

ORDINANCE NO: 2017-036

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, REPEALING AND REPLACING CHAPTER 98, ARTICLE VI, DIVISION 12, SUBDIVISION IV, ENTITLED "WIRELESS COMMUNICATION TOWERS AND ANTENNAS" OF THE CODE OF ORDINANCES WITH A NEW CHAPTER 98, ARTICLE VI, DIVISION 12, SUBDIVISION IV, ENTITLED "WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS" TO MODERNIZE AND BRING UP TO DATE TERMS AND CONDITIONS FOR THE PLACEMENT OF WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS IN THE CITY, PROVIDING FOR ENFORCEMENT AND ADMINISTRATION; PROVIDING FOR RESERVATION OF RIGHTS; PROVIDING FOR CONFLICTS; PROVIDING FOR PENALTIES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Congress of the United States adopted the Telecommunications Act of 1996, providing federal regulation of wireless communications, a technology of wireless voice, video and data communications systems rapidly becoming available, requiring land use facilities that impact planning and zoning concerns of the City of Hialeah ("City") and throughout the United States; and

WHEREAS, the City finds that it is in the best interest to permit the siting of wireless telecommunications towers and antennas within its municipal boundaries; and

WHEREAS, the City has received and expects to receive additional requests from telecommunications service providers to site wireless communications towers and antennas within the municipal boundaries and is authorized by federal, state and local law to regulate the siting of such telecommunications towers and antennas; and

WHEREAS, it is the intent of the City to provide reasonable accommodation to, and to promote and encourage fair and reasonable competition among telecommunications

service providers or providers of functionally equivalent services on a neutral and non-discriminatory basis; and

WHEREAS, the purpose and intent of this Ordinance is to establish appropriate locations in priority order of use, and, further, to develop the requirements and standards to permit the siting of wireless communications towers and antennas within the municipal boundaries, with due consideration to the City's zoning regulations, existing land uses and environmentally sensitive areas, including hurricane preparedness areas; and

WHEREAS, it is the intent of this Ordinance to encourage collocation among wireless telecommunications service providers and to enhance the ability of the providers to provide such services to the City through an efficient and timely application process pursuant to Section 365.172(13), Florida Statutes, as amended; and

WHEREAS, through these regulated standards, it is the intent of the City to protect and promote the health, safety and general welfare of its citizens and residents, the traveling public and others in such a manner that will minimize both the number of telecommunications towers and antennas and the adverse visual impact and other potential damage by these facilities by encouraging collocation and shared use of new and pre-existing telecommunications facilities, through incentives, careful design, engineering siting landscape screening and innovative camouflaging techniques; and

WHEREAS, the City Council, in its capacity as the local planning agency, has reviewed this Ordinance and recommends approval; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AS FOLLOWS:

Section 1: Findings.

The foregoing recitals are hereby adopted and incorporated herein as if fully set forth in this Section.

Section 2: Subdivision IV, entitled "Wireless Communication Towers and Antennas," in Chapter 98, Article VI, Division 12, of the City Code of Ordinances is hereby repealed.

Section 3: Chapter 98 entitled "Zoning", Article VI. Supplementary District Regulations, Division 12 entitled "Antennas and Towers" of the Code of Ordinances of the

City of Hialeah, Florida, is hereby amended to include a new Subdivision IV entitled:
“Wireless Telecommunications Towers and Antennas” as follows:

Chapter 98

ZONING

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**ARTICLE VI. SUPPLEMENTARY DISTRICT
REGULATIONS**

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DIVISION 12. - ANTENNAS AND TOWERS

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**SUBDIVISION IV. WIRELESS TELECOMMUNICATIONS
TOWERS AND ANTENNAS**

Sec. 98-2356.- Intent.

These regulations and requirements establish general guidelines for the siting of wireless telecommunications towers and antennas and are intended to accomplish the following purposes:

(1) Protect and promote the public health, safety and general welfare of the residents of the city;

(2) Minimize residential areas and land uses from potential adverse impacts of towers and antennas;

(3) Encourage the location of towers in nonresidential areas and to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

(4) Minimize the total number of towers throughout the community by strongly encouraging the collocation of antennas on new and pre-existing tower sites or existing structures as a primary option rather than construction of additional single-use telecommunications towers;

(5) Encourage users of telecommunications towers and antennas to configure them in a way that minimizes the adverse visual impact of the telecommunications towers and antennas through careful design, engineering, siting, landscape screening, and innovative camouflaging techniques;

(6) Minimize potential damage to property from telecommunications towers and telecommunications facilities by requiring such structures be soundly designed, constructed, modified and maintained; and

(7) Enhance the ability of the providers of telecommunications services to provide such services to the community through an efficient and timely application process. In furtherance of these goals, the city shall at all times give due consideration to the city's comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas, including hurricane preparedness areas, in approving sites for the location of telecommunications towers and antennas.

Sec. 98-2357. - General Rules of Interpretation and Definitions.

(a) Interpretation. In the absence of definitions, the standard dictionary meaning shall be utilized. In any event, the planning and zoning division shall have the right to interpret the terms contained in this subdivision. In construing the meaning of the subdivision, the following rules shall apply:

(1) Words used in the present tense also include the future tense.

(2) Words used in the singular number also include the plural and vice-versa.

(3) The word "shall" is mandatory. The word "may" is permissible.

(4) The word "development" shall refer also to "project" and the area in which a project takes place.

(5) The word "used" or "occupied" shall be construed to include arranged, designed, constructed, altered, converted, rented, leased or intended to be used, intended to be occupied.

(6) The word "lot" shall refer also to plot, parcel, tract and premises.

(7) The word "building" shall refer also to structure, mobile home, dwelling and residence.

(8) The words "area" and "district" may indicate and include the meaning "zone".

(9) Except where specified, the provisions of this Ordinance shall be construed to mean the minimum standards, requirements and regulations adopted in pursuit of the purposes of this subdivision.

(b) Definitions. As used in this Ordinance, the following words, terms and phrases, when used in this subdivision shall have the meanings set forth below, and for the purpose of this Ordinance shall control over any other definitions contained in the City's Code of Ordinances. Words not defined shall be given their common and ordinary meaning.

Accessory Use means a secondary use including a use that is not related to, incidental to, is subordinate to and subservient to the main use of the property on which an antenna and/or telecommunications tower is sited.

Antenna means a transmitting and/or receiving device mounted on a telecommunications tower, building or structure and used in wireless telecommunications services that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals and other communications signals, including directional antennas such as panel and microwave dish antennas, and omni-directional antennas such as whips, but excluding radar antennas, amateur radio antennas and satellite earth stations.

Applicant means any party submitting an Application within the meaning of this Ordinance.

Application means any proposal, submission or request to construct, operate, or maintain a telecommunications tower or antenna within the City or seeks any other relief from the City pursuant to this Ordinance.

Array means a group of up to 12 antennas that are either: (1) Mounted or side-mounted on the rooftop of a building or rooftop structure(s); or (2) Directly or indirectly mounted on a telecommunications tower.

Backhaul Network means the lines that connect personal wireless service facilities to one or more cellular telephone

switching offices, and/or long distance providers, or the public switched telephone network.

Broadcasting Facility means any telecommunications tower or antenna built primarily for the purpose of broadcasting AM, FM or television signals.

Building Code means the Florida Building Code, as amended, the National Electrical Code, as amended, the National Electrical Safety Code, as amended, FCC regulations, as amended, and any other applicable federal, state and local building code.

