172(b)1 and 5, the city may, in acting upon applications for wireless communications facilities, consider all applicable city land development and zoning regulations including, but not limited to, regulations addressing aesthetics, landscaping, land use based location priorities, structural design, and setbacks, as well as the applicant's compliance with construction standards adopted by the city under Florida Statutes Chapter 553 which are applicable to all similar types of construction.

**Sec. 107-44.3 - Location of WCAs.**

- A) Antennae and supporting mechanical equipment may be installed on or attached to existing structures, such as wireless or water towers, buildings, light or power poles, or other freestanding structures in areas zoned for multifamily, institutional, office, commercial, industrial, or municipal public lands uses. Such facilities shall add no more than 20 feet in height above the existing structure and shall be a neutral color similar to that of the supporting structure. If, and only if, the Telecommunications Act of 1996 or other applicable law requires the placement of a WCSF or a WCA in a single-family residential district will a WCSF or a WCA be permitted in a single-family residential district.

- B) Wireless communications facilities may be installed on or attached to city property if the provider or facility owner obtains a lease or license agreement with the city.
- C) It is recognized that different wireless communications services and providers have distinct geographical areas in which they must be located to provide their service, but it is also recognized that there is usually some flexibility in the type of antenna and support structure on which the antenna is to be located. Therefore, before a new WCA can be approved, and as long as the city determines that in the case of co-location the co-location would not adversely impact the environment, safety or aesthetics within the city, the applicant shall establish that it is not technically feasible or commercially practicable to locate the WCA in accordance with the following prioritization of types of facilities and sites:
1. Concealed attached antennas (WCA).
    - a) On city-owned property.
    - b) On other publicly owned property.
    - c) On privately owned property.
  2. Co-located or combined on existing antenna support structure facility.
    - a) On city-owned property.
    - b) On other publicly owned property.
    - c) On privately owned property.
  3. Freestanding concealed.
    - a) On city-owned property.
    - b) On other publicly owned property.
    - c) On privately owned property.
  4. Non-concealed antenna (WCA).
    - a) On city-owned property.
    - b) On other publicly owned property.
    - c) On privately owned property.
  5. Stealth antennae may be placed in the rights-of-way of arterial roads if the provider registers as required by § 78-543 et seq., satisfies the requirements of division 4 of article X of chapter 78 of this Code (concerning small and microcell facilities), and if design standards contained in this division are satisfied.
  6. Equipment cabinets to service antennae placed in the rights-of-way of arterial roads may be placed in proximity to the pole within the rights-of-way, but must be no larger than three feet × three feet × six feet and must be designed, and/or screened to aesthetically conform to landscaping and

building structures in the immediate vicinity of such installation and shall be camouflaged in such a manner as the city manager or his designee may dictate and must be outside required sight triangles. The placement of such equipment cabinets shall not cause a conflict with other public and private utilities in such right-of-way and shall be located in a manner that will allow public and private utilities to share such right-of-way with such equipment cabinets. All equipment cabinets must be buried if it is technically feasible and commercially practicable to do so.

7. WCAs shall require no personnel on the premises except as necessary for maintenance and repair.
8. No accessory equipment cabinets or shelters greater in size than six feet × six feet × ten feet shall be allowed in any governmental rights-of-way and only if the placement of a cabinet or shelter of such size will not interfere with the use of said right-of-way by other utilities, public or private. The smallest size cabinet or shelter suitable for providing the necessary service to serve the WCA shall be the maximum allowed.
9. WCA proposed to be located on a historic landmark or in a designated historic district may be denied if the WCA creates a detrimental impact on the historic character of the historic landmark or district.

#### **Sec. 107-44.4 - Design Standards of WCAs.**

- A) Any antenna placed on an existing tower, building, pole, facility, or other structure shall not add more than 20 feet to the height of the existing structure, provided all other applicable standards are met.
- B) Any antenna placed on a structure within the rights-of-way shall not cause the full height of the structure plus antenna to exceed 40 feet or the height of the structure, whichever is larger. If the antenna is to be placed in the rights-of-way in any area zoned for residential use or in areas zoned downtown core, marine park or commercial recreation, the antenna must be flush with the structure and not exceed its height.
- C) Any provider seeking to place an antenna in the rights-of-way shall abide by the permitting and registration requirements in Chapter 78, Article 10. A provider seeking to place an antenna in the rights-of-way shall first obtain permission from the owner of the pre-existing structure to place the antenna on the structure.
- D) Except as to existing non-stealth towers, stealth antennae shall be required. To qualify as a stealth antenna, illustrations or pictures of facilities similar to that proposed must be presented at the time of application for a development permit. The city staff shall make the final determination as to whether the proposed facility complies with the intent of this division and qualifies as a stealth antenna. Such final determination may be appealed to the board of adjustment and appeal.

