

ORDINANCE NO. 16-20

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES, BY AMENDING CHAPTER 57. RIGHT-OF-WAY APPLICATION PROCESS FOR COMMUNICATIONS FACILITIES BY AMENDING SUB-SECTION Q OF SECTION 57.05; UPDATING SECTION 57.02 DEFINITIONS; AMENDING SECTION 57.12 CONSTRUCTION BOND; REPEALING SECTION 57.13 SECURITY FUND; AND AMENDING THE CODE OF ORDINANCES BY ADOPTING AN ENTIRELY NEW CHAPTER 58. TO BE ENTITLED “RIGHT-OF-WAY APPLICATION PROCESS FOR SMALL WIRELESS FACILITIES” TO IMPLEMENT REGULATIONS SET FORTH IN THE “ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT”, CODIFIED AT SECTION 337.401(7), *FLORIDA STATUTES*; PROVIDING FOR A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Florida Legislature adopted, and on June 23, 2017, the Governor signed into law, effective July 1, 2017, the Advanced Wireless Infrastructure Deployment Act (the “Act”), codified at Fla. Stat. § 337.401(7), which places certain limitations on local government authority to regulate wireless communications facilities within the public rights-of-way; and

WHEREAS, passage of the Act necessitates the City amend the City Code in order to implement the Act, ensure the City’s regulations governing wireless communications facilities in the rights-of-way are consistent therewith, and to adopt new regulations as are consistent with the Act; and

WHEREAS, the Act at Fla. Stat. § 337.401(7)(b)2. authorizes local governments to adopt various types of regulations governing wireless facilities in the rights-of-way, including but not limited to “objective design standards” that may require wireless facilities to “meet reasonable location context, color, stealth, and concealment requirements,” and “reasonable spacing and location requirements concerning the location of ground-mounted equipment”; and

WHEREAS, the Act at Fla. Stat. § 337.401(7)(k) “does not limit a local government’s authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirement for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws”; and

WHEREAS, the Act authorizes a municipality to adopt by ordinance reasonable and non-discriminatory provisions for insurance coverage, indemnification, performance bonds, force majeure, abandonment, authority liability, or authority warranties; and

WHEREAS, the City currently has regulations pertaining to communications facilities within its Code of Ordinances, specifically codified within Chapter 57. that need to be amended to be consistent with the new law concerning wireless facilities and to reflect the definition of communications services as now reflected in state law and the removal of a requirement for security fund as a condition of registration pursuant to recent legislation on this topic; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Delray Beach as set forth in Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, and other applicable controlling laws; and

WHEREAS, the City Commission deems approval of this Ordinance to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, THAT THE FOLLOWING AMENDMENT IS HEREBY ADOPTED:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 57.02, Definitions, of the Code of Ordinances of the City of Delray Beach, Florida is hereby amended as to the definition of “Communications Services” to read as follows:

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

Communications services. The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

Section 3. That Section 57.05, “Placement or Maintenance of a Communications Facility in Public Rights-Of-Way”, at Subsection (Q) of the Code of Ordinances of the City of Delray Beach, Florida is hereby amended to read:

57.05. PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY.

(A) — (P) (These subsections shall remain in full force and effect as previously adopted)

(Q) A wireless facility that is a portion of a communication facility, such as an antenna ("Wireless Facility(ies)"), which is attached to a legally maintained ~~vertical structure~~ utility pole, as defined in Sec. 58.02, in the Public Rights-of-Way, ~~such as a light pole or utility pole ("vertical structure(s)"),~~ shall be governed by ~~land development regulation subsection 4.3.3(S)~~ the regulations for Small Wireless Facilities in the Rights-of-Way set forth at Chapter 58 herein. Notwithstanding Sec. 4.3.3(S) of the City's Land Development Regulations, Wireless Facilities which meet the definition for same at Sec. 58.02 of the City Code herein below do not constitute a principal use and are governed by Chapter 58. of the City Code.

