

**ORDINANCE 2019-**

**AN ORDINANCE RELATING TO RIGHTS-OF-WAY AND PUBLIC PROPERTY; AMENDING THE PUBLIC RIGHT-OF-WAY ORDINANCE NO. 06-11099 AS AMENDED, TO CREATE AND ADD AN APPENDIX D, AESTHETIC DESIGN STANDARDS, FOR PERMITTING OF CONSTRUCTION AND MAINTENANCE IN THE PUBLIC RIGHTS-OF-WAY, PUBLIC SIDEWALKS AND WAYS, PUBLIC UTILITY EASEMENTS, AND OTHER PUBLIC PROPERTY; AND PROVIDING A CONFLICT AND SEVERABILITY CLAUSE, A REPEALER PROVISION, AND AN EFFECTIVE DATE.**

**WHEREAS,** the Federal Communications Commission (FCC) has issued a Declaratory Ruling and Third Report and Order, in FCC18-133, WT Docket No. 17-79 and WC Docket 17-84 preempting certain actions by local governments and mandating certain review by local governments of small antenna permit applications; and

**WHEREAS,** Florida law also contains certain preemptions and mandates; and

**WHEREAS,** the FCC has given local governments only a short period of time in which to adopt by ordinance local aesthetic standards for staff to follow when considering small wireless permit applications; and

**WHEREAS,** the City of Naples is without debate one of the most beautiful cities in the world despite federal and state interference; and

**WHEREAS,** it is advisable and beneficial for the City to adopt strict but reasonable aesthetic standards for review of applications; and

**WHEREAS,** federal and state law and orders require that small wireless applications be treated in a non-discriminatory manner with other right-of-way applications:

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPLES, COLLIER COUNTY, FLORIDA:**

**Section 1.** That the Right-of-Way Ordinance and Construction Standards Handbook of the City of Naples, Ordinance No. 06-11099, as amended, is hereby further amended to create and add a new Appendix D, Aesthetic Design Standards, for permitting of construction and maintenance in or upon the public rights-of-way, public sidewalks and ways, public utility easements, and for other public property; which shall read as set out in Exhibit A, which is attached hereto and incorporated herein.

**Section 2.** That if any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional, invalid, or ineffective, the same shall not affect the validity of any remaining portions of this ordinance. In such event, the pre-existing word, phrase, clause, subsection or section, shall be revived.

**Section 3.** That all sections or parts of sections of the Ordinances of the City of

Naples, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict. If the procedures contained in this ordinance or the Public Right-of-Way Ordinance and Construction Standards Handbook conflict with a lawful state or federally-mandated or preemptive procedure, the state or federal procedure shall apply.

**Section 4.** This ordinance shall take effect immediately upon adoption at second reading.

**APPROVED AT FIRST READING AND PUBLIC HEARING THE 6<sup>TH</sup> DAY OF MARCH 2019.**

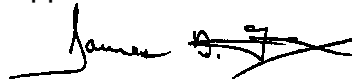
**ADOPTED AT SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA THE 20<sup>TH</sup> DAY OF MARCH 2019.**

Attest:

\_\_\_\_\_  
Patricia L. Rambosk, City Clerk

\_\_\_\_\_  
Bill Barnett, Mayor

Approved as to form and legality:



\_\_\_\_\_  
James D. Fox, City Attorney

Date filed with City Clerk: \_\_\_\_\_

**EXHIBIT A****APPENDIX D****AESTHETIC DESIGN STANDARDS****General**

1. The following design standards are created as a result of a Federal Communications Commission Declaratory Ruling and Third report and Order, FCC 18-33, WT Docket Nos. 17-79 and 17-84 pertaining to Small Scale Wireless Antenna Deployment. However, to the extent that they are the same or similar to placement of other facilities in or upon the public rights-of-way, public sidewalks, public ways, or public utility easements, they shall apply equally to other facilities. To achieve that end, the City will not discriminate against wireless facilities, including small-scale wireless facilities, within the meaning of the telecommunications laws. However, due to the existing beauty and high level of aesthetic awareness of the City, the City demands a high standard of aesthetic awareness and compliance for all facilities, especially those that are in full or in part above-ground or that can be seen from above the ground.

2. These standards may also be applied as guidelines to any real or personal city-owned or controlled property including city parks, buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way, City-owned public sidewalks and ways, and City-owned public utility easements.

3. For purposes of these standards the term “facility” or “facilities” will be used to describe all types of placements, including without limitation: wireless facilities, cables, antennas, conduit, rods, electrical transformers, electrical boxes, cable boxes, pull boxes telephone and utility poles, water connections, sewer connections, gas lines, and other similar structures. It is recognized that many of the “facilities” are governed by other laws and regulations, by franchise or other agreements, or other permits.