Building Permit Review means a review for compliance with building construction standards adopted by the City and does not include a review for compliance with land development regulations.

Camouflaged or Stealth Facility means a wireless communications facility that is designed to blend into the surrounding environment, disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure in a manner that makes it not readily identifiable as a wireless communications facility. Examples of such facilities would include, but are not limited to, architecturally screened roof mounted antenna, building-mounted antenna painted to match the existing structure, antenna integrated into architectural elements, or other similar structures. A camouflaged or stealth facility may or may not have a secondary function (e.g., bell tower, spire, flag pole, etc).

City means Hialeah, Florida, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

Collocation means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antenna. The term "collocation" includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennas.

Equipment Facility means a room, cabinet, shelter, pedestal, build-out of an existing structure, building, or similar structure used to house ancillary equipment for a telecommunications tower or

antenna. Each such cabinet, shelter, or building shall be considered a separate equipment facility.

Essential Services means those services provided by the City and other governmental entities that directly relate to the health and safety of its residents, including all wireless communications through the City's network to and from police, fire and other emergency services operating within the city.

Existing Structure means a structure that exists at the time an application for permission to place an antenna on a structure is filed with the City. This term includes any structure that is not in the public rights-of-way that can structurally support the attachment of an antenna in compliance with applicable codes.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Geographic Search Area means the geographic area in which a wireless communications facility must be located in order to provide required coverage or capacity as certified through an affidavit by a radio frequency engineer. The Geographic Search Area will vary depending on the type of wireless communications facility to be installed by the Service Provider.

Guyed Tower means a telecommunications tower that is supported, in whole or in part, by guy wires and ground anchors.

Height means the distance measured from the ground level to the highest point of a telecommunications tower or other structure. For the purposes of measuring height, the base pad and all antennas or other attachments mounted on a structure shall be included in the measurements to determine overall height. Height does not include lighting rods.

Interference means the impairment of transmission or reception of any desired communications or radio frequencies within the City. This term embraces electrical interference in all of its forms, including, without limitation, co-channel interference, interference from intermodulation products, and blanketing inference.

Lattice Tower means a telecommunications tower that is constructed to be self-supporting by lattice type supports and without the use of guy wires or other supports.

Microwave Dish Antenna means a dish-like antenna used to link telecommunications sites together by wireless transmission and/or receipt of voice or data.

Monopole Tower means a telecommunications tower consisting of a single pole or spire self-supported on a permanent foundation, constructed without guy wires, ground anchors, or other supports.

Pre-existing Telecommunications Tower means an existing telecommunications tower for which a building permit has been properly issued and constructed prior to the effective date of this Ordinance.

Preferred Zoning Districts means the zoning districts within this code in which the city provides a preference for the installation of wireless communications facilities.

Self-Support Tower See Lattice Tower.

Service Provider means any person or business entity wishing to locate a telecommunications tower or antenna within the city limits to provide wireless services.

Telecommunications Act means the Telecommunications Act of 1996, Pub. L No. 104-104, codified at 47 USC, and as may be amended from time to time.

Telecommunications Information Packet means a packet provided by the City, which contains questions regarding an applicant's proposed siting and installations of telecommunications towers and antennas in the City.

Telecommunications Services means the offering of telecommunication (or the transmission, between or among points, specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received) for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the

facilities used. Telecommunications services shall not be considered as essential services, public or private utilities.

Telecommunications Tower or Tower means any structure, and support thereto, which is greater than fifty-five (55) feet in height, that is designed and constructed primarily for the purpose of supporting one or more antennas intended for transmitting or receiving wireless services, telephone, radio and similar communication purposes, including alternative tower structure, lattice, camouflaged, monopole, and guyed towers. The term "telecommunications tower" or "tower" includes radio and television transmission telecommunications towers, microwave telecommunications towers, common-carrier telecommunications towers, and cellular telephone telecommunications towers, among others. Poles are not a telecommunications tower.

Whip Antenna means a cylindrical antenna that transmits signals in 360 degrees.

Wireless Communications Facility means any equipment or facility used to provide personal wireless service and may include, but is not limited to, antennas, towers, equipment facility, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility. Poles are only a support structure and are not a wireless communications facility. An open video system is not a wireless communications facility to the extent that it provides video services; a cable system is not a wireless communications facility to the extent that it provides cable service.

Wireless Services means commercial mobile radio service as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers

offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations. Wireless services shall not be considered as essential services, public or private utilities.

Sec. 98-2358.- Authority.

These regulations and requirements establish general guidelines for the siting of wireless telecommunications towers and antennas and are applicable as follows:

(1) All new wireless communications facilities and reconstruction or modifications to existing wireless communications facilities in the city shall be subject to the regulations in this Ordinance to the full extent permitted under applicable state and federal law;

(2) Pre-existing telecommunications towers or antennas shall not be required to meet the requirements of this Ordinance, other than the specific requirements set forth herein;

(3) This Ordinance shall not specifically govern any broadcasting facility or a wireless communications facility owned and operated by a federally licensed amateur radio station operator or used exclusively for receive only antennas, provided by applicable law;

(4) This Ordinance shall apply to applications for wireless communications facilities, telecommunications towers, and antennas as defined herein unless prohibited by applicable law;

(5) The providing of wireless services and the siting and construction of wireless communications facilities shall be regulated and permitted pursuant to this Ordinance and shall not be regulated or permitted as essential services as defined herein;

(6) Except for matters herein specifically reserved to the city council, the planning & zoning official shall be the principal city official responsible for the administration of this Ordinance. The planning & zoning official may delegate any or all of the duties hereunder unless prohibited by applicable law;

(7) For purposes of implementing this Ordinance, an AM array, consisting of one or more tower units and supporting ground

system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right; and

(8) The city may create an application form, as may be amended from time to time, for a person to apply for the construction, installation, or placement of a wireless communications facility, telecommunications tower, or antenna within the city consistent with the terms of this Ordinance. The city may create a different application form for collocation applications.

Sec. 98-2359.- Application requirements-Excluding Collocation.

(a) The following information must be included in all applications, including applications for installations of telecommunications towers and antennas, but excluding collocation applications:

(1) Current survey of the property;

(2) Description of the telecommunications services currently provided and/or to be provided in the future by the applicant over its wireless communications facilities;

(3) Location of the proposed facilities;

(4) Identify the location of all overhead and underground public utilities, telecommunications cable, water, sewer, drainage and other facilities within the leased parcel and the 50 feet which surrounds the leased parcel;

(5) Identify the trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate;

(6) Identify all applicable FCC licenses and approvals;

(7) Statement that the applicant shall notify all other telecommunication providers of the permit application at time application is accepted by the planning and zoning division;

(8) An engineering report from an engineer licensed to practice in the state or by an engineer exempt from such requirement under state law, and with experience with radio frequency and wireless communications facilities, and shall include:

(i) A site development plan of the entire subject property drawn to scale, including, without limitation:

1. A tax parcel number, legal description of the parent tract and leased parcel, total acres, and section/township/range of the subject property;

2. The lease parcel fully dimensioned, including property lines, setbacks, roads on or adjacent to the subject property, easements;

3. Outline of all existing buildings, including purpose (i.e., residential buildings, garages, accessory structures, etc.) on subject property;

4. All existing vegetation, by mass or individually by diameter, measured four feet from the ground of each stand-alone tree on the leased parcel and within an area of fifty (50) feet surrounding the leased parcel;