Section 4. That Section 57.12, "Construction Bond," of the Code of Ordinances of the City of Delray Beach, Florida, be repealed to the extent is references Section 57.13 and that Section 57.13, "Security Fund", of the Code of Ordinances of the City of Delray Beach, Florida, be repealed along with its title and reserved for future legislation:

57.12. CONSTRUCTION BOND.

(A) Prior to issuing a permit where the work under the permit will require restoration of Public Right-of-Way, the City may require a construction bond to secure the restoration of the Public Right-of-Way. ~~Notwithstanding the foregoing, a construction bond hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in Section 57.13.~~ Twelve (12) months after completion of the restoration in Public Right-of-Way, in accordance with the bond, the Registrant may eliminate the bond. However, the City may subsequently require a new bond for any subsequent work in the Public Right-of-Way. The construction bond shall be issued by a surety having a rating reasonably acceptable to the City; shall be subject to the approval of the risk manager; and shall provide that: "for twelve (12) months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(B) — (C) (These subsections shall remain in full force and effect as previously adopted)

57.13. ~~SECURITY FUND.~~ RESERVED.

~~At or prior to the time a Registrant receives its first permit to place or maintain a communications facility in Public Rights of Way after the effective date of this Chapter, the Registrant may be required to file with the City, for city approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of~~

~~twenty five thousand dollars (\$25,000.00) having as a surety a company qualified to do business in the State of Florida, and acceptable to the risk manager, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of: 1. transfer, sale, assignment or removal of all communications facilities in Public Rights of Way; or 2. twelve (12) months after the termination or cancellation of any Registration. The security fund shall be conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon Registrant by the provisions of this Chapter. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the Registrant's full and faithful performance at all times. In the event a Registrant fails to perform its duties and obligations imposed upon the Registrant by the provisions of this ordinance, subject to [Section 57.14](#) of this Chapter, there shall be recoverable, jointly and severally, from the principal and surety of the security fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the Registrant in Public Rights of Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the City may in its discretion not require a security fund or may accept a corporate guarantee of the Registrant or its parent company.~~

Section 5. That the Code of Ordinances of the City of Delray Beach, Florida, is hereby amended by adopting an entirely new Chapter 58. to be entitled "RIGHT-OF-WAY APPLICATION PROCESS FOR SMALL WIRELESS FACILITIES AND WIRELESS FACILITIES," which shall hereafter read:

CHAPTER 58. RIGHT-OF-WAY APPLICATION PROCESS FOR SMALL WIRELESS FACILITIES AND WIRELESS FACILITIES

58.01. INTENT AND PURPOSE; APPLICABILITY TO STATE-CONTROLLED RIGHTS-OF-WAY.

- (A) It is the intent of the City to promote the public health, safety and general welfare by: (a) providing for the placement or maintenance of small wireless facilities and wireless facilities in the public rights-of-way within the City; (b) adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401 as specifically amended at Subsection (7) by the Advanced Wireless Deployment Act (the "Act"), the City's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; (c) establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications services providers; (d) protecting the City's aesthetic qualities; (e) minimizing disruption to the public rights-of-way, and (f) prohibiting wireless services providers from obtaining an unfair advantage through placement, location, or priority.
- (B) This chapter shall apply to small wireless facilities or wireless facilities in public rights-of-way under the control and jurisdiction of the City. This shall also apply to small wireless facilities, wireless facilities and related communications facilities in public rights-of-way under the control and jurisdiction of Palm Beach County or the Florida Department of Transportation, provided that the

City is authorized to apply this chapter under a permit-delegation agreement between the City and either Palm Beach County or the Florida Department of Transportation in accordance with F.S. § 337.401(1)(a), or as otherwise provided by law.

58.02. DEFINITIONS.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given. Words and phrases not otherwise defined in this chapter shall be interpreted in accordance with applicable definitions under Chapter 57. of this Code of Ordinances and state and federal laws governing communications facilities, including Florida Statutes § 337.401 and as set forth within the Act, except where the context clearly indicates a different meaning, and shall otherwise be construed to mean the common and ordinary meaning.

Antenna means communications equipment that transmits or receives electromagnetic frequency signals used in providing wireless services.

Applicable codes means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization and the Florida Building Code and the Florida Fire Prevention Code and or local amendments to those codes enacted to address building, accessibility and fire code standards and threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes this Chapter as well as objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

Applicant means the duly authorized person making application for registration with the City or applying for permits to locate wireless facilities in the right-of-way of the City and includes the applicant's successors-in-interest and anyone owning and maintaining the wireless facilities.

Application means a request submitted by an applicant to the City for a permit to collocate and place small wireless facilities or wireless facilities.

Collocate or collocation 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 rights-of-way.

Micro wireless facility means 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 means 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.