- E) If placed on an antennae support structure, the antenna and associated electrical and mechanical equipment shall be of neutral color that is identical to or compatible with the color of the supporting structure, so as to make the antenna and equipment as unobtrusive as possible.
- F) No lighting shall be permitted unless required by the FAA. At time of construction of an antenna, in cases where there are residential uses located within a distance which is 300 percent of the height of the antenna from the antenna, dual mode lighting shall be requested from the FAA.
- G) WCAs shall be constructed in compliance with all applicable local, state and federal construction codes.
- H) The WCA shall meet all requirements of the zoning district in which it is located which do not directly conflict with this division.
- I) All WCAs shall be designed to blend into or meet the aesthetic character of the principal (primary) structure where reasonably practical.

**Sec. 107-44.5 - WCA Application Content and Review Procedures.**

- A) The applicant shall demonstrate that it meets all requirements of the uniform development code and all building code requirements and any other state required or federally required regulatory standards.
- B) The proposed antennae shall not exceed radiation standards established by the FCC. Documented certification received from the FCC may serve as required evidence.
- C) The applicant shall provide proof that the subject property and/or antenna support structure owner's agent has appropriate authorization to act upon the owner's behalf.
- D) If the proposed WCA is subject to FAA regulation, then prior to issuance of a building permit or other authorization by the city the applicant shall provide a copy of all material submitted by the applicant or the applicant's agent(s) to the FAA and any FAA determinations concerning the WCA.
- E) For all attached co-located and combined WCAs the applicant shall provide a certification furnished by a registered professional engineer licensed in the State of Florida that the WCSF or other facility or structure to which the proposed WCA will be attached has sufficient structural integrity to support the proposed WCA and feed lines in addition to all other equipment located or mounted on the structure.
- F) In addition to meeting all other requirements of this division, the following additional standards shall be met:
  - 1. Before an existing structure which has not previously been used as a support structure for a WCA can be used to support an antenna, the applicant shall demonstrate that the antenna must be located at its

proposed location within a specific search area to serve the company's system and that collocation on either an existing towers or other existing antenna support structure in that specific search area is unfeasible or unreasonable. Competent and substantial evidence must be provided which demonstrates at least one of the following:

- a) That existing towers and other alternative support structures located within the search radius are not of sufficient height for the provider's service area. Competent and substantial evidence must be provided by a professionally qualified radio frequency engineer. The qualifications of such person shall be submitted with any opinion or certification offered by such person.
  - b) That existing towers and other alternative support structures located within the search radius are not of sufficient structural strength to support applicant's proposed antenna and related equipment. Evidence must be certified by an appropriate professional engineer certified to practice in this state.
  - c) That co-location would cause electromagnetic interference either with the applicant's communication system or with existing communications-systems. Competent and substantial evidence must be provided by a professionally qualified radio frequency engineer. The qualifications of such person shall be submitted with any opinion or certification offered by such person.
  - d) That costs to share an existing tower or other alternative support structure or to adapt an existing tower or structure for sharing are unreasonable. Fees and costs shall be presumed to be unreasonable when they exceed 150 percent of the cost of locating on the proposed structure.
  - e) That alternative technology not requiring structures or tower is not economically feasible or compatible with the provider's existing technology or that such alternate technology exceeds 150 percent of the cost of locating on the proposed structure.
  - f) That other limiting factors exist, including, but not limited to, natural and man-made environmental limitations.
2. The applicant shall provide the search ring and inventory of all nearby towers and structures being used as support structures for WCAs located within the search radius and whether they provide collocation facilities.
- a) *Interference with public safety communications, preventative measures.* In order to facilitate the regulation, placement, and construction of WCAs, and to ensure that all parties are complying to the fullest extent possible with the rules, regulations, and/or guidelines of the FCC, each owner of a WCA or applicant for a WCA shall agree in a written statement to the following:

- i. Compliance with "good engineering practices" as defined by the FCC in its rules and regulations.
  - ii. Certification from the applicant that it complies with FCC regulations regarding susceptibility to radio frequency interference, frequency coordination requirements, general technical standards for power, antenna, bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI).
  - iii. In the case of an application for co-located telecommunications facilities, the applicant, together with the owner of the subject site, shall use their best efforts to provide a composite analysis of all users of the site to determine that the applicant's proposed facilities will not cause radio frequency interference with the city's public safety communications equipment and will implement appropriate technical measures to attempt to prevent such interference.
- b) *Steps when interference with public safety communications by WCAs is suspected.* Whenever the city has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by one or more WCA, the following steps shall be taken:
- i. The city shall provide notification to all WCA service providers operating in the city of possible interference with the public safety communications equipment, and upon such notifications, the owners shall use their best efforts to cooperate and coordinate with the city and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Best Practices Guide," released by the FCC in February 2001, including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time.
  - ii. If any WCA owner fails to cooperate with the city in complying with the owner's obligation under this section or if the FCC makes a determination of radio frequency interference with the city's public safety communications equipment, the owner who failed to cooperate and/or the owner of the WCA which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the city for all costs and fees associated with ascertaining and resolving the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action

as described in the "Best Practices Guide," as may be amended from time to time, within 24 hours of the city's notification.

**Sec. 107-44.6 - Location of WCSF Facilities.**

- A) Towers for amateur radio usage shall be allowed in all zones subject to other governmental regulations and the height of such tower shall be limited by the appropriate district regulation and the height of such amateur radio tower or any other type of tower shall be subject to adjustment pursuant to any other section of the uniform development code.
- B) WCSFs shall be prohibited in all areas within the city except upon property zoned general business (GB), commercial parkway (CP), shopping center (SC), light industrial (LI), municipal public lands (MPL) and general industrial (GI) unless the Telecommunications Act of 1996 or other applicable law requires otherwise.
- C) The locating of towers in the public rights-of-way or public lands is subject to prior approval by the city of a franchise, lease, license, permit, or other specific grant of authority to utilize said rights-of-way for such purpose.
- D) Before a new WCSF (tower) can be approved, the applicant shall establish first, that an antenna (WCA) located in the order of hierarchical preference indicated in section 107.41.3 above can not provide the legally required coverage or service; and second, that it is not technically feasible or commercially practicable to locate any legally required WCSF (tower) in accordance with the following prioritization:
  - 1. Towers on city-owned property.
  - 2. Towers on property where the city may grant a sublease to the applicant.
  - 3. Towers in other zoning districts allowed pursuant to subsection 107-44.2.

**Sec. 107-44.7 - WCSF Design Standards.**

- A) WCSFs are established as uses requiring development review and approval, and will not be approved unless compliance with the specific criteria set forth in this division and all other ordinances of the city can be demonstrated.
- B) All WCSFs shall be constructed in compliance with all applicable construction codes, which shall include electronic industries association and telecommunications industries association standards (EIA/TIA). Specifically, telecommunication towers shall be designed and constructed, to ensure that the structural failure or collapse of the tower will not create a safety hazard by using breakpoint or other appropriate technology, according to EIA/TIA 222-F Standards, to adjoining properties'. Communication towers shall be constructed to the EIA/TIA 222-F Standards, as published by the Electronic Industries Association, which may be amended from time to time, and all applicable city

and state building codes. Further, any improvements and/or additions (i.e., antenna, satellite dishes, etc.) to existing communications towers which exceed the design of the structure or which are not routine maintenance shall require submission of site plans in accordance with the land development code which demonstrate compliance with the EIA/TIA 222-F Standards in effect at the time of said improvements or additions.

- C) A WCSF shall not be higher than the minimum height necessary to provide the required services as demonstrated to the city by competent technical evidence submitted by a properly qualified professional. In no case shall a WCSF exceed 120 feet in height, including any WCA placed thereon unless mandated by applicable federal or state law. Measurement of a WCSF height shall include the base pad and other appurtenances and shall be measured from the finished grade of the WTF site.
- D) Lighting, if required by the FAA, shall not exceed FAA minimum standards. Any lighting required, by the FAA must be of the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) allowable by the FAA to minimize the potential attraction to migratory birds. Dual lighting standards are required and strobe light standards are prohibited unless required by the FAA. The lights shall be oriented so as not to project directly onto surrounding residential property, consistent with FAA requirements.
- E) No signage shall be placed, on any tower except as set forth in subsection (L).
- F) All WCSFs shall be designed for co-location of at least three WCAs.
- G) All new proposed towers shall be stealth (camouflaged) towers, except one in an MPL zone or two in the GB, CP, SC, LI and GI zoning districts where, in the opinion of the city staff, a monopole design would serve the same aesthetic purpose as a stealth design and such opinion has been concurred in by the city commission at a public meeting which has been noticed to all abutting property owners not less than 15 days prior to such meeting. The property on which such monopole design tower may be located shall not be closer than twice the tower height from a single-family zoning district. Such distance shall be measured from property line to property line.
- H) Any proposed tower and its supporting accessory equipment structures shall be a neutral, non-glare finish, so as to reduce visual obtrusiveness. All equipment cabinets must be buried if it is technically feasible and commercially practicable to do so.
- I) Tower setbacks shall be measured from the base of the tower to the property lines of the parent parcel. The tower owner shall provide a lease or deed or recorded fall zone easement covering the certified fall radius, and all towers shall be located on a parcel in such a manner that in the event of collapse, the tower structure and its supporting devices shall be contained within the confines of the property lines of the parent parcel. The fall radius of the tower shall be

determined and certified by a state licensed engineer. Towers shall be located no closer than 25 feet from any property line of the parent parcel.

- J) Towers shall be separated from any residentially zoned area (if applicable laws allow) and from the front property line a minimum of 50 feet or the certified fall zone, whichever is greater. Towers shall be separated from non-residentially zoned areas not closer than the established setbacks in the district in which such tower is located or the certified fall zone, whichever is greater.
- K) Towers and their accessory facilities shall be set back a minimum of 500 feet from any National Register Historic District and from any individual structure listed in the National Register of Historic Places and shall comply with all federal, state and local regulations regarding location in National Register Historic District and National Register of Historic Places.
- L) WCSFs shall be enclosed by properly grounded security fencing, built with materials other than chain link or barbed wire, with a locked gate and of a design deemed appropriate by the city staff, all not less than eight feet in height, and shall also be equipped with an appropriate anti-climbing device. In addition to the extent that high voltage or other dangers exist in the area of the WCSF, the fencing shall have signage so indicating. If more than 220 voltage is necessary for the operation of the facility and is present in a ground grid or in the antenna support structure, signs located every 20 feet and attached to the fence or structure shall be displayed in large, bold, high contrast letters of at least four inches in height the following: "HIGH VOLTAGE — DANGER." Any such enclosure shall have attached to it in a conspicuous place a sign upon which is indicated the name, address and telephone/telecopy number of whom to contact in an emergency. The signs required herein shall not be greater in size than one square foot. City staff may waive the fencing requirement for stealth towers if such would detract from the aesthetic benefit of the stealth tower and to do so would pose no safety risk.
- M) WCSFs shall be constructed in compliance with all applicable local, state and federal construction codes.
- N) WCSFs shall be required to have a landscaped buffer external to the fencing, so that the base of the WCSF and accessory equipment storage area and all other electrical appurtenances shall be screened from any right-of-way, residential use, or residential zoning district to 90 percent opacity within six months of time of installation. Such landscaped buffer shall be placed on the site in a manner that will maximize the aesthetic and environmental benefits while at the same time providing the visual buffer required hereby. Such landscaped buffer shall consist of hedges planted leaf-to-leaf that shall reach a height of not less than eight feet at maturity and shade trees of at least three inches in diameter at breast height, planted every 20 feet along the approved buffer. Such buffering and screening, including fence type and design, shall be constructed on the subject property in areas directed by the city staff of a design deemed appropriate by the city staff. All landscaping shall be of the evergreen variety. All landscaping shall be drought tolerant (xeriscape plantings) or irrigated, and

properly maintained to ensure good health and viability. City staff may waive or modify the landscaping requirement for WCSFs if such would detract from the aesthetic benefit of the stealth tower or the WCSF.