5. Proposed/existing security barrier, indicating type and extent as well as point of controlled entry;

6. Proposed/existing access easements, utility easements, and parking for the telecommunications tower;

7. All proposed changes to the subject property, including grading, vegetation removal, temporary or permanent roads and driveways, storm water management facilities and any other construction or development attendant to the telecommunications tower;

8. Scaled elevation drawing of proposed telecommunications tower, including location of all mounts, antennas, equipment facilities, fencing and landscaping;

9. If applicable, on-site and adjacent land uses;

(9) The type of telecommunications tower and specific design information shall be provided for the antennas, mounts, equipment facilities, cables as well as cable runs, and security barrier, if any. The following specific information shall be provided:

(i) Equipment brochures for the proposed tower, such as manufacturers' specifications or trade journal reprints;

(ii) Description of materials of the proposed tower specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, colors, etc.);

(iii) Dimensions of the tower specified for all directions including, but not limited to, height and width; and

(iv) A visual impact analysis with a minimum of two photo digitalization or photographic superimpositions of the tower within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments, including the antennas, mounts, equipment facilities, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth as well as at a distance of 250 feet and 500 feet from all properties within that range or at other points agreed upon in a pre-application conference;

(10) A structural engineer shall certify the design for that tower is inclusive of a design for future collocations. No telecommunications tower shall be permitted to exceed its wind loading capacity as provided for by the Florida building code.

(11) An affidavit from an engineer licensed to practice in the state or by an engineer exempt from such requirement under state law and with experience with radio frequency and wireless communications facilities stating that the proposed telecommunications tower, including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from essential services and will not interfere with the visual and customary transmission or reception of radio, television or similar services as well as other wireless services enjoyed by adjacent residential and nonresidential properties.

(12) An affidavit from an engineer licensed to practice in the state or by an engineer exempt from such requirement under state law and with experience with wireless communications facilities

confirming compliance with all applicable building codes associated regulations and safety standards. For all antennas attached to existing structures, the statement shall include certification that the structure can support the load of the telecommunications tower.

(13) A signed and notarized letter from the property owner authorizing the placement of applicant's wireless communications facility.

(14) Additional information that the city may request consistent with this code and applicable law to process the application.

(b) An accessory use of an existing structure on the same lot shall not preclude the installation of an antenna or telecommunications tower on such lot;

(c) For purposes of determining whether the installation of a telecommunications tower or antenna complies with the zoning provisions, including, but not limited to, setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antenna or telecommunications tower may be located on leased parcels within such lot;

(d) Each applicant shall provide the city with an inventory of pre-existing telecommunications towers within the Geographic Search Area associated with the proposed site of a new telecommunications tower;

(e) For applications for new telecommunications towers, the applicant must provide information to demonstrate pursuant to the procedures listed within this subsection that no pre-existing telecommunications towers or existing structures can accommodate or be modified to accommodate the applicants proposed telecommunications facilities. Evidence submitted to demonstrate that no pre-existing tower or existing structure is suitable may consist of an affidavit from an engineer licensed to practice in the state or by an engineer exempt from such requirement under state law and with experience with radio frequency and wireless communications facilities, determining or demonstrating the following:

(1) That pre-existing towers or existing structures located within the geographic search area do not have the capacity to provide reasonable technical service consistent with the applicant's technical system, including, but not limited to, applicable FCC requirements;

(2) That pre-existing or existing structures are not of sufficient height to meet applicable FCC requirements or engineering requirements of the applicant;

(3) That pre-existing towers or existing structures do not have sufficient structural strength to support applicants proposed antenna and related equipment;

(4) That the applicant's proposed antenna would cause electromagnetic/radio frequency interference with antennas on pre-existing towers, antennas, existing structures, or the antenna on the pre-existing towers or structures cause interference with the applicant's proposed antenna;

(5) That the applicant's proposed antenna on a pre-existing tower or existing structure would not cause interference with essential services and provide such location in its application;

(6) That the applicant made diligent efforts but was unable to obtain permission to install or collocate the applicant's wireless communications facilities on pre-existing towers or usable antenna support within a the geographic search area from the proposed site;

(7) That there are other limiting factors that render pre-existing towers and existing structures unsuitable;

(f) The city shall have the right to retain independent technical consultants and experts that it deems necessary to properly evaluate applications for individual towers. The consultant fee shall be based upon the hourly rate of the independent technical consultant or expert the city deems necessary to properly evaluate an application for a tower. The fee shall be applied to those applications requiring special review or evaluation. The fee shall be reimbursed by the applicant to the city.

(g) If the applicant seeks relief from any regulation contained herein, the applicant must provide the nature of the specific relief sought and the engineering justification to

demonstrate that, without such relief, applicability of the regulation would have the effect of prohibiting the provision of wireless services.

Sec. 98-2360. - Application requirements for Antennas-Collocations.

The following information must be included in all collocation applications:

(a) An engineering report from an engineer licensed to practice in the state or by an engineer exempt from such requirement under state law and with experience with wireless communications facilities that shall include:

(1) A statement of compliance with this Ordinance and all applicable building codes, associated regulations and safety standards as provided herein. The statement shall include certification that the existing structure or telecommunications tower can support the load of the proposed antennas;

(2) The type of antenna and specific design information shall be provided for all antennas, mounts, equipment facilities, cables as well as cable runs, and security barrier, if any. The following specific information shall be provided:

(i) Equipment brochures for the proposed antenna, such as manufacturer's specifications or trade journal reprints;

(ii) Description of materials of the proposed antenna specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, colors, etc.);

(iii) Dimensions of the proposed antenna specified for all three directions: height, width and breadth;

(iv) A structural engineer shall certify the wind-loading capacity is designed for that is inclusive of a design for future collocations No telecommunications tower shall be permitted to exceed its wind loading capacity as provided for by the state building code;

(v) A certification that the proposed antenna, including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from essential services or any other telecommunications services; and

(vi) A description of geographical service area requirements.

(b) Consent by land owner; and

(c) Each applicant shall complete and submit the city's telecommunications information packet; and

(d) Additional information that the city may request consistent with this Ordinance and applicable law to process the application.

Sec. 98-2361.- Installations on municipal property.

(a) Applications for wireless communications facility on property owned, leased or otherwise controlled by the city, except for public rights-of-way, shall require a lease agreement approved by the city council and executed by the city and the owner of the proposed wireless communications facility. The city may require, as a condition of entering into a lease agreement, the dedication of space on the facility for essential services purposes, as well as property improvements on the leased space. Any dedications and improvements shall be negotiated prior to execution of the lease.

(b) No lease granted pursuant to this Ordinance shall convey the exclusive right, privilege, permit or franchise to occupy or to use the public lands of the city for delivery of wireless services or any other purpose.

(c) No lease granted pursuant to this Ordinance shall convey any right, title or interest in the public lands other than a leasehold interest, and shall be deemed only to allow the use of the public lands for the limited purposes and term stated in the lease. No lease shall be construed as a conveyance of a title interest in the property.

(d) Any and all collocations or placements of antennas on a wireless communications facility that is located on property owned, leased or otherwise controlled by the city, except for public right-of-way, may require a separate lease agreement with the city

as well as full compliance with the requirements of this Ordinance for such collocations and placements of antennas.

(e) Pursuant to applicable law, the city may contract with a third party to administer city-owned property for purposes of developing city-owned sites, consistent with the terms of this Ordinance. Except as specifically provided herein, the terms of this Ordinance, and the requirements established thereby, shall be applicable to all telecommunication towers or personal wireless service facilities to be developed or collocated on city-owned sites.