Stealth design means a method of camouflaging any antenna, small wireless facilities, wireless facilities, or other ancillary supporting communications facility, including, but not limited to, supporting electrical, optical, or mechanical, or other equipment, which enhances compatibility with adjacent land uses and which is visually and aurally unobtrusive. Stealth design may include a repurposed structure. Stealth design includes any method of camouflaging small wireless facilities and wireless facilities as adopted by the City which is in accordance with applicable state law and equipment volumetric allowances.

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 street lights, signal lights, or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less.

Wireless facility or *wireless facilities* 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. The term includes small wireless facilities. The term does not include:

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

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

Wireless provider means a wireless infrastructure provider or 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 services provider means a person who provides wireless services.

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.

58.03. APPLICATION FOR PLACING OR MAINTAINING SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY.

- (A) An applicant that desires to place or maintain a small wireless facility in public rights-of-way in the City shall submit an application with the City in accordance with this chapter. Subject to the terms and conditions prescribed in this chapter, an applicant may place or maintain a wireless facility in public rights-of-way. Prior to the issuance of any permits by the City, a wireless provider shall first complete the registration required pursuant to Section 57.03 of that Chapter.
- (B) An application shall not convey any title, equitable or legal, to the applicant in the public rights-of-way. Approval of an application under this chapter only applies for the placement or maintenance of small wireless facilities in public rights-of-way. Submitting an application does not excuse a wireless services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the City's or another person's facilities. Approval of an application does not excuse a wireless provider from complying with all applicable City ordinances, codes or regulations, including this chapter.
- (C) Each applicant that desires to place or maintain a small wireless facility in public rights-of-way in the City shall file an application with the Public Works Department which shall include:
 - (1) Name of the applicant, including a contact person;
 - (2) An affirmative statement and proof the applicant is registered pursuant to Section 57.03;
 - (3) Those items listed in Section 57.05(B);

- (4) Name, address, email address, and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;
- (5) Evidence of the insurance coverage and construction bond required under this Chapter;
- (6) Acknowledgment that applicant has received and reviewed a copy of this Chapter, which acknowledgment shall not be deemed an agreement;
- (7) A color rendering of the proposed wireless support structure, utility pole, or similar pole drawn to scale, including a proposed Stealth Design;
- (8) The number of the applicant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any; and
- (9) If the proposed site utilizes public rights-of-way under the jurisdiction and control of Palm Beach County or the Florida Department of Transportation, provided that the City is authorized to apply this chapter under a permit-delegation agreement between the City and either Palm Beach County or the Florida Department of Transportation in accordance with F.S. § 337.401(1)(a), or as otherwise provided by law, the application must include written approval from Palm Beach County or the Florida Department of Transportation unless already permitted by a permit-delegation agreement.

(D) The City shall review the information submitted by the applicant to the Public Works Department. Such review shall be by the City Engineer or his or her designee.

58.04. APPLICATION NOTIFICATIONS; CONSOLIDATED APPLICATIONS; ALTERNATIVE LOCATIONS; STEALTH DESIGN; PERMIT DURATION; COLLOCATION FEES.

- (A) Within 14 days after receiving an application for installation of one or more small wireless facilities in the City's rights-of-way, the City shall determine and notify the applicant by electronic mail to the email address provided in the application as to whether the application is complete. If an application is deemed incomplete, the City shall specifically identify the missing information. An application is deemed complete if the City does not provide notification to the applicant within 14 days.
- (B) The City shall approve or deny an application within 60 days after receipt of the complete application, or it is deemed approved in accordance with F.S. § 337.401. If the City does not use the 30-day negotiation period provided in subparagraph (G), the parties may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.

(C) A collocation permit issued pursuant to an approved application shall remain in effect for one (1) year unless extended by the City.

(D) Notification Procedure.

(1) The City shall notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the applicable codes.

(2) If the application is denied, the City will specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail.

(E) The applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days after notice of the denial is sent to the applicant. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed. The City shall approve or deny the revised application within thirty (30) days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(F) An applicant may file a consolidated application and receive a single permit for the collocation of up to thirty (30) small wireless facilities. If the application includes multiple small wireless facilities, the City may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

(G) Alternative Collocations.