4. If there is a lawful state or federal mandate or preemption, the mandate or preemption shall apply and the application shall be processed accordingly, but only to the extent of the mandate or preemption. Otherwise, applications shall conform to the standards set out in the Right-of-Way Ordinance and Construction Standards Handbook, as amended.

5. Compliance with Aesthetic Standards. Applications for a Right-of-Way Permit must demonstrate compliance with the following:

- a. Aesthetic standards contained in the City’s Comprehensive Plan,
- b. Aesthetic standards applicable to the zoning district in which the permit is being sought, and

c. Aesthetic Design Standards as supplemented herein.

If compliance with these standards cannot be achieved or are believed by the applicant to be irrelevant, infeasible, not a best practice, or unlawful, the reasons shall be stated in the application or a response to staff request.

Specific

1. Insurance; bond. The City requires an application, proof of insurance, and a bond or bonds for performance as provided in this Handbook. A maintenance bond may be required to ensure removal or repair of a structure or facility.
2. Underground. To the extent feasible, and allowed by law, facilities or the equipment portions of facilities must be placed underground. Facilities or portions of facilities that are above ground or that can be seen from above ground must be installed and maintained in a first-class manner.
3. Avoidance of multiple facilities; coordination. Where the same or similar service is being provided, applicants must avoid proposing additional facilities if feasible. This includes collocation, sharing of equipment, lines, cables/conduits and their pathways and common or joint trenches; and coordination of installation and maintenance unless infeasible. Seeking competitive advantage alone does not make collocation or sharing of facilities infeasible. This does not permit the City to provide, or the Applicant to receive, exclusive use of the right-of-way.
4. Avoidance of view of equipment. Where feasible, equipment such as antenna boxes, electrical boxes, pull boxes, cables, grounding rods, water and sewer connections and equipment must be placed below or underground. If not feasible they must be buffered, such as with vegetation such as bushes or flowers, or an aesthetically pleasing non-advertisement paint or wrap. Wires, cables and equipment to be collocated on a utility pole must be inside the pole or covered with a shroud. No exposed wires or cables are permitted.
5. Avoidance of bulkiness or clutter. To the extent feasible, the equipment portion of a facility must be no larger than is necessary for the proper functioning of the facility. The City reserves the right to require replacement or removal of facilities or portions of facilities where fewer or smaller facilities or portions become feasible or where a facility is abandoned. An example would be advancing technology that allows for fewer or smaller facilities or portions of facilities.
6. Avoidance of placement in front of structures. Poles, pipes, conduit, and related equipment must not be placed on the front, or principal façade, of a structure unless it is demonstrated that there is no other feasible location.
7. Boring under rights-of-way and sidewalks. Boring of multiple lines under rights-of-way and sidewalks is not permitted where conduit or lines can run parallel and one line or conduit be placed. The application must show the proposed route.

8. High level of maintenance. The facility must be properly installed and maintained in working condition. It must be highly polished, painted, and clean. It must blend in with the surrounding background, and must be compatible with other facilities including city facilities and other structures. The City reserves the right to require, by bond, agreement, or other means, the proper ongoing maintenance, and the removal of the facility or portion that does not meet this standard.
9. Non-removal of Trees; damage to vegetation. Where removal of trees or damage to trees or other vegetation is proposed, the application must be accompanied by a landscape restoration plan and must comply with the City's tree protection ordinances.
10. Historic Preservation. The City retains its authority to enforce historic preservation regulations. Communications facilities shall not be permitted to be collocated on or to interfere with the aesthetics of historic property, unless waived by the city.
11. City's Use of Right-of-Way. A facility must not interfere with the City's use of the right-of-way, public sidewalk, public way, or public utility easement. To the extent not prohibited by law, regulation, or agreement, the City retains the right to require relocation of a facility, (temporarily or permanently), or removal and replacement at the applicant's cost. In such case the City will provide, or attempt in good faith to provide, a suitable alternative location.
12. Applicants must not place or maintain signage on facilities, including small wireless facilities or utility poles unless otherwise required by lawful federal or state law or regulations.
13. Applicants must not have any type of lighted signal, lights, or illuminations unless required by federal or state law or regulations or City codes.
14. Waivers. Waivers can be given where it is clearly demonstrated that strict compliance with these standards or the standards in the Right-of-Way Ordinance/Handbook cannot be met due to infeasibility or to existence of overriding state or federal law or regulations.
15. New Technology. The City will embrace amendments that reduce the incursion into aesthetics that may occur due to new technological advances.
16. Obsolete or abandoned equipment must be removed.
17. Status of the facility must be periodically reported to the City.