(f) City-owned property, not the public rights-of-way, is exempt from the minimum distance separation and height requirements set forth herein.

Sec. 98-2362.- Application fees, development standards and process.

(a) Filing fee. All applications shall be accompanied by the applicable nonrefundable filing fee as follows:

- (1) Telecommunications Tower - \$3,000
- (2) Initial Antennas - \$2,500
- (3) Modification of a Telecommunications Tower or Antenna - \$1,500
- (4) Collocation Antenna – Current Building Permit Fee
- (5) Inspection - \$1,500
- (6) Pre-Application Conference - \$500
- (7) Entry & Testing Agreement - \$1,500

(b) Cost Recovery. The purpose of the filing fee is to defray the City's costs in processing the Application. All reasonable expenses incurred by the City in considering and processing the Application including, but not limited to, consulting and legal costs, shall be off-set from the filing fee. If, however, the expenses exceed the amount of the filing fee, to the extent not prohibited by applicable law, the Applicant shall pay the difference within thirty (30) days of the date it receives notice of such additional expenses. If the additional fees are not received by the City within thirty (30) days of the date of notice, the City shall notify such Applicant and the Applicant shall pay an additional late fee at the rate of twelve percent (12%) per annum of the amount unpaid or underpaid. If the

City does not receive said fee in total within sixty (60) days of the date of notice, the City shall notify the Applicant in writing and may revoke any approval.

(c) Applicants regulated by this Ordinance may request a pre-application conference with the city. Such request shall be submitted with a non-refundable fee to reimburse the city for the cost and fees incurred by the conference.

(d) Unless otherwise authorized by state or federal law, no person shall construct, install or maintain a wireless communications facility within the city without the city's approval pursuant to this Ordinance.

(e) With the exception of collocation applications, the planning and zoning division shall review the new telecommunications tower, and antenna applications for consistency with the city's land development regulations including this Ordinance, and compatibility of the proposed telecommunications tower and antenna with the surrounding neighborhood. For applications that are not subject to the city council's approval pursuant to this chapter, the planning and zoning division shall issue a written decision either granting or denying an application. The planning and zoning division shall not grant an application for a proposed wireless communications facility that will interfere with any essential services, or is otherwise not in compliance with this Ordinance. In the event the planning and zoning division denies an application, the planning and zoning division shall set forth the reasons for denial in writing.

(f) Notification of completeness. The planning and zoning division shall notify the applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements set forth above. However, such determination shall not be deemed as an approval of the application. Such notification shall indicate with specificity any deficiencies which, if cured, could make the application properly completed.

(g) After the planning and zoning division has determined that the application is ready to be processed, with the exception of a

collocation application, the application shall be forwarded to the appropriate staff, and the design review committee pursuant to the requirements of this division, in accordance with applicable law.

(h) In the event that the planning and zoning division determines that a proposed wireless communications facility is not in compliance with this chapter, the planning and zoning official shall deny the application and shall set forth the reasons for denial in writing, in accordance with applicable law. Provided, however, that in the event a proposed wireless communications facility is not in compliance with one or more requirements of this division, the planning and zoning official may approve the application if the planning and zoning official determines that the requested modification to the development standards of this division will not be detrimental to the city.

(h) It is the intent of this section to establish a procedure for compliance with the "written decision" and "substantial evidence" requirements of the Telecommunications Act, 47 U.S.C. § 332(c)(7)(B)(iii).

(i) The city shall grant or deny each properly completed application for a collocation based on the application's compliance with this chapter, City Code and any other applicable regulations, and within the normal timeframe for a similar building permit review but in no case later than 45 business days after the date the application is determined to be properly completed. This timeframe may be extended when the application involves lease negotiations for collocation on city-owned property.

(j) The city shall grant or deny each properly completed application for any other wireless communications facility based on the application's compliance with this section and any other applicable law, including but not limited to the City Code and within the normal timeframe for a similar type of review, but in no case later than 90 business days after the date the application is determined to be properly completed. This timeframe may be extended depending on lease negotiations for wireless communications facilities on city-owned property.

(k) An application is deemed submitted or resubmitted on the date the application is received by the city. If the city does not

notify the applicant in writing that the application is not completed in compliance with the city's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the city's regulations, the city shall so notify the applicant in writing indicating with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, would make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the city shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the city do not make the application incomplete. Notwithstanding this sub-subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the city may continue to request the information until such time as the specified deficiency is cured. However, if applicant does not cure the application deficiencies within 20 business days after receiving the notice of deficiencies, the application shall be considered withdrawn or closed unless an extension due to reasonable circumstances of the time to cure is requested by the applicant prior to the expiration of the 20-day period and such extension is granted by the planning and zoning division.

(1) The timeframes specified in this section may be extended, only to the extent that the application has not been granted or denied, because the city's procedures generally applicable to all other similar types of applications require action by the city council and/or planning and zoning division and/or design review committee, and such action has not taken place within the specified timeframes. Under such circumstances, the city council, planning and zoning division, or design review committee, as applicable, shall either grant or deny the application at its next regularly scheduled meeting, or, otherwise, the application shall be deemed automatically to be approved; accordingly, the planning and zoning division may by letter to the applicant extend the timeframe for a decision until the next available scheduled meeting date of the city

council and/or planning and zoning division as to whether to grant or deny an application for a permit taken pursuant to this division.

(m) The city may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, the city may require a waiver in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the city.

(n) The city may enter into an entry and testing agreement with the wireless communications facility owner, applicant and/or operator to determine the viability and feasibility of the site for placement of wireless telecommunications towers and antennas, in a form approved by the city attorney, without approval of the city council.

(o) Notwithstanding the foregoing, the city and an applicant may voluntarily agree to waive the timeframes set forth above.

(p) Appeal. If an application is denied by the planning and zoning division for noncompliance with the requirements of this Ordinance then the applicant may appeal this decision to the city council in accordance with the timeframes and procedures specified herein. Any decision appealed from the city council may be appealed in accordance with applicable law.

(q) If an Application is denied by the planning and zoning official for noncompliance with the requirements of this Ordinance then the Applicant may appeal this decision to the city council within 30 days after receiving the written decision. The city council, after a public hearing, shall make the final decision by resolution.

(r) If a permit is denied, or conditions imposed, then the city council shall consider the action taken upon review of the following factors:

(1) The technical and practical necessity for the installation of the Telecommunications Tower or Wireless Communications Facility.

(2) Alternative measures of modifications that could be made to preserve the character of the neighborhood and to prevent aesthetic blight if installation were permitted.

(s) If an Application is denied by the planning and zoning division for reasons other than non-compliance with this Ordinance, excluding the Florida Building Code, then the Applicant may appeal the decision directly to the city council, which shall, by resolution, make the final decision within 45 days of the denial.

(t) If the city council ultimately denies the Application, the city council's resolution ordering the denial shall incorporate the Application, the minutes of public meetings, along with written findings to the city staff, the planning and zoning division, and/or the city council explaining the basis for the denial.

(u) Modification of development standards. If an applicant seeks a modification to the wireless communications facility development standards provided in this Ordinance, the applicant shall provide the nature of the specific relief sought and the engineering justification to demonstrate that, without such relief, applicability of the regulations would have the effect of prohibiting the provision of reliable and feasible wireless services.