(1) If an applicant seeks to place a small wireless facility on a wireless support structure or utility pole which does not currently exist and the proposed site of the new wireless support structure or utility pole is within 250 feet of an existing wireless support structure, utility pole, or similar pole, which does not already have an antenna system on it, the City may require the applicant to select a location on which a wireless support structure, utility pole, or similar pole already exists for the installation of the new wireless support structure or utility pole. The new wireless support structure or utility pole must retain whatever capability or function existed prior to replacement. However, the City may not require applicant to place the small wireless facility on a specific utility pole or category of poles. Any request by the City pursuant to this Section must be made within fourteen (14) days after the date the wireless facility application was filed and must be sent via electronic mail.

(2) If an applicant seeks to place a wireless facility upon a City utility pole or seeks to install a new wireless support structure or utility pole which is not located within 250 feet of an existing wireless

support structure, utility pole, or similar pole, the City may, within fourteen (14) days after the date that a wireless facility application is filed, request that the proposed location of the small wireless facility be moved to another location in the right-of-way, placed on an alternative utility pole or support structure, placed a new utility pole, or be placed on a location outside the right-of-way on City-owned structures or property. The City may offer an alternative location in the right-of-way for a wireless facility for health, safety, general welfare, or aesthetic reasons.

- (3) The City and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days following the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the City of such acceptance and the application shall be deemed granted for any new location for which there is agreement. If an agreement is not reached, the applicant must notify the City of such nonagreement and the City shall grant or deny the original application within ninety (90) days after the date the application was filed.
- (4) A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location shall be in writing and provided by electronic mail.
- (H) The City may require an applicant to provide a Stealth Design. If an applicant failed to provide a Stealth Design, the City must notify applicant within 14 days after receiving an application. Failure to provide a Stealth Design upon notification will be considered an automatic withdrawal of an application. It is within the City's sole discretion whether to approve or deny a proposed Stealth Design. However, approval will not be unreasonably withheld and any denial will be accompanied by a written statement providing required changes.

(I) Collocation Fees.

- (1) The wireless provider shall remit a \$150.00 collocation fee per small wireless facility to the City with the application to pay for the first year's fee for collocating small wireless facilities on a City utility pole.
- (2) The wireless infrastructure provider shall remit a \$150.00 collocation fee per small wireless facility collocated on a City utility pole within thirty (30) days of each one (1) year anniversary of the approval of the collocation. Failure to timely pay the Collocation Fee shall result in the immediate forfeiture of all rights to collocate on the City utility pole and any small wireless equipment collocated on the utility pole shall be removed within thirty (30) days at the wireless provider's expense.

58.05. CITY-OWNED STRUCTURES, FACILITIES, AND REAL PROPERTY.

- (A) In accordance with Sec. 58.04(G) above and notwithstanding Sec. 4.3.3(S) of the City's Land Development Regulations, the City may negotiate and subsequently allow the placement of an antenna or other wireless facility as governed by this chapter upon a City-owned structure or real property, or otherwise allow the use of City-owned facilities outside of the rights-of-way as an alternate location for wireless facilities, subject to rental, use, utility, license, or other fees upon such written terms as are deemed acceptable to the City and the Applicant; and as such terms may be consistent with the law and established by the City Commission via resolution.
- (B) In the interests of facilitating the safe, efficient, and aesthetically desirable use of the public rights-of-way, and to otherwise avoid the negative effects upon the public welfare of, and address safety concerns relating to, proliferation of structures within the rights-of-way, the City may offer to an applicant who wishes to install, construct, place, or maintain an antenna or other wireless facility in the public rights-of-way, to place or collocate such antenna or wireless facility upon or within a City-owned structure outside of the rights-of-way where feasible. Such antenna or wireless facility shall meet the requirements of this article.
- (C) The City reserves and does not waive any right that the City may have in its capacity as a property owner or utility provider with respect to City-owned structures, facilities, and real property, and may exercise control over such to the extent not prohibited by law. When the City allows the placement of communications facilities upon, or the use of, City-owned structures, facilities, and real property outside of the Public rights-of-way, the City shall be deemed to be acting within its proprietary capacity, as appropriate and otherwise consistent with the law. The provisions of this article shall not limit the City's discretion with respect to the use, installation, construction, placement, or maintenance of City-owned structures, facilities, and real property.

