

## **Ordinance No. 4774-18 – Communications Services Facilities in the Public Right of Way**

*Communication services:* means 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. Fla Stat. Sec. 202.11

*Small wireless facilities:* 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.

*Right-of-way:* means land used by the city as a public road, including land owned in fee, land dedicated by plat or easement for use as a public road. It does not include land over which the City only has a utility easement. Fla Stat. Sec. 334.03(16).

### **Timelines for review of application.**

*Note:* Statutory deadlines are strictly enforced. Failure to meet a deadline will deem the application automatically approved.

Application Receipt – Date of receipt must be recorded.

**14 calendar days**     *Small wireless facilities.* Deadline to advise applicant of any deficiency in the application OR to request applicant to relocate proposed small wireless facility. Notice of deficiency or request for relocation must be by email and must detail the information necessary to make the application complete.

**30 calendar days**     *Other communication facilities in ROW.* Deadline to advise applicant of any deficiency in the application (78-402)

*Other expedited collocations (911 Facilities – not small wireless).* Deadline to advise applicant of any deficiency in the application. Notice of deficiency must be in writing and must detail the information necessary to make the application complete. (Fla. Stat. Sec. 365.172)

*Small wireless facilities.* Deadline for negotiation of alternative location.

*Sec. 6409 collocations.* Wireless tower or base station – not small wireless. Deadline to advise applicant of any deficiency in the application. Notice must be in writing and detail the deficiency.

**60 calendar days**     *Small wireless facilities.* Deadline to approve or deny permit after application is complete. If denied, must notify by email and specify the reasons for denial.

Sec. 6409 collocations. Wireless tower or base station – not small wireless. Deadline to review and approve or deny application. Timeline paused if applicant properly advised of missing information. (78-402)

- Collocation on previously approved infrastructure.
- Non-substantial modification to existing facilities

**90 calendar days**      *Small wireless facilities.* Relocation negotiated but not accepted. Deadline for approval or denial of application. Notice of denial must be provided by email and detail the reasons for denial. (Applicant has ability to resubmit within certain timeline and City must review re-submittal within timeline (78-402)

All other collocations. Deadline to approve or deny application. Timeline paused if applicant properly advised of missing information. If deadline missed, application automatically granted

**150 days**              All other new facilities in new location. Deadline to approve or deny application.

### **Process to permit facilities for communication services in rights-of way.**

#### **A. Registration (78-392)**

- A. Must be registered with City before installing, maintaining or repairing any communication facilities in the ROW. Registrations to be submitted to Engineering Services Division.
  
- B. Registration must include (78-392)
  - Name, address and primary contact name and phone number
  - Acknowledgement that registrant received and reviewed Code
  - Evidence of authorization to provide communication services
  - If corporation, authority to do business in Florida
  - If pass through provider
  
- C. Renewal. Registration effective for 2 years. To be renewed every other year between January 1 and March 31 each year. (78--392)

#### **B. Process:**

- 1. Registration. Applicant must be registered with City or submits registration information at same time as permit application.
  
- 2. Communications Placement Permit. Application submitted for placement of communication service facilities in City right-of-way, unless exempt.
  
- *Permit Requirements:* Communications permit application requirements (78-401). City permit form must be used.
  - Engineering plan
  - Description of installation method
  - Description of concealment method

- Estimated timeframe for installation
- If pole replacement requested, city function to be replaced, proposed lighting type, electric metering, evidence of compliance with City standards
- Inventory of all communication facilities within area of permit plus 50 feet beyond
- Information on ability of the specific right-of-way to accommodate the proposed facility
- Estimate of restoration costs (if applicable)
- Statement that proposed facilities will not cause radio frequency interference with the City's public safety communication system
- Evidence of required insurance coverage. (78-406)
  - Workers' Compensation insurance in compliance with state law;
  - Comprehensive general liability insurance of not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 in aggregate
- Attestation that all facilities will be installed and operational no later than 9 months after application approval
- Construction bond, if applicable (78-407)
- Proof of notification to property owners within 250 ft.
- If 911 facilities (Sec. 365.172 collocation – not small wireless)
  - Evidence that the collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the support structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the supporting structure.
  - Evidence that collocation will not increase height of support structure
  - Evidence that collocation will not increase existing ground equipment size

*Consolidated application for small wireless facilities.* A registrant may file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. The city may separately address collocations for which incomplete information has been received or which are denied. (78-402)

*Exemptions:* A communications placement permit is not required for:

- Micro Wireless Facility. For installation or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles, a communications placement permit is not required, but the following information shall be provided to the city – after installation: (78-400)
  1. Drawings or other documents showing the location of the micro wireless facilities,
  2. Height of the facilities,
  3. Method of mounting such facilities
  4. Specific location on the cables, so the city can the specific facilities in its rights-of-way and the owner of such facilities.