(v) *Nonconforming towers.* A nonconforming telecommunications tower may remain on the site where it was originally approved provided that it is able to accommodate the minimum number of different users established by the collocation requirements required in this Ordinance. Such nonconforming towers may be reconstructed to accommodate collocations provided that the degree of nonconformity with regard to location and setback, is not increased by the reconstruction. Notwithstanding the foregoing, in the event that a nonconforming tower is reconstructed to accommodate collocations, the location of the replacement tower may be placed up to ten (10) feet from the existing nonconforming tower location within the boundaries of the same parent tract, subject to administrative approval by the planning and zoning division, and such relocation shall not be deemed to constitute an increase to an existing nonconformity with regard to location, setback and minimum distance separation requirements between towers.

Sec. 98-2363.- Collocation.

(a) It is the intent of the city to encourage collocation of antennas on existing structures, pre-existing towers and nonconforming towers. Except as provided herein, all towers shall have the capacity to permit multiple users. At a minimum, all towers shall be able to accommodate two collocations.

(b) To encourage such collocation, the building department may approve an application submitted to collocate antennas on an existing structure or a pre-existing tower consistent with this Ordinance. The specific collocation applications indicated in the subsections below shall be subject to approval or denial by the building department. All other applications shall be subject to approval or denial by the planning and zoning division and/or city council.

(c) Any antenna and related equipment to service the antenna that is being collocated on an aboveground existing structure or pre-existing tower is not subject to other land development regulations of this chapter if the following criteria are met:

(1) The existing structure already contains an established antenna and related equipment and collocation of an antenna increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;

(2) An existing tower, including a nonconforming tower, may be structurally modified in order to permit collocation or may be replaced through no more than administrative review and building permit review, if the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower. This subparagraph shall not preclude a public hearing for any appeal of the decision on the application.

(3) Notwithstanding the exemption provided for in this section, construction of the antenna and related equipment is subject to review by the planning and zoning division and any other city department or agency for compliance with the city's design standards; life safety codes, including, but not limited to, building codes; and conditions or requirements in any existing permits.

agreements, or approvals. Moreover, this section shall not relieve the permit holder for or owner of the existing structure or property of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including, but not limited to, any aesthetic requirements, or law.

(d) Collocation applications requiring only building permit approval.

(1) Collocations on towers, including nonconforming towers, are subject to only building permit review, which may include a review for compliance with this Ordinance, if they meet the following requirements:

(i) The collocation does not increase the height more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;

(ii) The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment facilities and ancillary facilities, except as allowed under this Ordinance; and

(iii) The collocation consists of antennas, equipment facilities, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennas placed on the tower and to its accompanying equipment facilities and ancillary facilities and, if applicable, applied to the tower supporting the antennas. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the applicable land development regulations in effect at the time the initial antennas placement was approved.

(2) Such collocations are not subject to any design or placement requirements of land development regulations in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antennas placement approval, to any other portion of the land development regulations, or to public hearing review. Such collocation applications shall be decided by the planning and zoning division.

(e) Other collocation applications requiring only building permit approval.

(f) Except for a historic building, structure, site, object, or district, the following tower collocation applications on all other existing structures shall also be subject to no more than a building permit approval if they meet the following requirements:

(1) The collocation does not increase the height;

(2) The collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(3) The collocation consists of antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this section at the time of the collocation application; and

(4) The collocation consists of antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with this section and were applied to the initial antennas placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennas.

(g) If only a portion of the collocation does not meet the requirements of any of the above subsections, such as an increase above the permitted height, or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the collocation meet the requirements of this subsection, that portion of the collocation only may be reviewed by the planning and zoning division. A collocation proposal under this subsection that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment facilities and ancillary facilities by 400 or more square feet or 50

percent or more of the original compound size, whichever is greater, shall require approval of a building permit.

(h) Any replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the city, shall require building permit approval.

(i) The owner of the pre-existing tower on which the proposed antennas are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of other provisions of these land development regulations to which the pre-existing tower must comply, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this section.

Sec. 98-2364.- Interference with Essential Services.

To the extent not inconsistent with applicable federal law and FCC regulations, all providers of wireless services and all owners and/or operators of wireless communications facilities, towers and antennas shall comply with the following:

(a) The owner and/or operator of a wireless communications facility, tower or antenna shall take reasonable precautions to avoid causing harmful interference with essential services. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference with essential services.

(b) If the planning and zoning official, in consultation with the telecommunications manager, other appropriate staff and technical consultant, as necessary, determines that any interference with essential services in the city requires further consideration, the Mayor shall review all necessary data or information and the owner and/or operator shall be notified the review. The Mayor may take action as it deems necessary, in accordance with applicable law.

(c) To the extent not inconsistent with applicable law, if a provider of wireless services or the owner or operator of a wireless communications facility, tower or antenna refuses to stop any interference with essential services in the city, the city may file a complaint with the FCC for resolution and/or seek an injunction against it pursuant to F.S. §843.025 that makes it unlawful for any person to deprive a law enforcement officer of his radio or to otherwise deprive the officer of the means to summon assistance, or pursue any other remedy authorized by applicable law.

Sec. 98-2365.- Development, zoning, building and inspection requirements for wireless communications facilities.

(a) The standards listed in this Ordinance apply specifically to all antennas, towers and wireless communications facilities, except those specifically constructed for essential services, located on property owned, leased, or otherwise controlled and approved by the city, except in the public rights-of-way, or as otherwise specified herein. The city reserves the right to modify or waive the requirements for use on public property. The city shall not be required to provide access to city property.

(b) The construction, maintenance, operation and repair of wireless communications facilities are subject to the regulatory supervision of the city to the full extent permitted by applicable law, and shall be performed in compliance with all laws, ordinances and practices affecting such facility, including, but not limited to, zoning codes, building codes, and safety codes, and as provided in this Ordinance. The construction, maintenance, operation and repair shall be performed in a manner consistent with applicable industry standards, including the Electronic Industries Association.

(c) All telecommunication towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, including emissions standards, and any other agency of the local, state or federal government with the authority to regulate towers and antennas prior to issuance of a building permit by the city. If such applicable standards and regulations are revised and require that existing facilities adhere to such revised standards, then the owners of telecommunications towers and antennas governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal

agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the telecommunications tower, antenna or wireless communications facility at the owner's expense.

(d) To ensure the structural integrity of telecommunications towers installed, the owner shall construct and maintain telecommunications towers in compliance with the Florida building code, and all other applicable codes and standards, as amended from time to time. A statement shall be submitted to the city by a licensed engineer certifying compliance with this section upon completion of construction and/or subsequent modification. Where an existing structure, including poles, is requested as a camouflaged facility, the facility, and all modifications thereof, shall comply with all requirements as provided in this Ordinance and all other applicable standards as may be amended from time to time. Following the issuance of a building permit, the city shall require an analysis of the ground from the base of the telecommunications tower site to determine whether construction is feasible.