58.06. PROHIBITIONS AND SUPPLEMENTAL REQUIREMENTS.

- (A) No small wireless facilities or other communications facilities shall be installed in the City's rights-of-way without a right-of-way utilization permit, including from Palm Beach County for County-maintained roads, a building permit, and, if applicable, payment of a collocation fee, except no permit shall be required for:
- (1) Routine maintenance;
 - (2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or small 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 taxes under chapter 202.
- (B) Wireless facilities, other than small wireless facilities and micro wireless facilities, are prohibited within the public rights-of-way.
- (C) To comply with clear zone requirements, no small wireless facilities or other communications facilities shall be closer than is dictated by location circumstances related to maintenance of safety related clear zones from the street curb or edge of pavement or, if no curb is present, as determined solely by the City Engineer.
- (D) Wireless facilities are prohibited on arms used to support or mount traffic control signals and warning signals and on arms attached to utility poles.
- (E) Wireless facilities located within the rights-of-way directly adjacent to or within any geographic area approved as an Historic District, Site, or Building by either the City's Land Development Regulations, the State of Florida, or listed on the National Register of Historic Places, including all the City's designated Historic Districts designated on or before April 1, 2017, are subject to all ordinances, administrative rules, or regulations applicable to any historic area, specifically, but without limitation, the following:
- (1) The applicant applies for review by the City's Historic Preservation Board, which recommends approval of the method to deploy the wireless facilities in stealth design so as not to detract from contributing historic structures and the ambiance of the district; and
- (2) The City Commission accepts the recommendation and approves of the application.
- (F) Small Wireless facilities are prohibited on utility poles or similar structures 15 feet or less in height unless incorporated into and hidden in the pole under a top mounted street light similar in design to adjacent light poles and acceptable to the City or unless pole height limitation has been waived by the City.
- (G) Small Wireless facilities shall not interfere with electrical lines, cable lines, or their associated equipment. For public safety, wireless facilities, including micro wireless facilities, shall not interfere with electrical distribution lines. Small Wireless facilities may not be hung from energized lines or mounted over energized lines or on poles to be removed in conjunction with the undergrounding of

electric utilities. To the extent the requirements of this subsection are in conflict with the National Electrical Safety Code, the subsection shall apply unless waived by the City Engineer.

- (H) Small Wireless facilities may not materially block, obscure, or interfere with the view of signs of commercial businesses or street signs nor shall ground-mounted equipment be placed so as to interfere with the intended purpose of the right-of-way, swales, or stormwater drainage features and appurtenances.
- (I) Wireless facilities may not extend more than ten (10) feet above the utility pole or structure to which it is attached. Unless waived by the City Commission, the height of a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location. If there is no utility pole within 500 feet, the height of the new utility pole shall be limited to 50 feet;
- (J) Any new or replacement poles are prohibited unless they shall be of substantially similar design, material, and color to the poles within 250 of feet in the same right-of-way, or as otherwise approved;
- (K) The applicant or applicant's successor must agree to remove the small wireless facilities at any time if warranted by public health or safety as determined by the City or as allowed by applicable law.
- (L) For the safety of electrical utility workers and members of the public:

 - (1) Small Wireless facilities collocated, if allowed, on the same utility pole as a street light shall be on the same disconnect as the street light or be otherwise easily disconnected by electrical utility workers;
 - (2) Small Wireless facilities shall be grounded and otherwise comply fully with all applicable electrical codes.
 - (3) Whenever conduit of the wireless facilities crosses telephone or electric power wires, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States in force at the time of the effective date of this chapter, and as amended.

- (4) Small Wireless facilities shall comply with all applicable structural requirements with respect to wind speed under the Florida Building Code.
- (M) An applicant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing or maintaining a wireless facility in public rights-of-way. The burden of proof shall at all times be on an applicant to establish compliance with requirements under this chapter and state and federal law.
- (N) An applicant shall not place, commence to place or maintain a small wireless facility in public rights-of-way until all applicable permits, if required, have been issued by the City or other appropriate authority, except in the case of an emergency. No small wireless facility shall operate unless the City has conducted a final inspection and issued a Certificate of Completion pursuant to the Florida Building Code.
- (1) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.
- (2) Applicant shall provide prompt notice to the City of the placement or maintenance of a wireless facility in public rights-of-way in the event of an emergency and shall be required to apply for an after-the-fact permit within 30 days if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency.
- (3) Applicant acknowledges that as a condition of granting such permits, the City may impose rules or regulations governing the placement or maintenance of a wireless facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit.
- (4) Further, once the emergency is abated, the wireless facility placed in the public right-of-way during the emergency shall be removed unless permitted without the emergency as a basis.
- (O) A communications services provider, wireless services provider, or wireless infrastructure provider will not assert the existence of any vested rights as to any other matter if the City issues a permit except to the extent that it is entitled to place its facilities as indicated by the permit. Further, issuance of a permit by the City shall not be construed by the communications services provider, wireless services provider, or wireless infrastructure provider as a warranty that the placement of its conduits, antennas, and/or other facilities, or the start of construction, is in compliance with any applicable rules, regulations or laws or that there are no physical conflicts between the wireless facilities and other facilities located on the City's rights-of-way.
- (P) The communications services provider or wireless infrastructure provider shall use its best efforts