Registrant with a communications placement permit to perform: (78-405; 78-409)

1. Emergency maintenance
2. Routine maintenance
3. Replacement of existing wireless facilities of similar or smaller size
4. Exempt micro wireless facilities on cables between existing poles

3. *ROW Permit.* Temporary right of way permit from Engineering Services also required to work in right of way (78-410).
4. *Building Permit.* Building permit may also be required where electrical work or support structural work is to be performed, in compliance with the Florida Building Code.
5. *Restoration.* The right-of-way shall be restored at the registrant's own expense, restore the public rights-of-way to at least its original condition as existed before the work in the public right-of-way, in accordance with the City's Engineering Services Standard Details, and subject to the city's satisfaction upon inspection. (78-411)
6. *As-Builts provided.* After installation, "as-builts" shall be provided to the city withing 60 days of completion of any installation, at no cost to the City (78-411).

C. **Fees.**

Communication Placement Permit Fee. (78-395; Flat. Stat. 337.401))

No Fee: No permit fee may be charged for:

- Communication service provided that remits communication service taxes to the City.
- Micro wireless facilities that are suspended on cables strung between existing utility poles by a registrant that remits communication service taxes – installation, maintenance, ore replacement of micro wireless facilities.
- Small wireless facilities -routine maintenance by registrant
- Replacement of existing wireless facilities with facilities that are the same size or smaller.

Permit Fee.

- \$100 for a registrant that does not pay communication services taxes to the City and directly services one or more customers within the City.
- \$500 per liner mile of cable, fiber optic, etc., for a registrant that does not directly serve a customer within the City (pass-through providers)
- Supplemental review. Review by city's technical consultants. When permitted by law, the cost to the city for such supplemental technical review shall be borne by the registrant/applicant and be in addition to other applicable fees.
- Collocation fees. \$150 per pole to collocate on a City utility pole.

### C. Review Criteria.

To extent practical, all conduits and poles should be located a minimum of 3 ft. from existing water, sewer or storm water facilities and 5 ft. from tree pits.

Small wireless facilities. An application for small wireless facilities may be denied if the proposed facility:

- (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 Florida Department of Transportation Utility Accommodation Manual, as may be amended or updated.
- (5) Fails to comply with height limitations.
- (5) Fails to comply with stealth design or concealment requirements.
- (6) New utility poles fail to comply with requirements for style aesthetics and curb line placement. Replacement city utility poles fail to meet city standards, lighting type or meter requirements.
- (7) Fails to comply with requirements for historic districts, if applicable
- (8) Fails to comply with applicable codes.
- (9) Exceeds the space available in the right-of-way due to existing facilities in the public rights-of-way or for city plans for public improvements which have been determined by the city to be in the public interest.

New or replacement utility poles. New or replacement utility poles shall be evaluated based on:

- (1) Compliance with applicable code requirements for stealth & concealment; style, location, similar design and/or color; historic certificate of appropriateness.

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

- (i) A collocation on an existing antenna-supporting structure within a public right of way shall not increase the overall height of the antenna-supporting structure, antenna and/or antenna array more than 10% or 10 feet, whichever is greater.
- (ii) A collocation on a structure within a public right of way, protrude from the antenna-supporting structure more than 6 feet.
- (iii) Any collocation on an existing antenna-supporting structure shall meet current building code requirements (including wind loading).
- (iv) A collocation shall not add more than four additional equipment cabinets to be eligible as a collocation.
- (v) A collocation shall not require excavation outside of the right-of-way.
- (vi) A collocation shall not defeat any existing concealment elements of the antenna-supporting structure.

Other expedited collocations. 911 emergency facilities. Applications entitled to the streamlined processes described in F.S. § 365.172(13) shall meet all the following requirements:

- i. The additional antenna array, transmission lines, and related ancillary equipment including the base station shall not exceed the number of same items previously approved for such support structure when originally approved, and the collocated facility is in complete conformance with the original conditions imposed on the support structure upon which it is being attached.
- ii. The proposed collocation shall not increase the overall height and width of the support structure to which the proposed infrastructure is to be attached.
- iii. The collocation shall not increase the ground space area for equipment enclosures and ancillary facilities.
- iv. The existing support structure shall comply with all applicable regulations.
- v. The proposed additional collocation and support structure shall comply with all federal, State and local safety requirements.
- vi. The proposed collocation and ancillary equipment shall not exceed the applicable structural capacity limits for the support structure, as evidenced by a sealed statement from a structural engineer licensed in the state of Florida.

Other wireless communication facilities. Applications for other wireless communication facilities shall be evaluated based on the requirements of this article and the following criteria:

1. The placement of antennas on structures is encouraged and preferred over the installation of new poles. Where feasible, co-location of facilities and minimum number of antennas shall be evaluated to determine the proposed facility has been designed carefully.
2. Equipment shelters or cabinets shall be consistent with the general character of the neighborhood and historic character, if applicable.
3. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or materials and colors consistent with the surrounding backdrop, or wrapping cabinets with site appropriate graphics.
4. Lighting. Lighting of these facilities is not allowed.

#### **E. Conflicts.**

##### *Insufficient space.*

The city may prohibit or limit the placement of new or additional communication services facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way. A determination of insufficient physical space may be made when:

- (i) necessary to protect existing facilities in the public rights-of-way;
- (j) (ii) to accommodate city plans for public improvements or projects;
- (k) (iii) to the extent not prohibited by applicable law, to prevent interference with the operations of public safety communications services; or

- (l) (iv) to accommodate traffic safety issues raised by the city, the county, FDOT or any other agency with regulatory authority over any right-of-way within the city.

Reservation of space on city utility poles for future public safety uses by the city may not preclude collocation of a small wireless facility. The registrant may, in accordance with the provisions of this article, apply for replacement of the utility pole in order to accommodate the small wireless facility and the future public safety use.

*Priority.* In case of conflict or interference between the facilities of different registrants, the registrant whose facilities were first permitted shall have priority over a competing registrant's use of the public rights-of-way.

*Scheduling.* Upon request of the city, a registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public right-of-way. The city may require a registrant to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the public rights-of-way. The city may provide a more definite time frame based on specific city construction or maintenance schedules.

#### F. **Placement in ROW.**

**Collocation:** (78-411) Collocation to be first option – except for small wireless facilities.

- **Existing Pole.** Automatic approval per Federal law provided:
  - a. Height not increased more than 10 feet or 10%, whichever greater.
  - b. Not protrude from pole more than 6 feet.
  
- **Replacement pole.** May request the City to replace the existing pole with a pole capable of accommodating the registrant's needs and also continuing to serve its original city function. The replacement pole shall not exceed the height of the existing pole, plus ten feet. If the replacement pole will also function as a streetlight, the pole and light fixture must meet City standards, must be a lighting type approved by the city's engineering services division (generally LED), and must be metered separately for electric power to the streetlight and the communications equipment. The registrant shall be responsible for maintenance of such pole, with the city responsible for the cost of replacement or repair of the light fixture.
  
- **Small wireless facilities.** City can request, in writing, by electronic mail, within 14 days of permit application, an alternate location. Revised location to be negotiated within 30 days. If no agreement, City has 90 days to accept or deny original application. All decisions regarding acceptance or denial of application must be in writing delivered by electronic mail.
  
- **Ground equipment.** Collocation shall not increase the ground space area currently occupied by wireless telecommunication facilities.
  
- **Conduit.** City may require the co-location of facilities in existing conduit, considering the economic and technical feasibility of such requests and interference with the use of the public rights-of-way by the public.

#### **Poles:**

*Concealed.* Must be concealed with equipment in pole structure.

*Alignment.* Must align with existing poles.

*New poles.*

- Must be comparable in style to existing streetlights, with equipment concealed within pole
- Height –  
Comparable in height to other utility poles in the same right-of-way or neighborhood.  
*Small wireless facilities*; Poles not to exceed height of existing poles within 500 ft by more than 10 feet. If not existing poles, cannot exceed height of 50 ft.
- Located if possible, with existing foliage or features to obscure pole.

*Replacement pole.* May request the City to replace the existing pole with a pole capable of accommodating the registrant's needs and also continuing to serve its original city function. The replacement pole shall not exceed the height of the existing pole, plus ten feet. If the replacement pole will also function as a streetlight, the pole and light fixture must meet City standards, must be a lighting type approved by the city's engineering services division (generally LED), and must be metered separately for electric power to the streetlight and the communications equipment. The registrant shall be responsible for maintenance of such pole, with the city responsible for the cost of replacement or repair of the light fixture.

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Equipment boxes

- Grouped. Maximum of two ground equipment boxes may be grouped together in any single location.
- Locations must be spaced a minimum of 500 linear feet apart from each other.
- Size. Individual ground equipment boxes shall not exceed 28 cubic feet.
- Concealed. Boxes shall be concealed and located in areas with existing foliage or other aesthetic features, such as wrapping.
- Equipment boxes may only be located on poles in those limited circumstances.
- No generators may be placed in the public right-of-way except temporarily, in case of emergency

**G. Prohibited by State Law for Small Wireless Facilities.**

Poles – Minimum separation distance prohibited; No forced placement on specific pole.  
Collocation – Cannot prohibit and cannot require  
Zoning code – Cannot be applied

- H. **Governing Law:** Federal Law; Telecommunications Act, Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012  
State Statutes: F.S. §§ 337.401, 362.01, and 337.29(3),  
Advanced Wireless Infrastructure Deployment Act. Fla. Stat. §337.401  
City Code, Ch. 78, Art. XI, Div. 2