(e) Upon coordination with owner and at the owner's expense, the city reserves the right to conduct periodic inspections of wireless communications facilities, towers, and antennas, to ensure structural and electrical integrity and compliance with this Ordinance. The owner of the wireless communications facilities, towers, or antennas may be required by the city to have more frequent inspections should there be an emergency, extraordinary conditions or other reason to believe that the structural and electrical integrity of the wireless communications facility, tower, or antenna is jeopardized. There shall be a maximum of one inspection per year unless emergency or extraordinary conditions warrant additional inspections. The owner of a wireless communications facility, tower or antenna may be required by the city to have more frequent inspections should there be reason to believe that the structural and electrical integrity of the tower is jeopardized. If, upon inspection, the city concludes that a wireless communications facility, tower, or antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner, the owner shall commence work within 30 days to bring such wireless communications facility, tower, or antenna into compliance with such standards. Failure to bring such wireless communications facility into compliance within 60 days of notice shall constitute grounds for requiring the removal of the facility at the owner's expense. The city reserves the right to require

additional inspections if there is evidence that a tower or a wireless communications facility has a safety problem or is exposed to extraordinary conditions. During the inspection, the building division will ensure structural and electrical integrity and compliance with the state building code, as amended, the code of the city, as amended, and other applicable codes and regulations. Additionally, towers shall be inspected once every five years by a state licensed engineer, at the tower owner's expense, and the results submitted to the planning and zoning division. Tower owners shall also submit a report to the city certifying structural and electrical integrity every two years. The report shall be accompanied by a non-refundable fee of \$250.00 to reimburse the city for the cost of review. Based upon the results of the inspection, the telecommunications manager may require repair or removal of a wireless communications facility or tower.

(f) The city prohibits the placement of a telecommunications tower and antennas in a residential area or residential zoning district unless the applicant demonstrates to the satisfaction of the city that it cannot reasonably provide its personal wireless service to the residential area or zone from outside the residential area or zone. In such a case, the city and the applicant shall cooperate to determine an appropriate location for an antenna of an appropriate design within the residential area or zone. The applicant shall reimburse any and all reasonable costs and expenses incurred by the city for this cooperative determination, including attorney's fees. Such application for cooperation shall be accompanied by an application fee in the same amount as for a new tower. The cooperation application shall not be subject to the timeframes contained in this code for granting and denying applications.

(g) Wireless communications facilities shall be permitted in the following preferred zoning districts and siting alternatives hierarchies:

(1) City-owned property, regardless of zoning district, is the first priority for siting of wireless communications facilities. The preferred zoning districts order of ranking is from highest (i) to lowest (vii). Where a lower ranked alternative is proposed, the applicant must demonstrate in its application that higher ranked options are not available.

- (i) City-owned property;
- (ii) M-3

- (iii) M-2
- (iv) C-3
- (vi) C-2
- (vii) M-1; and
- (viii) Any other zoning district approved by the City's Design Review Committee in accordance with section.

(2) The order of ranking for siting alternatives is from highest (i) to lowest (vii) as referenced below. Where a lower ranked alternative is proposed, the applicant must demonstrate in its application that higher ranked options are available.

- (i) Collocation on existing camouflaged tower on city-owned property in a preferred zoning district.
- (ii) Collocation on existing telecommunications tower on city-owned property in a preferred zoning district.
- (iii) Collocation on existing structures on city-owned property in a preferred zoning district.
- (iv) Collocation on existing telecommunications tower in a preferred zoning district.
- (v) Attachment of initial antenna on an existing structure in a preferred zoning district.
- (vi) New camouflaged telecommunications tower in a preferred zoning district.
- (vii) New telecommunications tower in a preferred zoning district.

(3) On property owned by the city, the city shall authorize the application and use of city property after the applicant executes a lease agreement acceptable to the city. The city shall have no obligation whatsoever to execute such lease even if the applicant can meet the criteria set forth herein.

Sec. 98-2366.- Unmanned communication cabinets.

(a) Unmanned communication cabinets shall comply with the setback requirements of the zoning district where such cabinets are situated.

(b) An unmanned communication cabinets that is not in the public rights-of-way shall be a permanent structure not to exceed 250 square feet in floor area. More than one unmanned communication cabinet may be permitted on a site; provided,

however, that the total square footage of such cabinets, added together, does not exceed 750 square feet. If the site contains more than one cabinet, the required distance separation between the cabinets may be excused.

Sec. 98-2367.- Standards for telecommunications towers.

(a) Except where a variance is granted, every telecommunications tower must meet the following minimum standards:

(1) The height of a telecommunications tower shall not exceed 125 feet. Tower height shall be measured from the crown of the road of the nearest public street.

(2) All telecommunication towers shall be designed and constructed with the capability of supporting a minimum of two collocation connections.

(3) Depending on the height and location, telecommunication towers or antennas shall be approved by the FAA, Miami-Dade County Aviation Authority or other appropriate agency prior to issuance of a building permit by the city. Prior to the issuance of a building permit by the building division and/or planning and zoning division, the applicant shall provide evidence that the telecommunication towers or antennas are in compliance with FAA regulations. Where an antenna will not exceed the highest point of the existing structure upon which it is to be mounted, such evidence shall not be required.

(4) All proposed telecommunication towers shall comply with current radio frequency emissions standards of the FCC.

(5) All telecommunication tower sites must comply with the landscaping requirements of the city in force at the time the application for a telecommunication tower site plan application is submitted to the city. An eight-foot fence or wall constructed in accordance with these land development regulations, as measured from the finished grade of the site, shall be required around the base of any tower and may be required around any accessory building or structures.

(6) Landscaping, consistent with the requirements of these land development regulations, as amended, shall be installed around

the entire perimeter of the fence or wall, encircling the leased premises on which said telecommunication tower shall be placed. Additional landscaping may be required around the perimeter of the fence or wall and around any or all anchors or supports if deemed necessary to buffer adjacent properties. The planning and zoning division, upon site plan review, may require landscaping in excess of the above requirements as is deemed reasonably necessary in order to enhance compatibility with adjacent residential and nonresidential land uses. Landscaping shall be installed on the outside of the perimeter wall.

(7) Landscaping, consistent with the requirements of the City Code, as amended, shall be installed around any accessory buildings or structures. In addition to the city's landscaping requirements, at a minimum the following landscaping shall be provided:

(i) A row of shade trees and/or bushes at least eight feet in height, at a maximum distance of ten feet apart, shall be planted around the perimeter of the fence;

(ii) A continuous hedge at least 30 inches in height at planting that are capable of growing to a height of 36 inches within 18 months shall be planted on the outside of the perimeter of the fence and tree line;

(iii) All landscaping shall be properly maintained to ensure good health and viability; and

(iv) In locations where the impact of the wireless communications facility would be minimal, the planning and zoning division may waive or reduce the landscaping requirements.

(b) Telecommunication towers shall only be located on leased premises on parent parcels larger than 2,000 square feet.

(c) Warning signs for high voltage and trespassing.

(d) No signs, including commercial advertising, logo, political signs, flyers, flags, or banners, but excluding warning signs, shall be allowed on any part of an antenna or tower. Any signs placed in violation of this section shall be removed immediately at the facility owner's expense.

(e) If high voltage is necessary for the operation of the telecommunication tower, associated equipment, or backhaul network or any accessory structures, "HIGH VOLTAGE—DANGER" warning signs shall be permanently attached to the fence or wall and spaced no more than 40 feet apart.

(f) "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and spaced no more than 40 feet apart.

(g) The height of the lettering of the warning signs shall be at least 12 inches in height. The warning signs shall be installed at least five feet above the finished grade.

(h) The warning signs may be attached to freestanding poles if the content of the sign may be obstructed by landscaping.

(i) Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the telecommunication tower, unless repairs to the tower are being made.

(j) The minimum setbacks shall conform to the zoning districts where the towers are situated. The planning and zoning division may administratively reduce the minimum setbacks required in the paragraph above, depending on the type of tower to be used (i.e., a monopole tower versus a guyed tower).

