

THE CITY OF WINTER GARDEN
CITY COMMISSION AGENDA ITEM

From: Steve Pash, Assistant City Manager – Public Services

Via: City Manager Jon C. Williams

Date: April 18, 2024 **Meeting Date:** May 9, 2024

Subject: Approval of Ordinance 24-09 amending Chapter 70 of the City Code.

Issue:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 70, TELECOMMUNICATIONS, ARTICLE I, IN GENERAL, CITY OF WINTER GARDEN CODE OF ORDINANCES TO ADD REQUIREMENTS FOR RIGHT-OF-WAY PERMIT APPLICANTS AND REGISTRATION REQUIREMENTS FOR COMMUNICATIONS SERVICES PROVIDERS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

Recommended Action:

Staff recommends approving Ordinance 24-09.

Attachment(s)/References:

Ordinance 24-09

ORDINANCE 24-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 70, TELECOMMUNICATIONS, ARTICLE I, IN GENERAL, CITY OF WINTER GARDEN CODE OF ORDINANCES TO ADD REQUIREMENTS FOR RIGHT-OF-WAY PERMIT APPLICANTS AND REGISTRATION REQUIREMENTS FOR COMMUNICATIONS SERVICES PROVIDERS; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission desires to amend Chapter 70, Article I of the City of Winter Garden Code of Ordinances to add requirements for _____ provider applicants seeking right-of-way permits for installation of facilities within public rights-of-way; and

WHEREAS, the City Commission finds it to be in the best interest of the public health, to amend the definitions of Chapter 70, Article I, City of Winter Garden Code of Ordinances in the manner specified in this Ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

SECTION 1: Authority. The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

SECTION 2: Adoption. Chapter 70, Article I of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not included are not being amended):

Chapter 70 TELECOMMUNICATIONS

ARTICLE I. IN GENERAL

Sec. 70-1. Registration for placing or maintaining communications services facilities in public rights-of-way.

- (a) A _____ provider that desires to place or maintain a facility in public rights-of-way in the city shall first register with the city in accordance with this section before it is eligible to apply for a permit. The city has the right to refuse to process any application for a permit if there is not an active registration of the _____ provider under this Section.
- (b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this article only applies for the placement or maintenance of communications services facilities in public rights-of-way. Other ordinances, codes or regulations

may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications services facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another person's facilities. Registration does not excuse a communications services provider from complying with all applicable city ordinances, codes or regulations, including this article.

- (c) Each communications _____ provider that desires to place or maintain a communication services facility in public rights-of-way in the city shall file a single registration with the city building department which shall include the following information:
- (1) Name of the applicant, including a contact person;
 - (2) Name, address, email address, and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;
 - (3) Evidence of the insurance coverage and surety bond required under this article;
 - (4) Acknowledgment that registrant has received and reviewed a copy of this article, which acknowledgment shall not be deemed an agreement;
 - (5) The number of the applicant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any.
- (d) The city shall review the information submitted by the applicant for registration to the building department. Such review shall be by the city manager or his or her designee. If the applicant submits information in accordance with subsection (c) above and other provisions of this chapter and the city code, the registration shall be effective and the city shall notify the applicant of the effectiveness of registration in writing. If the city determines that the information has not been submitted in accordance with subsection (c) above, the city shall notify the applicant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The city shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section.
- (e) *Cancellation of registration.* A registrant may cancel a registration upon written notice to the city stating that it will no longer place or maintain any communications services facilities in public rights-of-way within the city and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications services facilities in public rights-of-way.
- (f) *Limited rights conferred by registration.* Registration does not, in and of itself, establish a right to place or maintain or priority for the placement or maintenance of a communications services facility in public rights-of-way within the city but shall establish for the registrant a right to apply for appropriate and necessary permits to do so. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.

Sec. 70-2. Owner's Authorization.

Each applicant for a right-of-way permit must have an owner's authorization executed by the communication services facilities owner authorizing the applicant to apply for a right-of-way permit on its behalf. The owner's authorization must provide that the communication services facilities owner accepts full and complete joint and several liability for the acts and omissions of the applicant and its contractors, subcontractors and others performing work through the applicant. The owner's authorization must be executed by the same legal entity that is registered with the city under section 70-1. The owner's authorization must be in a form and with terms acceptable to the city. The city manager or his/her designee is authorized to create an owner's authorization form for use by applicants. The city has the right not to process any permit application submitted without a fully executed owner's authorization.

Sec. 70-3. Cash Escrow.

As a condition to applying for a permit for the installation of communication services facilities with the right-of-way, each applicant for a right-of-way permit must execute a cash escrow agreement and submit into escrow with the city a cash deposit in an amount equal to the greater of (i) \$250,000, and (ii) ten percent (10%) of the estimated installation cost of the communication services facilities being placed in the right-of-way under the requested permit, provided that the total amount deposited is not required to exceed \$2,500,000. The cash deposit will be held by the city from the issuance of the right-of-way permit and until 200 days after completion of the installation of the communications services facilities subject to the permit. Subject to deductions to correct damages as allowed by the cash escrow agreement, the cash deposit will be returned to the applicant on the 200th day after the completion of the installation of the communications services facilities subject to the permit. The cash deposit will be held as security to ensure that damages caused by the applicant or its contractors and subcontractors during its installation activities are promptly corrected. The cash escrow agreement will allow the city to use escrow funds to correct property damages, including to other utilities and improvements within the right-of-way and to adjacent public or private property. The cash escrow agreement will be in a form and with terms acceptable to the city. The city manager is authorized to create a cash escrow agreement for use by applicants. No right-of-way permit for the installation of communication services facilities will be issued unless and until the required cash escrow agreement is executed and the required cash deposit is made.

Sec. 70-4. Stop Work Order.

If at any time it is discovered that a permit holder for the installation of communication services facilities or its contractors, subcontractors or any others performing work through the permit holder caused damages to other utilities and improvements within the right-of-way or to adjacent public or private property and such damages were not promptly corrected by the permit holder, the city shall have the authority to issue a stop work order under all permits obtained by the permit holder and concerning work on behalf of the authorizing communication services facilities owner. If a stop work order is issued by the city, all work on the permits impacted by the stop order shall cease and not recommence unless and until the stop work order is released.

Sec. 70-5 Limitation on Work Area.

Due to the constraints placed on city staff concerning communication services facilities installation projects and associated utility locates, the city shall have the right to limit the area of the applicant's work site to not exceed 3,500 linear feet as a condition of any right-of-way permit. Further, the city shall have the right to limit a communication services facilities owner and its contractors and agents to one active right-of-way permit at a time for communication services facilities installation projects. This provision does not restrict the number of right-of-way permits associated with repairing existing communication services facilities within the right-of-way.

SECTION 3: Codification: Section 2 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 4: Control: In the event of a conflict or conflicts between this Ordinance and other ordinances, this Ordinance controls.

SECTION 5: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 6: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: _____, 2024.

SECOND READING: _____, 2024.

ADOPTED this _____ day of _____, 2024, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

ANGELA GRIMMAGE, City Clerk