- O) One unmanned communication equipment building or structure not more than 300 square feet may be constructed for each communication service provider that co-locates one or more antennae on a tower site, height not to exceed 12 feet. At a tower site, design of the buildings and related structures shall, where practicable, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings to minimize the visual impact. No equipment compound shall be used for the storage of any excess equipment or hazardous waste (i.e. discarded batteries). No equipment compound shall be used as habitable space. No outdoor storage yards shall be allowed in a WCSF equipment compound. All equipment cabinets must be buried if it is technically feasible and commercially practicable to do so.
- P) WCSFs shall not exceed "Radio Frequency Protection Guides" in American National Standards Institute "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300k to 100 GHz" (ANSI C95.1-1992). The WTF owner shall be prepared to demonstrate the percentage of compliance with ANSI Standard C95.1-1992 upon written request by the city manager or designee.
- Q) Any applicant for facilities under this section shall certify that such proposed facility shall comply with all applicable federal regulations regarding interference protection.
- R) No sound emissions from machinery, alarms, bells, buzzers, or the like are permitted beyond the perimeter of the equipment compound.

**Sec. 107-44.8 - Application Content and Review Procedures; WCSF and Retention of Expert Assistance and Reimbursement by Applicant.**

- A) Prior to application to the city, pre-application conferences with the city staff are required to discuss application of this division and the applicant's need and so that the city staff can advise the applicant of the specific location(s) where a WCA proposed by the applicant or where a WCSF can be located, given the applicant's intended construction plans and locational needs.
- B) After the city staff and the applicant have discussed a location, the applicant may begin preparing its application.
- C) As a part of the application process, the applicant must demonstrate by the affidavit of a radio frequency engineer or other qualified professional acceptable to the city and supporting documentation including but not limited to maps and calculations demonstrating the need for the proposed WCSF, that:
  - 1. There is a justification for a new tower and that there is a gap in service or coverage such that the city would be legally required to allow the erection of a new WCSF where a new WCSF is proposed. For purposes of this division, existing towers or structures shall mean those located within the

city, as well as those located outside the city limits. Such justification must show that an existing lower or structure cannot be used because:

- a) Existing towers, WCSFs, or structures, including those extra-jurisdictional to the city are not of sufficient height or in the required geographic area to meet the applicant's engineering requirements;
  - b) Existing towers, WCSFs, or structures, including those extra-jurisdictional to the city, do not have sufficient structural strength or other physical capacity to support the applicant's proposed antenna and related equipment. Evidence must be certified by an appropriate professional engineer certified to practice in this state;
  - c) The applicant's proposed antenna would cause electromagnetic interference with or would be interfered with by other antennae if placed on existing towers or structures, including those extra-jurisdictional to the city;
  - d) It is not financially feasible to modify or replace existing towers or utilize existing structures, including those extra-jurisdictional to the city, to accommodate the proposed antenna because no entity will allow co-location and/or modification is commercially impracticable;
  - e) The fees, costs, or contractual provisions required of the owner or service provider to share an existing tower or structure for a time period of 20 years exceeds the cost of constructing a new tower; or
  - f) The applicant shall demonstrate that there are other limiting factors that render existing tower, structures and sites, including those extra-jurisdictional to the city, unsuitable.
2. As part of the demonstration, for any tower that would not fall subject to one of the limiting factors presented above, the applicant shall submit an inventory of all towers or suitable sites located within one mile of the applicant's proposed site, and by demonstration of response, whether the owner of any such tower will allow co-location. Thus, the applicant shall have demonstrated the limiting factors, or refusal, for each such tower or site.
- a) Applications for a WCSF shall consist of three sets of signed and sealed site plans (the site plans shall identify at a minimum adjacent land owners, land uses, height and principal building size, size of lots, and existing zoning and land use designations) and other documents as necessary to demonstrate compliance with the criteria listed in this division, including but not limited to, a legal description of the site, radio frequency coverage, applicant's search ring, drives, parking, set backs, building footprint, fence, landscaping, tower footprint, height, required utilities, finished floor elevation, flood zone, zoning district, building site and such additional information as the city staff or experts hired by the city may reasonably require.
  - b) The application shall contain all required engineering drawings in triplicate of the proposed WCSF signed and sealed by a professional

engineer with appropriate state license, stating that the design has the required structural integrity, is properly grounded and will withstand the wind forces and other forces of nature anticipated at the specific location.

- c) All applications shall include a written description and graphic of the geographic service area of each antenna on the tower.
- d) For all WCSF applications the applicant shall provide photo-simulated post construction renderings of the completed proposed WCSF, including all support structures, equipment cabinets, and ancillary structures from locations to be determined during the pre-application conference (but shall, at a minimum, include renderings from the vantage point of any adjacent roadways and occupied or proposed non-residential or residential structures), proposed exterior paint and stain samples (all mounted on color board no larger than 11 feet x 17 feet).
- e) The applications for the installation of a WCSF must be signed by the subject property owner and reviewed by the city planning and development department. The city planning and development department shall review all such requests and shall approve such requests that meet the requirements of this division and other land development regulations. Such review by the city shall be without public notice. The applications shall include an identification card for the subject property from the Pinellas County Property Appraiser's Office or a tax bill showing the ownership of the subject property.
- f) The applicant, if not also the owner of the antenna to be located on the proposed WCSF, shall provide a lease agreement demonstrating that one or more provider(s) intend to locate WCAs on the proposed WCSF.
- g) A copy of the applicant's or the carrier's, for whom the tower is designed, FCC license for the service area shall be submitted with the application.
- h) The applicant must include a statement in the application of its good faith intent to allow the co-location of the WCA of other entities, provided that the cost of modifying the WCSF to accommodate the co-location WCA is borne by the co-locating entity.
- i) The applicant shall send a written notice to all potential users of the new WCSF offering an opportunity for co-location. The list of potential users shall be provided by the city based on those entities who have requested approval of WCSF in the past, current FCC license holders and any other entities requesting to be included on the list. If, during a period of 30 days after the notice letters are sent to potential users, a user or users request, in writing, to co-locate on the new WCSF, the applicant shall accommodate the request(s), unless co-location is not reasonably possible.

- j) An existing monopole or stealth tower that is originally built to less than the maximum approved height may be increased to its ultimate height without further development review; however, a building permit will be required prior to implementing the height increase and all current governmental codes and regulations shall be met. No tower that is not a monopole or stealth tower may be increased in height, replaced or substantially modified.
- k) This division shall not exempt the applicant from such other conditional government review and permitting procedures as may be applicable.
- l) The city may hire any consultant and/or expert necessary to assist it in reviewing and evaluating any aspect of the application, including the construction and modification of the site, once permitted.
- m) An applicant shall deposit with the city, funds sufficient to reimburse the city for all reasonable costs of retaining a consultant and the expert evaluation of any application. The initial deposit shall be \$8,500.00. The payment of the monies shall precede the pre-application meeting. The city is under no obligation to hold a pre-application meeting unless and until it is in possession or control of the required funds. The city will maintain a separate escrow account for all such monies. The city's experts will invoice the city for their services and they will be paid from the escrow account. If at any time the balance in the escrow account falls below \$2,500.00, the applicant shall immediately upon notification replenish the escrow account so that it has a balance of at least \$5,000.00. Once all relevant work is completed by the city's experts and all invoices are paid any remaining balance in the escrow account will be returned to the applicant. The applicant is not entitled to any interest on the money in the escrow account.
- n) The total amount of funds set forth in subsection (b) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the commission or its consultant/expert to complete the necessary review and analysis. Additional escrow monies shall be paid into the fund by the applicant, as reasonably required and requested by the city.
- o) If the proposed WCSF is subject to FAA regulation, then prior to issuance of a building permit or other authorization by the city the applicant shall provide a copy of all material submitted by the applicant or the applicant's agent(s) to the FAA and any FAA determinations concerning the WCSF.
- p) *Interference with public safety communications, preventative measures.* In order to facilitate the regulation, placement, and construction of WCSFs, and to ensure that all parties are complying to the fullest extent possible with the rules, regulations, and/or guidelines

of the FCC, each owner of a WCSF or applicant for a WCSF shall agree in a written statement to the following:

- i. Compliance with "Good Engineering Practices" as defined by the FCC in its rules and regulations.
  - ii. Certification from the applicant that it complies with FCC regulations regarding susceptibility to radio frequency interference, frequency coordination requirements, general technical standards for power, antenna, bandwidth limitations, frequency stability, transmitter measurements, operating requirements, and any and all other federal statutory and regulatory requirements relating to radio frequency interference (RFI).
- q) *Steps when interference with public safety communications by any component of or attachment to a WCSF is suspected.* Whenever the city has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by one or more WCSF, the following steps shall be taken:
- i. The city shall provide notification to all WCSF service providers operating in the city of possible interference with the public safety, communications equipment, and upon such notifications, the owners shall use their best efforts to cooperate and coordinate with the city and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Best Practices Guide," released by the FCC in February 2001, including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time.
  - ii. If any WCSF owner fails to cooperate with the city in complying with the owner's obligation under this section or if the FCC makes a determination of radio frequency interference with the city's public safety communications equipment, the owner who failed to cooperate and/or the owner of the WCSF which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the city for all costs and fees associated with ascertaining and resolving the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in the "Best Practices Guide," as may be amended from time to time, within 24-hours of the city's notification.
- r) *Application approval deadlines.* Pursuant to Florida Statutes § 365.172(13)(d), applications for collocation of WCAs shall be acted upon no later than 45 business days after the date the application is determined by the city to be properly completed, and applications for all other WCAs and WCSFs shall be acted upon no later than 90

business days after the date the application is determined by the city to be properly completed.

**Sec. 107-44.9 - Application Fees.**

At the time an applicant submits his or her application for a permit to erect, install or build a WCSF, WCAs and/or accessory facility or structure the applicant shall pay a non-refundable application fee of \$5,000.00 to the city. If the application is for a permit for co-locating on an existing structure, tower, or building where no increase in the height of the existing structure, tower, or building is requested or required, the non-refundable fee shall be \$2,500.00.

**Sec. 107-44.10 - Performance Surety and Insurance.**

- A) The applicant shall provide such performance financial assurances in place for the life of the tower as the city may reasonably require which shall ensure the payment of the cost of removal of the WCA or WCSF if abandoned, including footings and foundations if on public property, unless such assurances are waived by the city upon good cause shown. Failure to maintain such financial assurance shall cause the WCA or WCSF to be deemed abandoned, and the city shall take such action as required by this division.
- B) At the time of application, the applicant shall submit a draft surety agreement.

**Sec. 107-44.11 - Federal Requirements and Safety Standards.**

- A) All towers and antennae must meet or exceed current standards and regulations of applicable building, engineering and electrical codes and those of the FAA, FCC, and any other agency of government with authority to regulate the construction, placement or operation of towers and antennae. If such standards are changed, the owners of the towers and antennae governed by this division shall bring such towers and antennae into compliance with the revised standards and regulations in accordance with the compliance provisions of such standards and regulations. Failure to bring towers or antenna into compliance with such revised standards and regulations shall constitute grounds for removal of the tower or antenna at the owner's expense.
- B) Towers and antennae shall be constructed, installed and maintained in accordance with applicable building and associated codes and, in addition, must meet the standards set forth by the electronic industries association. If upon inspection, the city staff at any time finds that the structural integrity of a tower or antenna constitutes a danger to persons or property, the owner of the tower or antenna shall be given written notice of the conditions and shall immediately undertake to make the tower or antenna structurally sound in accordance with the standards set forth in the applicable codes. If within 30 days, the danger to

persons or property continues to exist, the owner shall be deemed in violation of the uniform development code, and the city may require removal in accordance with the provisions of this division.

- C) Every two years from the date of the original building permit issuance, tower owners shall inspect the facilities and submit to the city certification of structural integrity and electrical and radio frequency compliance with applicable law at the time of inspection. The structural certification shall be signed by an engineer licensed to practice in this state. Failure to inspect and provide the required certification shall result in inspection by the city with costs being borne by the facility owner.

#### **Sec. 107-44.12 - Removal of Abandoned Antennae and Towers.**

- A) Any WCSF which is not operated by a provider or owner for a period of 180 days shall be considered abandoned. Determination of the date of abandonment shall be made by the planning and development director, who shall have the right to request documentation and/or affidavits from the tower owner/operator regarding the issue of tower usage. Failure or refusal for any reason by the owner/operator to respond within 20 days to such a request shall constitute prima facie evidence that the tower has been abandoned. Upon determination of abandonment and notice thereof to the owner or provider, the provider or owner shall have an additional 180 days within which to:
  1. Reactivate the use of the tower or transfer the tower to another owner or provider who makes actual use of the tower within the 180 day period; or
  2. Dismantle and remove the tower. At the earlier of 181 days from the date of abandonment without reactivation or upon completion of dismantling and removal, any approval for the tower shall automatically expire.
- B) Where a WCSF is abandoned but not removed or demolished as required by the city, the city may remove or demolish the WCSF, dispose of the WCSF and place a lien on the property and WCSF for the costs thereof by following the procedures (but not the criteria) for demolition of nuisance or unsafe structures, such lien on the property and WCSF shall be superior to all other liens except taxes.

#### **Sec. 107-44.13 - Replacement of Existing WCSF Facilities.**

- A) WCSF constructed with variances granted prior to September 1, 2001, causing the WCSF not to conform to the requirements of this division shall become nonconforming uses. Any variance given prior to the enactment of this division which causes the WCSF not to be in conformance with this division is hereby terminated and such WCSF shall become a nonconforming use.
- B) Change-out and replacement towers may be constructed in the same location as the original tower, including within easements and/or rights-of-way, up to 50 feet from the original location, so long as there is compliance with the required setbacks and all other applicable standards of the code. All other nonconforming

aspects of an existing tower shall come into compliance with all other standards of the code.

- C) The replacement WCSF shall not exceed a total height of 120 feet.
- D) The applicant shall cause the existing WCSF to be removed within 90 days of completion of the replacement WCSF and the relocation or installation of the WCA. In any event, the existing WCSF shall be removed within 180 days of the city's final construction inspection of the replacement WCSF.
- E) If the location of the replacement WCSF is such that the existing WCSF must be moved before the replacement WCSF is constructed, temporary portable antennae support facilities may be used, but must be removed within 30 days of the completion of the replacement WCSF and the relocation or installation of the WCA. In any event, the temporary portable antennae facilities must be removed within 60 days of the city's final construction inspection of the replacement WCSF.

#### **Sec. 107-44.14 – Variances.**

An applicant may apply for setback variances for WCAs and WCSFs under the procedures in the code. Variances for height or tower design, such as monopole or stealth design shall not be permitted in any case. Variance shall only be granted for the least amount of deviation necessary to obtain the required result, and shall only be granted if, but for the variance, these regulations would prohibit, or have the effect of prohibiting personal wireless communications or cellular service in the city. Variances existing prior to September 1, 2001, shall be terminated as set forth in section 107-44.13(A).

#### **Sec. 107-44.15 - Appeal Process.**

A decision by the city staff that an acceptable alternative to a new WCA or WCSF is available may be appealed under the procedures established in the code.

#### **Sec. 107-44.16 – Nonconformities.**

An existing WCSF that does not conform to the requirements of this division may remain in place as a nonconforming use. If a nonconforming WCSF is to be removed from its present location and a new WCSF is to be placed on the same property within a one-year period after the enactment of this division, the city may permit the WCSF to be moved, so long as the WCSF to be placed in the new location is a monopole WCSF that does not exceed 150 feet in height.

**Section 4.** If any section, subsection, sentence, clause, provision or word of this Ordinance is held invalid, same shall be severable and the remainder of this

Ordinance shall not be affected by such invalidity. The Dunedin City Commission expressly indicates that it desires any remainder of the Ordinance to withstand any severed provision, as it would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

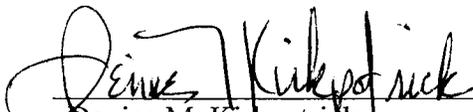
**Section 5.** The Codifier shall codify the substantive amendments to the Dunedin City Code contained in Sections 1 through 3 of this Ordinance as provided for therein, and shall not codify any other sections not designated for codification.

**Section 6.** Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF DUNEDIN, FLORIDA, THIS 23rd day of August, 2018.**

  
\_\_\_\_\_  
Julie Ward Bujalski  
Mayor

ATTEST:

  
\_\_\_\_\_  
Denise M. Kirkpatrick  
City Clerk

READ FIRST TIME AND PASSED: July 26, 2018

READ SECOND TIME AND ADOPTED: August 23, 2018