(k) All telecommunication towers shall be located no closer than 100 percent of the height of the tower from residential areas or districts, as measured on a straight line from the two closest points between the nearest residential zoning district line and the nearest point of the proposed tower structure.

(l) The minimum distance separation between an existing tower and a proposed tower in the following zoning districts shall be:

- (1) City-owned property (½ mile);
- (2) M-3 (one mile);
- (3) M-2 (one mile);
- (4) C-3 (one mile);
- (5) C-2 (one mile);

(6) M-1 (one mile); and

(7) Any other zoning district shall be no less than one mile and approved by the City's Design Review Committee in accordance with section.

(8) When a camouflaged facility or tower is proposed to be used by the applicant, or an existing tower or structure that serves another purpose, then in that event, the planning and zoning division may administratively approve a reduction to the minimum separation requirements by not greater than 50 percent of the minimum separation, providing that the proper landscaping and/or buffering is approved by the planning and zoning division.

(9) Regardless of the zoning district, the minimum distance separation between all towers shall be no less than ½ mile.

(m) All buildings and other structures to be located on the same property as a telecommunications tower shall conform to the setbacks established for the underlying zoning district.

(n) Any requests which deviate from the aforementioned regulations shall be subject to a variance.

(o) *Removal of abandoned or unused facilities.* A provider who has determined to discontinue its operations or part of its operations in the city must either:

(1) Remove its own facilities;

(2) Provide information satisfactory to the planning and zoning division that the provider's obligations for its equipment on City-owned or private property under this Ordinance have been lawfully assumed by another provider; or

(3) Submit to the planning and zoning division a proposal and instruments for transferring ownership of its equipment from the provider to the City. If a provider proceeds under this clause, the city may, at its option:

(i) Assume ownership of the equipment with a \$10.00 nominal consideration;

(ii) Require the provider, at its own expense, to remove it; or

(iii) Require the provider to post a bond in an amount sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the equipment. Equipment of a provider who fails to comply with the preceding paragraph and which, for 12 months, remains unused shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to:

1. Abating the nuisance;
2. Taking possession of the equipment and restoring it to a useable condition; or
3. Requiring removal of the equipment by the provider or by the provider's surety under the bond required by this Ordinance.
4. Telecommunication towers being utilized for other purposes, including, but not limited to, light standards and power poles, may be exempt from this provision.

(p) The use of any portion of a tower for signs or advertising purposes, including company name, banners, streamers, etc., shall be strictly prohibited.

(q) All accessory buildings or structures shall meet all building design standards as listed in these land development regulations, and in accordance with the provisions of the state building code. All accessory buildings or structures shall require a building permit issued by the building division and/or planning and zoning division.

(r) Except where superseded by the requirements of other county, state, or federal regulatory agencies possessing jurisdiction over such facilities, telecommunications towers shall be painted or constructed in neutral colors, designed to blend into the surrounding environment, such as non-contrasting gray, earth tones of appropriate shades of green, or such other colors as determined to be appropriate for each site by the planning and zoning division.

Sec. 98-2368.- Standards for antennas.

(a) Antennas mounted on rooftops or buildings shall be permitted as an accessory use in all preferred zoning districts subject to the procedure and requirements provided elsewhere in this Ordinance, as follows:

(1) No commercial advertising shall be allowed on an antenna;

(2) No signals, lights, or illumination shall be permitted on an antenna, unless required by the FCC or the FAA;

(3) Any related unmanned communication cabinets shall not contain more than 250 square feet of gross floor area or be more than ten feet in height;

(4) If the communication cabinet is located on the roof of the building, the area of the cabinet shall not occupy more than 25 percent of the roof area;

(5) Antennas, and related communication cabinets, shall be set back a minimum of the height of the Antennas and related communications cabinets from the edge of the building it is set on or rooftop unless they are camouflaged or screened to minimize the visual impact of the antenna upon adjacent properties and shall be of a material or color which matches the exterior of the building or structure upon which it is situated; and

(6) Antennas shall only be permitted on buildings which are at least 50 feet tall they are camouflaged or screened to minimize the visual impact of the antenna. Antennas may be placed on buildings less than 50 feet tall if the planning and zoning division determines that essential services' needs warrant the antenna.

(b) Building rooftop camouflaged antennas may not extend more than 20 feet above highest point of a roof. Camouflaged antennas attached to but not above rooftop structures shall be exempt from this provision. Antennas may exceed 20 feet above the roof if the planning and zoning division determines that essential services' needs warrant additional height.

(c) Building rooftop non-stealth antennas may not extend more than ten feet above highest point of a roof. Stealth antennas

attached to but not above rooftop structures shall be exempt from this provision. Antennas may exceed 20 feet above the roof if the planning and zoning division determines that essential services' needs warrant additional height.

(d) To minimize adverse visual impacts, camouflaged antenna types shall be preferred. If a noncamouflaged antenna is proposed, the applicant shall be required to demonstrate, in a technical manner acceptable to the planning and zoning division, why the camouflaged antenna (i.e., an antenna incorporated into the architecture of the building or fully screened from view from sight proximate to the antenna) cannot be used for the particular application. This does not preclude a combination of the various types of antenna.

(e) Antenna dimensions shall be reviewed by the planning and zoning division as required by existing technology. A statement shall be submitted, prepared by a professional registered engineer licensed to practice in the state, and competent to evaluate antenna choices, to certify the need for the required dimensions.

(f) Whip (omni-directional) antennas and their supports must not exceed 15 feet in height and three inches in diameter and must be constructed of a material or color which matches the exterior of the building.

(g) Microwave dish antennas located below 65 feet above the ground may not exceed six feet in diameter, and when located 65 feet or higher above the ground may not exceed eight feet in diameter. Ground-mounted dish antennas must be located or screened so as not to be visible from abutting public streets or adjacent properties.

(h) No more than five dish antennas shall be installed on a monopole tower.

(i) Prior to the issuance of a building permit by the building division and/or planning and zoning division, the applicant shall provide evidence that the telecommunications towers or antennas are in compliance with FAA and Miami-Dade County Aviation Authority regulations. Where an antenna will not exceed the highest point of the existing structure upon which it is to be mounted, such evidence shall not be required.

(j) The location of a new antenna in any zoning district other than the preferred zoning districts specified in this Ordinance shall be prohibited unless approved as a conditional use at a public hearing by the city council.

Sec. 98-2369.- Use of public rights-of-way.

(a) No telecommunications towers may be installed or placed in public right-of-way.

(b) Applications for placement of antennas and its associated equipment facilities in the public rights-of-way must be submitted in accordance with the City's Communications Services Regulations Ordinance.

Sec. 98-2370.- Replacement or modification of a wireless communications facility.

(a) A telecommunications tower that is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same telecommunications tower type as the existing tower, unless the city allows reconstruction as a monopole pursuant to this section.

(b) An existing telecommunications tower may be modified or rebuilt to a taller height to accommodate an additional antenna. Such modification or rebuild of the tower shall require the approval of the planning and zoning division. The new height shall comply with the requirements of this Ordinance.

(c) A telecommunications tower that is being rebuilt to accommodate a collocation and which requires movement on-site from its existing location shall require planning and zoning division approval. After the telecommunications tower is rebuilt to accommodate a collocation, only one telecommunications tower may remain on the site. A relocated on-site telecommunications tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to this section. The relocation of a telecommunications tower pursuant to this section shall not be deemed to cause a violation of the separation requirements contained herein.

(d) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless

communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the city, are subject to no more than applicable building permit review. All other modifications shall require approval by the planning and zoning division.

(e) A pre-existing tower, including a nonconforming tower, may be structurally modified to permit collocation or may be replaced through no more than an administrative review and building permit review, and is not subject to a public hearing, provided the overall height of the tower is not increased. In the case of a replacement where the replacement tower is a monopole tower or, if the pre-existing tower is a camouflaged tower, the replacement tower shall be a camouflaged tower.

(f) Legal nonconforming telecommunications towers or antennas that are damaged or destroyed may be rebuilt subject to this Ordinance. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if the permit expires, the telecommunications tower or antenna shall be deemed abandoned as specified in this Ordinance.

Sect. 98-2371.- Indemnification, insurance and security funds.

(a) The city shall not enter into any lease agreement for city owned property until and unless the city obtains an adequate indemnity from such provider. The indemnity must at least:

(1) Release the city from and against any and all liability and responsibility in or arising out of the construction, operation or repair of the wireless communications facility.

(2) Indemnify and hold harmless the city, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the city or any third party arising out of, or by reason of, or resulting from each wireless communications

facility operator, or its agents, employees, or servants negligent acts, errors, or omissions.

(3) Provide that the covenants and representations relating to the indemnification provision shall survive following the term of any agreement and continue in full force and effect for at least one year following the termination of the party's agreement as to the party's responsibility to indemnify.

(4) In no event shall the city indemnify a service provider and/or the owner or operator of a wireless communications facility.

(b) The city shall not grant or approve an application for the installation of a tower, antenna and/or wireless communications facility and shall not enter into any lease agreement for city owned property until and unless the city obtains assurance that such applicant or lessee (and those acting on its behalf) have adequate insurance. At a minimum, the following requirements must be satisfied:

(1) A wireless communications facility owner shall not commence construction or operation of the facility without obtaining all insurance required under this section and approval of the amount and limits of such insurance by the risk management department and the planning and zoning division, nor shall a wireless communications facility operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the wireless communications facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the city may order such entities to stop operations until the insurance is obtained and approved.

(2) Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the city. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage. An applicant must obtain insurance from an insurance provider authorized to do business in the state of Florida.

(3) These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least 30 days prior written notice has been given to the city. Policies shall be issued by companies authorized to do business under the laws of the state. The city may amend its requirements pertaining to insurance from time to time and may require additional provisions pertaining to such insurance in a lease.

(4) In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the lease agreement with the city, then in that event, the wireless communications facility operator shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof of equal and like coverage for the balance of the period.

(c) A wireless communications facility operator and its contractors or subcontractors engaged in work on the operator's behalf shall maintain adequate insurance to cover liability, bodily injury and property damage in the amount to be determined by the city at the time of application. Exposures to be covered include premises, operations, and those certain contracts relating to the construction, installation or maintenance of the wireless communications facility. Coverage shall be written on an occurrence basis. Certificates of insurance reflecting evidence of the required insurance shall be filed with the city.

(d) Prior to any construction, every service provider, whether on public or private property within the city, shall establish a cash security fund, or provide the city with an irrevocable letter of credit subject to the city attorney's approval, in the amount specified in an agreement, permit, or other authorization as necessary to ensure the provider's faithful performance of construction and compliance with this Ordinance. The minimum amount of the security fund for each telecommunications tower shall be \$25,000.00 and the minimum amount for each antenna shall be \$5,000.00.

(e) In the alternative, at the city's discretion, a service provider may, in lieu of a cash security fund or letter of credit, file and maintain with the city a bond in the same amounts as required in subsection (d) of this section. The provider and the surety shall be jointly and severally liable under the terms of the bond. The bond shall be issued by a surety having a minimum rating of A-1 in Best's

Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the city attorney; and shall provide that "This bond may not be canceled, or allowed to lapse, until 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."

(f) The rights reserved by the city with respect to any security fund or bond established pursuant to this section are in addition to all other rights and remedies the city may have under this Ordinance, a lease, or at law or equity.

(g) Any person, firm or corporation who knowingly breaches any provision of this Ordinance shall, upon receipt of written notice from the city, be given a time schedule to cure the violation. Failure to commence to cure the violation within 30 days and to complete cure, to the city's satisfaction, within 60 days, or such longer time as the city may specify, shall result in revocation of any permit or license and the city shall seek any remedy or damages to the full extent of the law. This shall not preclude other penalties allowed by law.

(h) In addition to revoking any permit or license for violation of this Ordinance, the city may enforce this Ordinance pursuant to the Local Government Code Enforcement Act, F.S. ch. 162, as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Sec. 98-2372.- Reservation of rights.

(a) The city reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

(b) This Ordinance shall be applicable to all telecommunications towers and antennas placed or applied to be placed in the City on or after the effective date of this Ordinance from which this Ordinance is derived and shall apply to all existing telecommunications towers and antennas placed in the City prior to the effective date of the Ordinance from which this Ordinance is derived, to the full extent permitted by state and federal law.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6: Savings. All fees and other dollar amounts owed to the City under any contract, Agreement, or other provision of the City Code as of the effective date of this Ordinance, whether known or unknown, shall not be affected by the adoption of this Ordinance and the City expressly reserves its rights with respect to such amounts.

Section 7: Penalties. Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

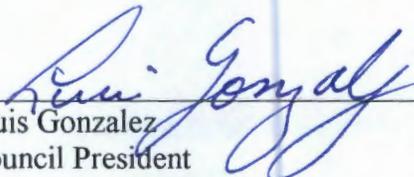
Section 8: Inclusion in Code. The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition

or amendment thereto, and the sections of this Ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 9: Effective Date. This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 27 day of June, 2017.

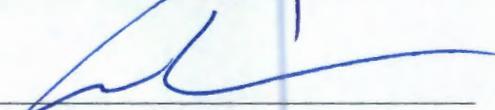
THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.


Luis Gonzalez
Council President

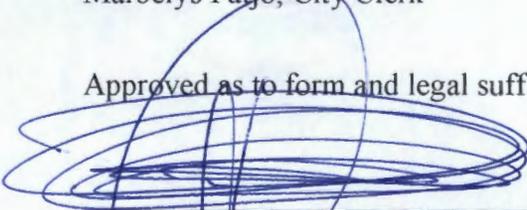
Attest:

Approved on this 10 day of July, 2017.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena E. Bravo, City Attorney

Ordinance was adopted by a (5-0-2) vote with Councilmembers, Caragol, Gonzalez, Hernandez, Cue-Fuente, and Garcia-Martinez voting "Yes". Councilmember Lozano and Casals-Muñoz absent.

Strikethrough indicates deletion. Underline indicates addition.

S:\DJ\Cell providers and Towers\Ch98-Towers Ordinance-FINAL (3).docx

Report of Scrivener's Error -- On June 27, 2017 the City Council approved Ordinance No. 2017-036, concerning wireless communications and antennas, and the ordinance was signed by Mayor Hernandez. On page 31 of the ordinance, §99-2365, in paragraph 2, the word *not* should have appeared between the words: are and available in the last sentence. This ordinance is being amended to read as follows: (2) The order of ranking for siting alternatives is from highest (i) to lowest (vii) as referenced below. Where a lower ranked alternative is proposed, the applicant must demonstrate in its application that higher ranked options are not available. In §99-2366, paragraph (b), the letter s should be stricken in the first line at the end of the word cabinets. The ordinance is also being amended as follow: (b) An unmanned communication cabinets that is not.