to individually notify all adjacent property owners affected by proposed construction in the rights-of-way prior to the commencement of that work. Such notification shall not be required for emergencies requiring immediate repairs.

(Q) In addition to any other reasons for denial set forth in the Act at sub-paragraph (d)11, it is reiterated that the City may deny a proposed collocation of a new small wireless facility in the public rights-of-way if the proposed collocation materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement or if proposed collocation of or a new small wireless facility in the public rights-of-way if it materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

(R) The City may request that ground-mounted equipment use materials, colors, textures, screening, and landscape that will blend into the natural setting and surrounding built environment to minimize the visual impact utilizing stealth design, as permitted by Section 337.401, Florida Statutes; and the City may request ground-mounted equipment be placed no closer than fifty (50) feet from existing ground-mounted equipment servicing the same carrier, as permitted by Section 337.401, Florida Statutes.

58.07. INSURANCE; INDEMNITY, CONSTRUCTION BONDS; ABANDONMENT; AND FORCE MAJEURE.

The Applicant is subject to the same supplemental regulations as set forth for a “Registrant” at Chapter 57. hereinabove, which are: Registration requirements at Section 57.03, Notice of Transfer, Sale or Assignment at Section 57.04, Suspension of Permits at Section 57.06 as it relates to permit issued pursuant to this Chapter, Appeals at Section 57.07, Involuntary Termination of Registration, Insurance requirements at Sec. 57.10.; Indemnity provisions at Sec. 57.11.; Construction Bond regulations at Sec. 57.12.; Abandonment at Sec. 57.15.; and Force Majeure provisions at Sec. 57.16. Such supplemental regulations shall be applied to the Applicant as they have also been made applicable to a Registrant under the provisions of Chapter 57.

58.08. SUSPENSION OF PERMITS.

(A) The city may suspend a permit for work in the public rights-of-way for one (1) or more of the following reasons, subject to Sec. 58.09 of this chapter:

- (1) Violation of permit conditions, including conditions set forth in the permit, this chapter, or other applicable city ordinances, codes, or regulations governing placement or maintenance of wireless facilities in public rights-of-way;
 - (2) Misrepresentation or fraud by Applicant in an application or permit application to the City;
 - (3) Failure to properly renew or ineffectiveness of the application, registration, or permit; or
 - (4) Failure to relocate or remove facilities as may be lawfully required by the City.
- (B) The City Engineer shall provide notice and an opportunity to cure any violation of subsections (1) through (4) above, each of which shall be reasonable under the circumstances.

58.09. APPEALS.

Final, written decisions of the City Engineer or designee suspending or denying a permit, denying an application for a permit, or denying an application for renewal of a permit are subject to appeal. An appeal must be filed with the City Engineer within thirty (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 Development Services Management Group shall have the authority to hear the appeal as part of its duties pursuant to Article 2.1. of the City's Land Development Regulations. The hearing shall occur within forty-five (45) days of the receipt of the appeal, unless waived by the applicant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

58.10. – 58.20. RESERVED.

Section 6. For the purposes of jurisdictional applicability, this ordinance shall apply in the City of Delray Beach. This ordinance shall apply to all applications for installation of wireless facilities including building permit applications and pole installation proposals, submitted on or after the effective date of this ordinance

Section 7. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 8. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 9. That this ordinance shall become effective on the ___ day _____, 2020, upon its passage on second and final reading and shall apply to all existing and future applications for permits.

PASSED AND ADOPTED in regular session on second and final reading on this the ____ day of _____, 2020.

M A Y O R

ATTEST:

City Clerk

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney