P.H. 2018-042: Ordinance 2018/ - AN ORDINANCE OF THE CITY COMMISSION OF
THE CITY OF DEERFIELD BEACH, FLORIDA, AMENDING CHAPTER 2
“ADMINISTRATION”, ARTICLE VII “USE OF CITY RIGHTS-OF-WAY” OF THE CITY
CODE OF ORDINANCES REGARDING COMMUNICATIONS FACILITIES IN
RIGHTS-OF-WAY REGULATIONS; PROVIDING AND AMENDING DEFINITIONS OF
TERMS; PROVIDING FOR UNIFORM, NONDISCRIMINATORY STANDARDS TO
PREVENT OVERCROWDING, PROLIFERATION AND SATURATION OF CITY
RIGHTS-OF-WAY, INCLUDING STANDARDS RELATED TO STEALTH DESIGN,
PROTECTION OF RESIDENTIAL PROPERTIES, AND EQUIPMENT LOCATION AND
SIZE; PROVIDING FOR THE ENCOURAGEMENT OF COLLOCATION OF
COMMUNICATIONS FACILITIES; PROVIDING REGULATIONS FOR SMALL
WIRELESS FACILITIES; PROVIDING FOR CODIFICATION, SEVERABILITY,
CONFLICTS, AND AN EFFECTIVE DATE. (Deferred from January 16, 2018)

Commission to vote on Ordinance

Background/History:

The City of Deerfield Beach’s telecommunications facilities regulations are primarily
located in two parts of the City’s Code of Ordinances (“City Code”). Chapter 98, Section
98-98 “Communications towers and antennas” of the City Code provides general
regulations for telecommunications towers and antennas located within the City, including
on public and private property. Chapter 2, Article VII “Use of City Rights-of-Way” of the
City Code provides regulations for communications facilities installed and maintained in
the City’s rights-of-way.

The enclosed draft Ordinance amends Chapter 2, Article VII to revise the City’s
communications facilities in rights-of-way regulations to provide for reasonable,
competitively neutral regulations and standards for such facilities in compliance with
recently amended state law.

Proposed amendments to Chapter 98 will be brought before the Planning & Zoning
Board at a future date.

A memo from the City Attorney’s Office detailing the current state law and the proposed
amendment is enclosed.
MEMORANDUM

TO: City Commission

FROM: City Attorney’s Office

DATE: January 25, 2018

RE: Second Reading - Ordinance Amending Communications Facilities in Rights-of-Way Regulations; Implementing Florida House Bill 687

On December 5, 2017, the City Commission passed the Ordinance on First Reading that amends the City Code to revise the City’s communications facilities in rights-of-way regulations to provide for reasonable, competitively neutral regulations and standards for such facilities in compliance with the recently amended state law. The City Attorney’s Office prepared a Memorandum for First Reading summarizing the amendments provided for in the Ordinance (See enclosed Memo).

The City Attorney’s Office has received a number of comments from telecommunications industry representatives and has been working with their attorneys to address the concerns raised. We did not accept all of their proposed changes, but made some changes that our office felt were reasonable and would not have a detrimental impact. The changes made to the Ordinance between First and Second Reading are highlighted in grey in the Ordinance.
ORDINANCE NO. 2018/

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION”, ARTICLE VII “USE OF CITY RIGHTS-OF-WAY” OF THE CITY CODE OF ORDINANCES REGARDING COMMUNICATIONS FACILITIES IN RIGHTS-OF-WAY REGULATIONS; PROVIDING AND AMENDING DEFINITIONS OF TERMS; PROVIDING FOR UNIFORM, NONDISCRIMINATORY STANDARDS TO PREVENT OVERCROWDING, PROLIFERATION AND SATURATION OF CITY RIGHTS-OF-WAY, INCLUDING STANDARDS RELATED TO STEALTH DESIGN, PROTECTION OF RESIDENTIAL PROPERTIES, AND EQUIPMENT LOCATION AND SIZE; PROVIDING FOR THE ENCOURAGEMENT OF COLLOCATION OF COMMUNICATIONS FACILITIES; PROVIDING REGULATIONS FOR SMALL WIRELESS FACILITIES; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the provision of communications services to residents of and visitors to the City of Deerfield Beach (“City”) is both an important amenity and a necessity of public and private life in the City; and

WHEREAS, the demand for telecommunications services has grown in recent years and continues to grow exponentially, requiring the continual upgrading of telecommunications facilities and services to satisfy such growing demand; and

WHEREAS, Section 337.401, Florida Statutes, states that because Federal and State law require the nondiscriminatory treatment of providers of all communications services and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities treat providers of communication services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the City’s rights-of-way; and

WHEREAS, rules and regulations imposed by a municipality relating to communications service providers that desire to place or maintain communications facilities in City rights-of-way must be generally nondiscriminatory and competitively neutral and, notwithstanding any other law, may not require providers of communications services to apply for or enter into an individual license, franchise, or other agreement with the City as a condition of placing or maintaining communications facilities in its rights-of-way; and

WHEREAS, Section 337.401 (3) (g), Florida Statutes, provides that a municipality may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications
Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and

WHEREAS, Section 337.401(7), Florida Statutes, provides that a municipality may adopt by ordinance objective design standards that require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements and objective design standards that require a new utility pole that replaces an existing facility to be of substantially similar design, material, and color, and require reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, it is the City’s intent to exercise its authority over communications services providers, communications facility providers and pass-through providers’ placement and maintenance of facilities in its rights-of-way; and

WHEREAS, it is the City’s further intent to treat each such provider in a reasonable, nondiscriminatory and competitively neutral manner in exercising such authority, which authority is limited to only those matters necessary to manage its rights-of-way; and

WHEREAS, the City’s rights-of-way are essential for the travel of persons and the transport of goods throughout the City; and are a unique and physically limited resource requiring proper management by the City in order to maximize efficiency, minimize costs to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, it is the further intent of the City to exercise its authority to adopt reasonable rules and regulations to the fullest extent allowed by Federal and State law.

WHEREAS, NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA THAT:

SECTION 1. The above WHEREAS clauses are true and correct and are incorporated herein.

SECTION 2. Chapter 2 “Administration”, Article VII “Use of City Rights-Of-Way” of the City of Deerfield Beach Code of Ordinances is hereby amended to read as follows:

ARTICLE VII. USE OF CITY RIGHTS-OF-WAY
Sec. 2-451. - Generally.

Pursuant to Florida law, the City of Deerfield Beach does hereby ratify and confirm the fact that the rights-of-way of the City of Deerfield Beach are to be held by the City of Deerfield Beach for the benefit of the public and no use may be made of said rights-of-way by private parties for the placement of any objects of any kind whatsoever on said rights-of-way whether said objects are placed on, under or above said rights-of-way, without the authorization of the City of Deerfield Beach as provided for within Chapter 2, Article VII of this Code. Authorization for permits for the Deleted portions of the City Code are struck through; added portions are underlined; shaded text reflects text changes between First and Second Reading.
construction within the city's right-of-way for infrastructure improvements shall be according to the provisions of section 2-467 of this Code. Authorization for permits for the placement of communication facilities within the city's right-of-way shall be according to the provisions of section 2-468 of this Code.

It is the intent of the city to promote the public health, safety and general welfare by: providing for the placement and maintenance of communications facilities in the public rights-of-way within the city; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401, as it may be amended, the city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers, communications facilities providers and pass-through providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the city shall be governed by and shall comply with all applicable federal and state laws.

Sec. 2-452. - Definitions.

For the purposes of this section, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender. "And" and "or" may be read conjunctively or disjunctively. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined in this section shall be given the meaning set forth in Title 47 of the United States Code, and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

Abandonment shall mean the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. For example, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.
**Applicable codes** means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement Section 337.401(7), Fla. Stat. The term includes objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

**City** shall mean the City of Deerfield Beach, Florida.

**City utility pole** means a utility pole owned by the city and located in the right-of-way.

**Collocate** or **collocation** means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

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

**Communications services provider** shall mean any person providing communications services through the placement or maintenance of a communications facility in public rights-of-way. Communications services provider shall also include any person that places or maintains a communications facility in public rights-of-way but does not provide communications services.

**Communications facility** or **facility** or **system** shall mean any permanent or temporary plant, equipment or property, including but not limited to, cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the city and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services; telecommunications towers are excluded and shall not be permitted in the public rights-of-way.

**Communications Facilities Provider** means a person (other than a communications services provider) operating one or more communications facilities located within the city, who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more communications service providers all or a portion of the tangible personal property used in a communications facility. A pass-through provider may be a communications facility provider.
Communications services means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

(b) Installation or maintenance of wiring or equipment on a customer’s premises.

(c) The sale or rental of tangible personal property.

(d) The sale of advertising, including, but not limited to, directory advertising.

(e) Bad check charges.

(f) Late payment charges.

(g) Billing and collection services.

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

Communications services provider means any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way.

Distributed antenna system or DAS means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Existing Structure means a structure within the city’s public right-of-way that exists at the time an application for permission to place a communications facility on the preexisting structure is filed with the city. The term includes utility poles and any structure that:

(i) can structurally support the attachment of a communications facility;

(ii) can be modified or repurposed to support the attachment of a communications facility; or

(iii) can be removed and replaced with a structure of similar design and purpose as the original existing structure that supports the attachment of a communications facility.

FCC shall mean the Federal Communications Commission.

In public rights-of-way or in the public rights-of-way means in, on, over, under or across the public rights-of-way.

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**Micro wireless facility** means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

**Pass-Through Provider** means any person who places or maintains a communications facility in the city’s public rights-of-way and who does not remit taxes imposed by the city pursuant to chapter 202, Florida Statutes, as same may be amended from time to time. A utility as defined in 47 U.S.C. § 224 is not a pass-through provider.

*Person* shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and but shall not include city to the extent the city acts as a communications services provider permitted by applicable law.

*Place or maintain or placement or maintenance or placing or maintaining* shall mean to erect, construct, install, maintain, grade, excavate, place, repair, extend, replace, expand, remove, occupy, locate or relocate. A communications services provider, communications facilities provider or pass-through provider which owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A party providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute "placing or maintaining" facilities in the public rights-of-way.

*Public rights-of-way* shall mean a public right-of-way, public utility easement, public highway, street, lane, bridge, sidewalk, road, waterway, tunnel, alley, or similar property for which the city is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the city holds a property interest therein. "Public rights-of-way" shall not include private property. "Public rights-of-way" shall not include any real or personal city property except as described above and shall not include city buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way. No reference herein, or in any permit, to public rights-of-way shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a registrant shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

*Registrant* shall mean a communications services provider or other person that has registered with the city in accordance with the provisions of this section article.

*Registration or register* shall mean the process described in this section article whereby a communications services provider provides certain information to the city.

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Repurposed structure means an existing structure that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its primary existing purpose while also supporting the attachment of communications facilities through stealth design or otherwise that is approximately in the same location as the existing structure and in such a manner that does not result in a net increase in the number of structures located within the city’s public rights-of-way and does not interfere with pedestrian or vehicular access, and is compliant with applicable codes. To “repurpose an existing structure” shall mean the act of renovating, reconfiguring or replacing an existing structure as described above.

Small wireless facility means a wireless facility that meets the following qualifications:

a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

Stealth Design means a method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure or a wrap.

Surrounding Neighborhood means the area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

Utility pole means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

Video Service means a communications service as defined at section 202.11 (24), Florida statutes, as may be amended from time to time.

Wireless facility means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

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a. The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;

b. Wireline backhaul facilities; or

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

*Wireless services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

*Wireless support structure* means a freestanding structure, such as a monopole, guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

*Wrap* means an aesthetic covering depicting scenic imagery, such as vegetation, which blends with the surrounding area.

**Sec. 2-453. - City authorization required for use of rights-of-way.**

No person may place any objects on, under, or over rights-of-way for the purpose of conducting any business, commercial activity, or profit-making endeavor without the authorization of the City of Deerfield Beach, which authorization shall be granted pursuant to the provisions of this article.

**Sec. 2-454. - Application for use of rights-of-way by persons other than a communications services provider, communications facilities provider or pass-through provider.**

(A) *Application.* Any person, other than a communications services provider, communications facilities provider or pass-through provider, wishing to place an object under, on, or over a right-of-way shall be required to file an application with the City of Deerfield Beach on a form approved by the city manager or his designee, and such application shall be processed, in accordance with this section. The city manager may develop different forms for different types of requests, depending upon the nature and extent of the proposed use of the right-of-way.

**Sec. 2-455. - Processing of application.**

Upon a determination by the city manager or his designee that the application for use of the right-of-way is complete, and payment of the required applicable fee, if any, the city will process said application.

**Sec. 2-456. - Payment of fee.**

Any application for use of the right of way pursuant to this article shall be accompanied by a fee. For temporary uses of the right-of-way for periods less than 30 days, the fee shall be $100.00. For any use over 30 days, the fee shall be $500.00; for periods in excess of 90 days the fee shall be $1,000.00; in addition to the requirement to place in a cost recovery account, a sum of money deemed appropriate by the city manager to cover the costs of professional services needed in

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Sec. 2-457. Review of applications.

(B) City staff review. Upon certification that the application is complete, the application shall be reviewed by all appropriate city departments as determined as necessary by the city manager or his designee. During this review, the city manager or his designee may determine that additional material is needed from the applicant and shall direct the applicant to provide such additional material or information as is deemed necessary and appropriate by the city manager or his designee.

Sec. 2-458. City commission review of application; approval by ordinance.

(C) City Commission review. After review of the application as set forth above, the application shall be transmitted to the city commission for review. Applications for use of the right-of-way for less than a period of 30 days may be approved by resolution of the City Commission of the City of Deerfield Beach. Applications for use of the right-of-way in excess of 30 days shall be approved by ordinance of the City Commission of the City of Deerfield Beach. Except as otherwise required by law, no other form of approval shall be permitted.

(D) Sec. 2-459. Exemptions.

The following actions are exempt from this section:

(1) Uses covered by special event permits;

(2) Uses required by the city to enable the city to provide city services; and

(3) Temporary uses of the right-of-way for non-profit purposes, subject to conditions placed on the use by city manager or city commission.

(4) Existing franchise ordinances of public utilities regulated by the public service commission or other entities to the extent of the specific terms and limitations of the franchise ordinance.

(5) Existing permit ordinances with Bell South to the extent of their terms.

(6) Garage sales conducted in accordance with city regulation.

(E) Sec. 2-460. Considerations for approval of application. In determining whether to grant or approve an application under this section for use of the right-of-way, the city commission shall consider all factors it deems relevant for the protection of the public welfare; these factors shall include, but not be limited to, the following:

(1) The purposes for which the right-of-way is proposed to be used;

(2) The nature and extent of the inconvenience, invasion and interference with the public rights-of-way to be caused by the use of the right-of-way (including any inconvenience, interference, and invasion during placement of objects in, on, over, or below the right-of-way);

(3) The amount of right-of-way to be used by the applicant;

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(4) Any safety hazards or danger to the public resulting from the use of the right-of-way;

(5) The effect of granting permission on the public's use of the right-of-way, any interference with traffic or pedestrian flow, or other city activity on the right-of-way;

(6) The effect of the granting of permission to use the right-of-way on other previously granted consents to other private parties on their use of the right-of-way;

(7) The impact upon future plans or needs of the city or other entities or projects with respect to the rights-of-way;

(8) Any other considerations related to the city's use of the rights-of-way, and the benefit to the public of permitting the use of the rights-of-way as proposed by the applicant.

(F) Sec. 2-461. — **Indemnification.** In return for the use of the right-of-way, the city commission shall require a complete indemnity, hold harmless and defense provision which shall completely provide for a complete defense, indemnity and hold harmless of the city for any and all causes of actions, judgments, obligations, responsibilities, or liability of whatsoever kind relating to the use of the right-of-way by the applicant.

(G) Sec. 2-462. — **Payment for use of right-of-way.**

To the extent permitted by applicable law, the city shall require payment for use of the right-of-way, which payment shall be determined in the sole discretion of the city commission, based upon its considerations of the factors stated above, applicable state and federal law, and such other considerations, including but not limited to the financial benefit to the applicant and the length of the permission, and the extent of the use, and the standards and fees charged by similar communities, as the city deems just and appropriate.

See. 2-463. — **Additional conditions for granting of permission for use of rights-of-way.**

The city may attach other conditions to the grant of permission for use of the right-of-way, including, but not limited to the right to payments for annual inspections as to the manner in which the right of way is being used, other fees for monitoring the use of the rights-of-way, the right to audit any fees if they are in the nature of franchise fees related to revenues collected from the right-of-way, or any other costs associated with the use of the right-of-way. The city may require annual reimbursement for the costs of enforcement, monitoring, and administration.

(H) Sec. 2-464. — **Protection of public welfare.**

The city commission shall also attach conditions which shall require that any use of the right-of-way not interfere with the right-of-way by the public and include provisions which will enforce and ensure that any use of the right-of-way shall not hinder the public and that if the licensee or franchisee is granted the right to use the right-of-way, that any physical invasion of the right-of-way shall be promptly and quickly remedied in a safe manner satisfactory to the City of Deerfield Beach and that the franchisee or licensee shall be responsible for said maintenance and any actions resulting therefrom. Any other conditions deemed necessary to protect the public welfare may be attached to any permission granted to the extent permitted by applicable law.
Sec. 2-465. – Compliance with state and federal regulations.

In implementing this article and the provisions set forth herein, the city shall comply with any state and federal regulations and the provisions of this article shall be given force to the maximum amount and greatest extent permissible under state and federal law.

Sec. 2-466. – Assessment of fee on telecommunications companies for telecommunications facilities; when due; interest; review of records.

(a) Purpose and application. The purpose of this section is to establish fees for occupation of the city's rights-of-way for telecommunications facilities of telecommunications companies not otherwise paying a fee to the city for occupation of the city's rights-of-way. Any telecommunications company paying fees for the occupation of the city's rights-of-way for telecommunications facilities as of the effective date of this section shall continue to pay fees to the city as the company has been paying them.

The fees imposed pursuant to this section shall apply to all telecommunications companies occupying the city's rights-of-way for telecommunications facilities and not otherwise paying a fee to the city for occupation of the city's rights-of-way.

The fees imposed pursuant to this section are a fee and not a tax as specified in F.S. § 337.401; consequently, (1) the payments to be made pursuant to this section shall not be deemed to be in the nature of a tax; (2) such payments shall be in addition to any and all taxes of a general applicability; and (3) the fee specified herein is consideration for occupation of the city's rights-of-way, including all public easements, for the purpose of erecting, constructing and maintaining telecommunications systems.

(b) Fee for telecommunications company occupation of rights-of-way.

(1) a. Any telecommunications company providing local telephone service, as defined in F.S. § 203.012(3), in the city and that is occupying municipal streets or rights-of-way within the corporate limits of the city with poles, wires or other fixtures shall pay to the city a fee in the amount of one percent of the gross receipts on recurring local service revenues for services provided within the corporate limits of the city by such telecommunications company. Included within the fee are all taxes, licenses, fees, in-kind contributions accepted pursuant to Section 337.401, Florida Statutes (2000), and other impositions except as valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the city upon the telecommunications company.

b. In the event that a telecommunications company which provides telecommunications services defined as toll services in F.S. § 203.012(7), occupies the city's rights-of-way, the telecommunications company shall pay to the city annually $500.00 per linear mile, which amount is prorated for any portion thereof, for any cable, fiber optic, or other pathway that makes physical use of the city's rights-of-way. Such annual fee shall be prorated to reflect the expiration date of this section and shall be payable annually, in advance. If a telecommunications company that is required to pay a fee pursuant to this subsection (b)(1)b. increases the amount of its facilities

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occupying the city's rights-of-way after such advance payment has been made, but prior to the expiration date of this section, the fees due for the additional facilities shall be prorated and paid in full at the time the facilities are installed in the city's rights-of-way.

The fee or other consideration imposed pursuant to this subsection b. shall not apply in any manner to any telecommunications company which provides local telephone service as defined in F.S. § 203.012(3), for any services provided by such telecommunications company.

e. Telecommunications company, as used in this section, shall have the meaning set forth in F.S. § 364.02(12).

(2) The fees provided for in subsection (b)(1)a. shall be paid by the telecommunications company to the city in quarterly installments. The installment payments shall be based upon such gross receipts on recurring local service revenues for the immediately preceding installment period or portion thereof after the effective date of this section, and shall be made within 30 calendar days following the end of the period. Past due payments or underpayments shall bear interest accrued from the last day of the quarter for which the payment was due. Interest shall be paid at the Florida statutory rate of interest on judgments as established by F.S. § 55.03. Payments shall include a statement as to how the fee amount was determined and the statement shall be certified by the telecommunications company's chief financial officer or other duly authorized representative of the company.

(3) If the city wishes to verify the payments due to the city under this section, the telecommunications company shall permit the city or a designated representative of the city, upon reasonable advance written notice, and during normal business hours at the location of the telecommunications company where such records are maintained in the city, at another location satisfactory to the city, or elsewhere pursuant to a. or b. below, to review or audit the telecommunications company's billing and payment records kept in the ordinary course of business upon which the payments were based. If a telecommunications company's records are not maintained in the city, the telecommunications company shall either:

a. Pay all reasonable expenses, including travel, following the provisions of F.S. § 12.061(6), (7) and (8), to the city for the city to have a review or audit performed; or

b. Provide the city with access to copies of the telecommunications company's records in the city or within 55 miles of the city or by an electronic method satisfactory to the city.

However, without the specific written consent of a telecommunications company's audit representative, no company records may be duplicated or taken from the telecommunications company's premises, and the city shall maintain the confidentiality of the information disclosed in these records and use the information solely for the purposes of verifying payments by the telecommunications company. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the city may have.

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city may have for sums due and payable under this section unless the city agrees in writing. In the event that the city, pursuant to final audit findings, determines that there exists a difference between the amount due to the city and the amount paid to the city, indicating an underpayment to the city, in excess of five percent of the amount due, such telecommunications company shall pay all reasonable costs, fees and expenses of the audit.

(4) This section is adopted consistent with the provisions of F.S. § 337.401, and other applicable provisions of law. This section shall not be construed as a waiver or limitation of the power of the city to prescribe and enforce reasonable rules and regulations pursuant to applicable provisions of law.

Sec. 2-467455. – Registration for placement and maintenance of communications facilities.

A. (a) Registration required for placing or maintaining communications facilities in public rights-of-way.

(4) A communications services provider, communications facilities provider or a pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this section. Subject to the terms and conditions prescribed in this section, a registrant may place or maintain a communications facility in public rights-of-way upon complying with all permitting and other applicable requirements. A communications services provider, communications facilities provider or a pass-through provider with an existing communications facility in the public rights-of-way of the city as of the effective date of this section shall comply with this section within 60 days from the effective date of this section, including, but not limited to, registration, or be in violation hereof.

(2) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this section governs only the placement or maintenance of communications facilities in public rights-of-way. Registration does not excuse a communications services provider, provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another person's facilities in the city's public rights-of-way. Registration does not excuse a communications services provider, communications facilities provider or a pass-through provider from complying with all applicable city ordinances, codes or regulations, including this section.

B. (3) Registration application. Each communications services provider, communications facilities provider or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file a single registration with the city which shall include the following information:

a1. Name of the applicant;

b2. Name, 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;

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For registrations submitted prior to the effective date of this section, the applicant shall state whether it provides local service or toll service or both;

d. Evidence of the insurance coverage required under this section and acknowledgment that registrant has received and reviewed a copy of this section;

e. A copy of the applicant’s certificate of authorization or license to provide communications services, which may be evidenced by the Florida Public Services Commission, FCC or Department of State certificate of authorization number issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any;

f. For an applicant that does not provide a Florida Public Service Commission certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by providing including the number of the corporate certificate certification from the state of incorporation; and

g. A security fund in accordance with this section article.

C(4)  Processing. The city manager, or designee, shall review the information submitted by the applicant. If the applicant submits information in accordance with subsection 2-467(a)(3) (B) above, 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 2-467(a)(3) (B) 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.

D(5)  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 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 facilities in public rights-of-way.

E(6)  Registration shall be nonexclusive. Registration shall not in itself establish any right to place or maintain service for the placement or maintenance of a communications facility in public rights-of-way within the city, but shall establish for the registrant a right to apply for a permit, if permitting is required by the city. Registrations are expressly subject to any future amendment to or replacement of this section and further subject to any additional city’s ordinances, as well as any state or federal laws that may be enacted.

F(7)  Renewal of registration. A registrant shall renew its registration with the city by April 1 of even numbered years in accordance with the registration requirements in this section, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within 30 days of any change in the information required to be submitted pursuant to subsection 2-467(a)(3), a registrant shall provide updated information to the city. Registration renewals shall include an inventory of the registrant’s newly installed facilities or abandoned communications facilities within the city’s public rights-of-way, placed since the most recent renewal or update to the city. If an inventory of the registrant’s
facilities within the city had not previously been provided, then the registration renewal shall provide such inventory. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the communications services provider, communications facilities provider or pass-through provider has complied with the registration requirements of this section article.

G(8) Registration updates. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (B) above, a registrant shall provide updated information to the city. In accordance with applicable city sections, codes or regulations and this section, a permit shall be required of a communications services provider that desires to place or maintain a communications facility in public rights of way. An effective registration shall be a condition precedent to obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

H(9) Termination of registration. A registrant that places or maintains communications facilities in the public rights of way shall be required to pay compensation to the city as set forth within section 2-466.

1. The involuntary termination of a previously effective registration may only be accomplished by an action of the city commission. The city may declare the registration terminated and revoke and cancel all privileges granted under that registration if:

   a. A federal or Florida authority suspends, denies, or revokes a registrant's certification or license to provide communications service,

   b. The registrant's placement and maintenance in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way, or

   c. The registrant abandons all of its communications facilities in the public rights-of-way.

Prior to such termination for any of the reasons set forth in this section, the city manager shall notify the registrant in writing setting forth the matters pertinent to such reasons and describing the proposed action of the city with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the city commission, to accomplish the same.

2. The registrant shall be provided with written notice of the meeting at least five days prior to the meeting where the city commission is scheduled to consider termination of the registrant’s registration. At such meeting, the registrant shall be given the opportunity to address the city commission regarding the proposed termination action prior to the city commission’s vote on termination.
3. In the event of a vote by the city commission to terminate the registration, the registrant shall, within a reasonable time following such termination, provide an acceptable plan for transferring ownership of the communications facilities to another person in accordance with this article or shall remove or abandon the facilities and take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way of the city safe. If the registrant has either abandoned its facilities or chooses to abandon its facilities, the city may either:

a. Require the registrant or the registrant's bonding company to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal;

b. Require that some or all of the facilities be removed and the public rights-of-way restored to its such condition at the registrant's expense, using city employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement; or

c. Utilize or allow other persons to utilize the registrant's abandoned facilities.

The obligations of the registrant hereunder shall survive the termination of a registration. In the event of a declaration of termination of registration, this provision does not permit the city to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered with the city, for such certificated service, where required.

I. Communications services tax in lieu of permit fee. A registrant that places or maintains communications facilities in the city’s public rights-of-way and that pays communications services taxes shall not be required to pay a permit fee since the city has elected to collect the communications services tax pursuant to Ch. 202, Florida Statutes, as may be amended from time to time. Pass-through providers shall pay a fee pursuant to city code section 2-463 and section 337.401(5), Florida Statutes, as amended from time to time.

J. Permits required of registrants. In accordance with applicable city ordinances, codes or regulations, a permit may be required of a communications services provider, communications facilities provider, or a pass-through provider that desires to place or maintain a communications facility in the city’s public rights-of-way. An effective registration shall be a condition precedent to obtaining a permit. Notwithstanding an effective registration, permitting requirements shall also apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all applicable permitting requirements are met.
Sec. 2-456. - Permit requirements and conditions for work in rights-of-way.

A. (1) Permit required. A registrant shall not commence to place or maintain a communications facility in a city public right-of-way until all applicable permits have been issued by the city. The registrant acknowledges that as a condition of granting such permits, the city may impose reasonable conditions governing the placement or maintenance of a communications facility in the city's public rights-of-way related to the public, health, safety and welfare as permitted and set forth in section 337.401, Florida Statutes, as may be amended from time to time; however, no such imposed conditions shall prohibit the provision of communications services. Permits shall apply only to the areas of the city's public rights-of-way specifically identified in the permit. In determining whether to permit and reasonably limit, or impose conditions or prohibit a communications facility to be placed or located within the city's public rights-of-way, the city engineer shall consider the following standards and minimum requirements in the city engineer’s review and consideration of a permit application and imposition of reasonable permit conditions:

(i) Sufficiency of space to accommodate present and pending applications for use of the city's public rights-of-way. The sufficiency of space to accommodate all of the present and pending applications to place communications facilities and pending or planned applications to place and maintain facilities in that area of the city's public rights-of-way;

(ii) Sufficiency of space to accommodate the city's need for projected public improvements. The sufficiency of space to accommodate city plans for public improvements or projects adopted as part of its community investment capital improvements plan that the city determines in the best interest of the public;

(iii) Impact on traffic and traffic safety. The impact on traffic and traffic safety;

(iv) Impact on existing facilities. The impact upon existing facilities in the city's public rights-of-way;

(v) Distance separation from edge of pavement. No new communications facility pole or wireless support structure shall be constructed, operated or maintained in the city's public rights-of-way in violation of the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Streets and Highways, Table 3-13 Minimum Width of Clear Zones. In accordance with Table 3-13, the city engineer shall have the authority to reduce the four (4) foot minimum offset identified in Table 3-13 where that offset cannot be reasonably obtained and other alternatives are deemed impractical;

(vi) Distance separation from sidewalk. No newly installed communications facility pole or wireless support structure shall be placed or maintained in the city's public rights-of-way within one (1) foot of a sidewalk that is five (5) feet or less in width. Collocation on an existing structure is exempt from this requirement; and
(vii) **Installation at outermost boundary of City's Public Rights-of-way.** Where a superior site design results from placement of a communications facility pole or wireless support structure at or near the outermost boundary of the city's public right-of-way, the farthest distance practicable from the centerline thereof and edge of pavement is encouraged. To the extent that the location of the sidewalk within the city's public right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this article, then the city engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet other requirements of this article.

(2) **Permit not required.** A registrant shall be allowed to perform the following limited work within the public right-of-way without first obtaining a permit provided that such proposed limited work does not involve excavation, or the closure of a sidewalk or vehicle lane:

(i) routine maintenance or emergency maintenance, subject to the notification provisions of this article;

(ii) replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

(iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communication services provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202, Fla. Stat.

B. **Permit applications.** Except as otherwise provided by applicable law, permit applications to place a communications facility in the city's public right-of-way shall contain the following, unless the City Engineer, or designee, determines based on the circumstances of a particular application and proposed facility that the information is not necessary for the proper management of the City's right-of-way:

(1) **Site plan.** A site plan, in the form of signed and sealed plans from a Florida licensed professional engineer of record that show the location of the proposed facilities in the city's public right-of-way, in a hard copy format or electronic format specified by the city engineer. The site plan shall also include:

i. a description of the facilities to be installed, where the facilities are to be located, and the size, dimensions and height of the proposed facilities that will be located in the city's public right-of-way; and

ii. for new communications facility poles or wireless support structures, how many collocations the new poles or structures can support in terms of capacity; and

iii. sufficient specificity as to demonstrate compliance with the Florida Building Code, specifically in terms of compliance with ASCE-7-10, or latest edition for requirements.
of wind load; and

iv. for new communication facility poles, wireless support structures, or any excavation work, a geotechnical report for the existing soil conditions, or a soil statement by a Florida licensed professional engineer, attesting to the soil conditions.

(2) **Full color photo-simulation.** A full color photo-simulation showing the proposed new communication facility poles and wireless support structures installed in accordance with the application from the point of view of properties adjacent to the proposed site.

(3) **Description of installation or construction.**

i. A description of the type of facility and the manner in which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques); and

ii. a description of stealth design to be utilized. Additionally, each application for a permit to place a communications facility pole or a wireless support structure in the city's public rights-of-way shall include photographs showing the location and condition of the surrounding neighborhood, and a description of the stealth design techniques proposed to minimize the visual impact of the communications facility pole or wireless support structure and graphic depictions accurately representing the visual impact of the communications facility pole or wireless support structure when viewed from the street and from adjacent properties.

iii. alternatively, a signed and sealed statement from a Florida state licensed professional engineer that stealth design cannot be utilized on any particular facility and documentation demonstrating to the satisfaction of the city engineer that the proposed communications facility cannot employ stealth design and the proposed exterior location and configuration of equipment are the minimum equipment necessary to achieve the needed function.

(4) **Temporary sidewalk closure plan.** A temporary sidewalk closure plan, if appropriate given the facility proposed, to accommodate placement or maintenance of the communications facility.

(5) **Temporary modification maintenance of traffic (MOT) plan.** A temporary traffic lane closure and modification maintenance of traffic (MOT) plan, if appropriate given the facility proposed, to accommodate installation and/or modification of the communications facility.

(6) **Capacity of abutting city public rights-of-way to accommodate the cumulative impact of the proposed facility and other facilities within the city's public rights-of-way.** Information on the capacity of the city's public rights-of-way to accommodate the cumulative impact of (i) the proposed facility together with (ii) other existing and proposed facilities in the adjacent city public rights-of-way, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons).
Notwithstanding the foregoing, such information is not required with respect to wireline pole attachment installations made in the communications space of utility poles.

(7) **Restoration plan and cost of restoration of the city's public right-of-way.** Based on the facility proposed, a restoration plan and an estimate of the cost of restoration of the city's public rights-of-way.

(8) **Timetable for construction or installation and intended areas of service.** The timetable for placement or maintenance of the proposed facility or each phase of the placement or maintenance thereof, and the intended areas of the city to be served by the communications facility.

(9) **Project Permits involving multiple collocations or attachments.** For project permits that involve multiple collocations or attachments to existing structures, repurposed structures or installation of multiple new wireless support structures, the applicant shall only be required to provide a structural certification by a Florida licensed professional engineer as to each type of facility verifying that each type of facility can structurally support the proposed collocations or attachments with the additional loading on the subject structure, not for each facility proposed as part of the overall project. No such certification is required with respect to wireline pole attachment installations made in the communications space of utility poles.

(10) **Certification as to removal of abandoned facilities or equipment.** The applicant shall certify that any and all of its abandoned facilities within the city's public rights-of-way has or have been removed, indicating the prior location of such abandoned facilities.

(11) **Information regarding distance separation.** In order to assess the impacts on the city's public rights-of-way resources and the potential for collocations or use of repurposed structures, identification of all communications facility poles and wireless support structures in the city's public rights-of-way within a five hundred (500) foot radius of the proposed new communications facility (such information may be produced without certification as to correctness to the extent obtained from other registrants with facilities in the city's public rights-of-way). No such identification is required with respect to wireline pole attachment installations made in the communications space of utility poles or for small wireless facilities.

(12) **Identification of all above-grade and below-grade structures within the city's public rights-of-way within a five hundred (500) foot radius.** In order to assess the impacts on the city's public rights-of-way resources, the impact on surrounding neighborhoods and other properties within the permit area, and the potential for collocations or use of existing structures, identification of all above-grade structures in the city's public right-of-way within a five hundred (500) foot radius of the proposed new communications facility (including utility poles, equipment boxes, below-grade and above-grade communications service facilities and antennae) shall be provided (such information may be produced without certification as to correctness to the extent obtained from other registrants with facilities in the city's public rights-of-way). No such identification is required with respect to...
to wireline pole attachment installations made in the communications space of utility poles or for small wireless facility installations.

(4312) **Affidavits.**

(i) An application for a permit to install new communications facility pole(s) or new wireless support structures (as opposed to collocations, applications to use an existing structure, or wireline pole attachment installations made in the communications space of utility poles) shall include an affidavit from a Florida licensed professional engineer with a statement that it is not feasible to locate applicant’s proposed facilities on existing poles along the proposed route and all the facts relied upon in the applicant's attempt to both collocate or attach the proposed new communications facilities on existing structures within the city's public rights-of-way, as well as on property outside the city's public rights-of-way, within a five hundred (500) foot radius of the proposed new communications facility. The affidavit requirement in this subsection (i) shall not apply to applications to install a new utility pole in the public rights-of-way to support the collocation of small wireless facilities.

(ii) An application for collocation shall include an affidavit signed statement from the owner of the facility or existing structure being collocated upon that the applicant has been granted permission to attach to the facility or existing structure being collocated upon or attached to.

(iii) An application from a wireless infrastructure provider to place a new utility pole in the public rights-of-way to support the collocation of small wireless facilities shall include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved.

(4413) **Public notice of new communications facility poles or new wireless support structures.**

(i) Simultaneous with the filing of an application for a permit for the installation of a new communications facility pole or a new wireless support structure (except for the filing of an application for the installation of a small wireless facility), the registrant shall submit an affidavit of mailing, attesting that notice of pending application has been mailed to all interested persons within three hundred (300) feet of the proposed permit area, as certified by the Broward County Property Appraiser's Office.

(ii) As to owners of condominium or cooperative units where the condominium or cooperative is within three hundred (300) feet of the proposed permit area, the registrant shall satisfy the requirements of this subsection by providing written notice to the respective condominium association or cooperative corporation in lieu of written notice to the individual property owners within such condominium or cooperative.
(iii) The notice of pending application shall notify the interested persons that an
application for a new communications facility pole or wireless support structure has been
filed with the city engineer.

(iv) The notice of pending application shall invite the interested persons to provide
comments, inquiries or objections to the city engineer and registrant within fifteen (15)
days of the date the notice was posted to the U.S. mail.

(v) The notice of pending application shall provide the name, mailing address, e-mail
address and phone number of the city engineer to whom the interested persons should direct
their comments, inquiries or objections. The contact information for the city engineer shall
be in 14 point bold faced print.

(vi) The notice of pending application shall contain the following:
   a. a hard copy of the site plan submitted with the permit application;
   b. a description of the location of the proposed new communications facility
      poles or new wireless support structures by reference to the property street
      addresses abutting the proposed site of the new communications facility poles;
   c. a description of the new communications facility pole(s) or new wireless
      support structures to be installed, including the size, dimensions and height of the
      proposed new communications facility pole(s) or new wireless support structures;
   d. a full color photo-simulation showing the proposed new communications
      facility pole(s) or new wireless support structures installed in accordance with the
      application from the point of view the properties adjacent to the proposed site,
      together with depictions of any stealth design features to be utilized; and
   e. the location where the interested persons may go to examine any other
      materials relative to the pending application.

(1514) Registrant agrees to indemnification. A statement shall be included within the application
for a permit that by execution of the application and by applying for the permit, the
registrant agrees to be bound to the city with respect to the indemnification provisions set
forth in city code section 2-459(B) as though such indemnification provisions are set forth
verbatim in the permit application.

(1615) Additional information as reasonably required for review of permit
application. Such additional information as the city engineer finds reasonably necessary
with respect to the placement or maintenance of the communications facility that is the
subject of the permit application to review such permit application, which information
may include, but is not necessarily limited to: (i) evidence satisfactory to the city engineer
that the proposed facility will not pose a risk of explosion, fire, or other danger to life or
property due to its proximity to volatile, flammable, explosive or other dangerous
chemicals; and (ii) a written statement from a qualified radio frequency engineer that the
construction and placement of the proposed facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent properties.

C. Permit does not create a property right; program areas where overhead utilities are being placed underground. A permit from the city constitutes authorization to undertake only certain activities in the city's public rights-of-way in accordance with this article, and does not create a property right to continued occupation of the city’s public rights-of-way or grant authority to impinge upon the rights of others who may have an interest in the city's public rights-of-way. Nor does it create a property right to maintain collocated communications facilities or facilities hosting on repurposed structures or existing structures when such hosting structures are within a program where overhead distribution utilities are being placed underground pursuant to a city program to underground such overhead distribution facilities.

D. Avoidance of interference with city public rights-of-way.

(1) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of the property owners who adjoin the city's public rights-of-way. The registrant shall endeavor to install all communications facilities underground wherever feasible.

(2) All construction or maintenance of communications facilities shall be accomplished in the manner that will result in the least amount of damage and disruption to the rights-of-way.

(3) The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the city's public rights-of-way as well as joint trenching for the collocation of facilities in existing conduit is strongly encouraged, and the city may require such methods wherever feasible and not inconsistent with applicable law.

E. Avoidance of interference, displacement, damage or destruction or destruction of other facilities. A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to sewers, gas or water mains, storm drains, storm drainage lines, pipes, cables or conduits of the city or any other person’s facilities lawfully occupying the city's public rights-of-way. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The city manager or designee may issue such rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way as may be consistent with this article and other applicable law.

F. Coordination with other work in city public rights-of-way. Upon request of the city, and as notified by the city of other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject city public right-of-way, and the registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions.

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and disturbance in the city's public rights-of-way and minimize any interference with the existing communications facilities.

G. Temporary raising and lowering of communications facilities as accommodation. A registrant shall, on the request of any person holding a permit issued by the city, temporarily support, protect raise or lower its communications facilities to permit the work authorized by the permit within the city's public rights-of-way. The expense of such temporary support, protection, raising or lowering of facilities shall be paid by the person requesting it, and the registrant shall have the authority to require such payment in advance. To the extent possible, the registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary support, protection, raising or lowering of the facility. If the city requests the temporary support, protection, raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary support, protection, raising or lowering of the facility.

H. Restoration of city public rights-of-way. After the completion of any placement or maintenance work involving a communications facility in a city public right-of-way or each phase thereof, a registrant shall, at its own expense, restore the city public right-of-way to its existing condition prior to such work. If the registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance work, the city may perform restoration and charge the costs of the restoration against the registrant in accordance with section 337.402, Florida Statutes, as may be amended from time to time. For twelve (12) months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense.

I. Removal or relocation governed by Florida law; conversion of overhead distribution facilities to underground distribution facilities.

1. Removal or relocation at the direction of the city of a registrant's communications facilities in a city public right-of-way shall be governed by the provisions of sections 337.402, 337.403 and 337.404, Florida Statutes, as amended from time to time.

2. Subject to sections 337.402, 337.403 and 337.404, Florida Statutes applicable law, as amended from time to time, and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground distribution facilities, any registrant having communications facilities located on a communications facility pole or utility pole which is to be removed as a result of said underground conversion shall arrange at their sole expense for the conversion to underground facilities (for wired facilities) or above ground relocation (for wireless facilities) on the same terms and conditions as the other utility distribution facilities that are being converted to underground distribution facilities.

J. Maintenance in accordance with industry standards and applicable law. A registrant shall maintain its communications facilities in good condition, order and repair in a manner consistent with accepted industry practice and applicable law.

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Owners of communications facilities located in city public rights-of-way shall install and maintain communications facilities and other appurtenant equipment in compliance with the requirements of all applicable laws and codes, and in such a manner that will not interfere with the use of other property or facilities within the city's public rights-of-way.

All communications facilities and other appurtenant equipment shall, at all times, be kept and maintained in good condition, order and repair so that the same shall not endanger the life or property of any person or other facilities in the city's public rights-of-way.

**K. Maintenance of graffiti plan.** Each communications facility within the city's public rights-of-way, including any appurtenant features incorporated therewith under this article, shall be maintained in a neat and clean condition at all times. Specifically, but not without limiting the generality of the foregoing, each communications facility in the city's public rights-of-way shall be regularly maintained so that:

1. it is free of graffiti visible from the city's public rights-of-way or surrounding neighborhood at grade. All graffiti shall be removed within ten (10) working days from receipt of notice thereof by the city that graffiti exists on the communications facility or any portion thereof. A fine of $50.00 per day shall be imposed for each and every day of non-compliance after receipt of notice by the city; and

2. it is reasonably free of dirt and grease, rust and corrosion in visible metal areas, chipped, faded, peeling and cracked paint that is visible from the city's public right-of-way at grade. All such conditions shall be remedied within thirty (30) working days from receipt of notice thereof from the city.

**L. Safety practices; encourage strengthening utility infrastructure and infrastructure hardening plan.** All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities. The city's policies strongly favor strengthening utility infrastructure and in particular as it relates to flooding and hurricane related events, and applicants are encouraged to implement an infrastructure hardening plan for any communications facilities within the city's public rights-of-way.

**M. Underground facility damage prevention and safety act.** In connection with excavation in the city's public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes, as may be amended from time to time.

**N. Use of due caution.** Registrants shall use and exercise due caution, care and skill in performing work in the city's public rights-of-way and shall take all reasonable steps to safeguard work site areas, including, but not limited to those safeguards set forth in chapter 33 of the Florida Building Code. A registrant shall not place or maintain its communications facilities so as to interfere, displace, damage or destroy any facilities, including but not limited to sewers, gas or water mains, storm drains, pipes, cables or conduits of the city or any other person's facilities lawfully occupying the public rights-of-way of the city.
O. **No warranties or representations regarding fitness, suitability or availability of city public rights-of-way.** The city makes no warranties or representations regarding the fitness, suitability, or availability of the city's public rights-of-way for the registrant's communications facilities. Any performance of work, costs incurred or services provided by the registrant shall be at the registrant's sole risk. Nothing in this article shall affect the city's authority to add, vacate or abandon its public rights-of-way, and the city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

P. **Right of inspection.** The city shall have the right to make such inspections of communications facilities placed or maintained in its public rights-of-way as it finds necessary and upon reasonable notice to ensure compliance with this article.

(1) Upon completion of work authorized by any permit, in the event that field work resulted in changes from the permit plans, the applicant shall furnish to the city, at no cost to the city, one complete set of sealed "as-built" plans, or in the case of any underground utility facilities, a sealed survey showing the exact location of such facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be) of facilities as the city engineer may approve.

(2) The "as-built" plans shall be in an electronic format specified by the city engineer and shall be provided to the city at no cost to the city.

(3) This requirement shall be in addition to, and not in lieu of, any filings the registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes, as may be amended from time to time.

(4) The fact that such "as-built" plans or survey is on file with the city shall in no way abrogate the duty of any person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the city's public rights-of-way.

(5) Any proprietary confidential business information obtained from a registrant in connection with a permit application shall be held confidential by the city to the extent required by section 202.195, Florida Statutes, as may be amended from time to time, provided the registrant so notifies the city which information is confidential in accordance with Florida’s public records laws.

Q. **Florida Building Code; high velocity hurricane zone.** In addition to the requirements of this article, all permitted facilities shall comply with the applicable provisions of the Florida Building Code. Communications facilities shall be considered to be structures under building risk category IV, Structures, Chapter 16, Section 1620 - 1621, High Velocity Hurricane Zone Area. Signed and sealed design and wind load calculation shall be provided by a Florida licensed professional engineer and a permit under the Florida Building Code shall be required.
R. Permit processing timeframes; "shot clock". The city's action on proposals to place or maintain communications facilities shall be subject to the applicable standards and time frames set out in Sections 337.401 and 365.172, Florida Statutes, as may be amended from time to time; and 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same may be amended from time to time. All Federal and State "shot clock" timeframe guidelines that apply to any particular permit are hereby recognized by the city, and the city will make all reasonable efforts to comply therewith.

S. Project permit.

(1) **General.** The city may issue a single project permit that would otherwise require individual permits for two or more collocations, existing structures, repurposed structures or pole attachments that form a cluster or multiple clusters to serve a specified service area. New communication facility poles or wireless support structures may not be included in any project permit. The process will start with a preliminary review meeting. After completion of this meeting, a project plan shall be submitted with project permit application.

(2) **Preliminary review meeting.** A meeting with city engineer shall occur to discuss code concerns prior to submitting project plans. For purposes of the master project plan, this meeting is the forum in which the design team describes their intentions for the completion sequence. This is a crucial step that designates how to permit the entire project in order to realize these intentions. From information gathered at the meeting, a project plan shall be created and submitted with a permit application. At the city engineer's sole discretion, upon a determination that a proposed project permit is too large to be processed and completed as such, said proposed project permit may be broken into multiple individual permits or smaller project permits, in any combination.

(3) **Project plan.** An organization chart that breaks down the phases of the project shall be included. The organization is arranged to reflect the dependency that exist between sub-projects. The purpose of the preliminary project plan is to show the sequence of completion for the project. The entire project contained in a project permit must be completely constructed within 90 days from permit issuance.

T. Routine maintenance and emergency notices and permits. In the case of routine maintenance, a registrant shall provide at least three (3) days' advance written notice to the city identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. In the case of an emergency, a registrant may restore its damaged facilities in the city's public rights-of-way to their pre-emergency condition or replace its destroyed facilities in the city's public rights-of-way with facilities of the same size, character and quality, all without first applying for or receiving a permit.

(1) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.
(2) A registrant shall provide prompt notice to the city of the emergency repair or replacement of a communications facility in the city's public right-of-way, and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in connection with the emergency.

U. Issuance of permit in violation of city code or construction in violation of city code.

(1) The issuance of a permit for a communications facility shall not be construed as a right to placement or maintenance of the communications facility that fails to meet the requirements of this article.

(2) The issuance of a permit for a communications facility shall not be deemed or construed to be a permit for or approval of any violation of any of the provisions of this article. A permit presuming to give authority to violate or cancel the provisions of the city code shall be void and invalid except insofar as the work or use that it authorizes is lawful.

V. Permit required. Notwithstanding any other provision to the contrary, a right-of-way permit from the city is required for any work that involves excavation, closure of a sidewalk or closure of a vehicular lane.

W. No permit fees for work under this article. Pursuant to section 337.401(3)(c)(1)(b), Florida Statutes, as amended from time to time, and other applicable provisions of law, the city has elected not to charge permit fees to any registrant for permits to do work under this article in the city public rights-of-way. Notwithstanding the foregoing, pass-through providers shall be subject to the fees set forth in city code section 2-463.

X. Repurposed structures. Unless stated otherwise, or as otherwise limited by applicable law, all requirements imposed on communications facilities shall also apply to repurposed structures. The provider attaching its communications facilities to a repurposed structure shall be responsible for registration and permitting requirements of this article to the extent they were exempted prior to the act of repurposing the existing structure. The provider that later removes a repurposed structure (other than a utility pole) shall reinstall a replacement communications facility pole in the city's public right-of-way at the direction and discretion of the city.

Sec. 2-457. Design standards for compatibility with surrounding neighborhood; prevention of pole proliferation and saturation of city public rights-of-way.

A. In general. Above-ground communications facilities, including wireless communications facilities and support structures, shall be designed in such a manner that the facilities and structures are compatible with the surrounding neighborhood and minimize any negative visual impact on the surrounding neighborhood. In order to achieve compatibility with the surrounding neighborhood and to minimize the negative visual impact on the surrounding neighborhood, the regulations in this section 2-457 shall apply, unless otherwise provided pursuant to this section.
B. Stealth design. Stealth design for above-ground communications facilities, and in particular, communications facility poles and wireless support structures, shall be utilized wherever possible in order to minimize the visual impact of communications facilities on, and preserve compatibility with, surrounding neighborhoods, and in order to eliminate the need to locate any ground or elevated equipment on the exterior of a communications facility or existing structure. Stealth design is not required with respect to wireline pole attachment installations made in the communication space of utility poles. To the extent reasonably practicable for the site, stealth design features shall include, but are not limited to, the following:

1. For new communications facility poles and new wireless support structures, as well as existing structures in the city's public rights-of-way, (i) top mounted antennas within enclosures that do not extend the diameter of the supporting communications facility pole, wireless support structure, existing structure or other support structure at the level of antenna attachment, or (ii) side mounted antennas within enclosures that extend no more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment shall be utilized. For purposes of calculating the above, the dimensions of the supporting communications facility pole, wireless support structure, existing structure or other support structure do not include any platform, rack, mount or other hardware used to attach an antenna or antenna enclosure to the supporting structure. Nothing contained in this subparagraph (1) shall be construed to limit stealth design as specified in other subparagraphs below.

2. The use of foliage and vegetation based on conditions of the specific area where the facility is to be located. Trees shall be determined and approved by the city's landscape plans examiner under separate permit.

3. Equipment wraps (the imagery in a wrap shall not contain any advertising).

4. Flag poles.

5. Street light fixtures.

6. Other stealth design proposed by an applicant and approved by the city based on unique circumstances applicable to the facility or the location or both.

All stealth designed communications facilities components, including associated hardware, shall be designed and constructed in accordance with the high velocity zone criteria specified in the Florida Building Code, Chapter 16 and considered as structures under building risk category II. Design and wind load calculations shall be provided per ASCE 7 - 10 (170 MPH). Calculations should be accompanied by Miami-Dade County Notice of Acceptance (NOA)/Product Approvals.

C. No Signage. Registrants shall not place or maintain signage on communications facilities in city public rights-of-way, unless otherwise required by federal or state law, provided; however, that existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law or city code, as may be amended from time to time.
D. Exterior finish. Communications facilities not requiring FAA painting or marking shall have an exterior hard durable finish that enhances compatibility with adjacent uses, as approved by the city engineer.

E. Lighting. A communications facility shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, State, or local rule, regulation, the FAA or law; provided, however, the city may require the installation of an LED street light on a new communications facility pole or wireless support structure or an existing structure functioning as a light pole.

F. Maximum height restrictions. Subject to the equipment volume and antenna volume limitations, a communications facility, including any attached antennas, shall not exceed the following height:

1. Poles along roadways. The height of a new communications facility pole or wireless support structure within the public rights-of-way shall only be as high as reasonably necessary to achieve its intended purpose and shall not exceed the height of existing poles or structures in the public rights-of-way within 100 feet of the proposed new communications facility pole or wireless support structure. If no such existing poles are present in the public rights-of-way within 100 feet, the new communications facility pole or a new wireless support structure shall not exceed a height of 30 feet. Height shall be measured from the crown of the road of the nearest public street.

2. Top mounted Antennas. Top mounted antennas may extend an additional four (4) feet in height in excess of the height limitations set forth in (F)(1), above.

3. Colocations and repurposed structures. For each collocation or repurposed structure, top mounted antennas may extend an additional six (6) feet in height in excess of the height limitations set forth in (F)(1), above.

4. Above grade requirement. All antennas shall be no less than eight (8) feet above grade.

5. Small wireless facilities. See section 2-464(G).

G. Equipment and antenna volume.

1. Subject to height limits and antenna volume limits, equipment that may be associated with communications facilities (excluding equipment directly associated with a small wireless facility) attached to an existing structure or a new communications facility pole or a new wireless support structure or located in the city's public right-of-way at grade, not including associated antenna(s), electric meter, telecom demarcation box, battery-backup power systems, grounding equipment, or power transfer switch, shall not exceed seventeen (17) cubic feet.

2. Antenna volume. Subject to height limits and equipment volume limits, each antenna that may be associated with the installation of a communications facility (excluding equipment directly associated with a small wireless facility) shall not exceed more than three (3) cubic feet.
cubic feet in volume. Each antenna that is exposed and not concealed within a concealment enclosure shall fit within an imaginary enclosure that does not exceed three (3) cubic feet.

H. Prohibition against placement on certain roadways where the city has plans for sidewalks: preference for arterial or collector roadways. No communications facility shall be placed or maintained in the swale area on the side of a collector roadway or local roadway where the city has documented plans to install a sidewalk of five (5) feet in width or more, nor shall such communications facility be located in such a manner that would preclude a five (5) foot clear pathway for the planned sidewalk. Otherwise, communications facilities shall generally be placed in arterial or collector roadways whenever possible. Placement of communications facilities in rights-of-way other than arterial or collector roadways shall be justified by the applicant to the satisfaction of the city engineer prior to the issuance of any permit. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these areas, subject to any future relocation of the existing structure or repurposed structure to accommodate the sidewalk.

I. Minimum distance separation from edge of pavement. No communications facility shall be placed or maintained in the city's public rights-of-way in violation of minimum distance separation from edge of pavement in accordance with the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, Table 3-13, Minimum Width of Clear Zones. In accordance with Table 3-13, the city engineer shall have the authority to reduce the four (4) foot minimum offset identified in Table 3-13 where that offset cannot be reasonably obtained and other alternatives are deemed impractical, the city engineer shall have the authority to decide reductions in the clear zone in accordance with the above referenced Table 3-13. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these areas.

J. Minimum distance separation from existing sidewalk. No communications facility pole or wireless support structure shall be placed or maintained in the city's public rights-of-way within one (1) foot of an existing sidewalk. Collocation and use of repurposed structures are exempt from this requirement.

K. Installation at outermost boundary of city public rights-of-way. Where a superior site design results from placement of a communications facility at or near the outermost boundary of the city's public right-of-way, the farthest distance practicable from the centerline of the public right-of-way and edge of pavement is encouraged. To the extent that the location of the sidewalk within the city's public right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this article, then the city engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet other requirements of this article. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these restricted areas, subject to any future relocation of the existing structure or repurposed structure to accommodate the sidewalk.

Deleted portions of the City Code are struck through; added portions are underlined; shaded text reflects text changes between First and Second Reading.
L. **Distance separation between communications facility poles and wireless support structures in city public rights-of-way.** Communications facility poles and wireless support structures in the city's public rights-of-way must be spaced a minimum of five hundred (500) linear feet apart from each other, along the line of general vehicular travel, except that no distance requirement shall apply to collocations or existing structures.

M. **Site Triangles.** Except on existing structures, no new communications facility shall be constructed or installed within a triangular shaped area of land, known as a "site triangle", and measured in accordance with FDOT standards, as follows:

1. Ten (10) feet from the intersection point of the edge of a driveway and curb, or in the event that there is no curb, the edge of the alley or street pavement; or

2. Fifteen (15) feet from the intersection point of the extended property lines at an alley and a street; or

3. Twenty-five (25) feet from the intersection point of the extended property lines at a street and a street.

4. The foregoing site triangles may be reduced to no less than ten (10) feet, if the city engineer, on a case-by-case basis, finds that the proposed reduction complies with all city engineering standards and the city engineer shall take into consideration neighborhood characteristics such as the location of schools, parks and other community facilities, pedestrian facilities such as adequate sidewalks and multi-purpose trails, street characteristics such as pavement with, width of swale (right-of-way line to curb or edge of pavement for vehicular travel-ways) the curvature of the street, speed limits and other similar elements.

5. Site triangles located at the intersection of a local street or driveway within a right-of-way under county, state or federal jurisdictions, may be subject to the site triangle requirements of those jurisdictions.

N. **Emphasis on arterial or collector roadways.** Registrants seeking to place or maintain a communications facility pole or a wireless support structure in the city's public rights-of-way shall locate their facilities in arterial or collector roadways, whenever possible. An application for a permit to place a communications facility pole or a wireless support structure in a city public right-of-way other than arterial or collector roadways shall explain why the applicant is unable to locate the facilities in an arterial or collector roadway and shall demonstrate to the satisfaction of the city engineer the need to locate the facilities in the areas proposed in the application. The preceding sentence shall not apply to applications for small wireless facilities. Upon delegation to the city of the regulatory authorities in this article by the county, state or U.S. Department of Transportation or all of the foregoing entities, then the city may enforce such regulations in this article within the corporate boundaries of the city to the extent such authority has been delegated to the city as stated above.

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O. **Prohibition against placement in a front yard within residential zoned districts; distance from residential structures.** No communications facility pole or a wireless support structure (excluding repurposed structures) shall be placed within a city public right-of-way that abuts any front yard in a residential zoned district. No antenna attached to a freestanding pole in the public rights-of-way, other than as a collocation with an existing power, light or other utility pole, or unless installed as a stealth facility, shall be permitted within 50 feet of any principal residential structure.

P. **Limitation on placement in corner yards within residential zoned districts.** A communications facility pole or a wireless support structure within the city public rights-of-way abutting a corner yard of a corner lot within a residential zoned district shall not be placed any closer than ten (10) feet from the side property line of the lot abutting and adjacent to the corner lot.

Q. **Not significantly impair view from principal structures within residential zoned districts.** All communications facility poles or wireless support structures shall be located such that views from principal structures within residential zoned districts are not significantly impaired. Where possible, newly installed communications facility poles or wireless support structures should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the communications facility pole or wireless support structure within residential zoned districts. The requirements of this subparagraph shall not apply to existing structures, when there is a one-to-one use or repurposing of an existing structure.

R. **Waiver of the requirements of this section by city commission.** Nothing in section 2-457 shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of city public rights-of-way by communications service providers, communications facility providers or pass-through providers in violation of federal or state law. The waiver provisions listed in this subsection apply in those circumstances where a communications service provider, communications facility provider or pass-through provider's competitively use of city public rights-of-way is impaired by strict application of the requirements of this section 2-457. The city commission shall have the jurisdiction to grant or deny waivers as set forth in this subsection. The following provisions shall govern the granting or denying of a request for a waiver under the requirements of this section 2-457(R):

1. **Filing of request.** A request for a waiver shall be filed with the city contemporaneously with the permit application.

2. **Contents.** The request for waiver shall contain each subsection within section 2-457 for which a waiver is sought. A request for a waiver shall include all information described in this subsection (R) and any other information the city may reasonably require to process the waiver request. The city commission may deny the request for a waiver if it does not comply with the requirements of this section 2-457(R).

3. **Factors.** The city commission shall consider the following factors and information, which shall be supplied by the applicant in the waiver request, in determining whether to grant a waiver:

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(i) a detailed explanation, with supporting engineering or other data, as to why a waiver from the requirements of section 2-457 is required in order to allow the registrant/applicant to have nondiscriminatory and competitively neutral use of the city's public rights-of-way;

(ii) availability of collocation opportunities;

(iii) size and height of the proposed facilities;

(iv) location and separation distances of the proposed facilities;

(v) nature and characteristics of surrounding neighborhood;

(vi) adjacent and nearby topography, tree coverage and foliage of surrounding neighborhood;

(vii) design of the proposed facilities with particular reference to achieving compatibility with the surrounding neighborhood and elimination of adverse visual impacts of such facilities on the surrounding neighborhood;

(viii) any other factors the city determines to be relevant and that may be considered under applicable law.

(4) **Conditions.** In granting any waiver, the city commission may impose conditions to the extent the city commission concludes such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the city and its residents.

(5) **Four-fifths vote required; criteria.** The city commission shall have authority to grant a waiver upon a four-fifths vote of the city commission if the applicant proves by a preponderance of the evidence that each of the below criteria have been met in the application for a waiver:

(i) there are special conditions and circumstance affecting the proposed site that prevent compliance with the subsections for which a waiver is being sought;

(ii) the proposed waiver, if granted, results in a superior site plan;

(iii) the proposed waiver, if granted, will not be incompatible with adjoining properties or the surrounding neighborhood;

(iv) the proposed waiver, if granted, is ADA compliant;

(v) the proposed waiver, if granted, complies with FCC regulations;
(vi) the proposed waiver, if granted, preserves to the city optimum flexibility in its management of its public rights-of-way; and

(vii) the applicant for the waiver demonstrates that the subsection for which the waiver is being sought would unreasonably discriminate against the applicant in favor of another communications service provider or would otherwise violate applicable law.

2-458 (b) Transfer, sale or assignment of assets in public rights-of-way.

A. (1) If a registrant transfers, sells or assigns its assets located in public rights-of-way incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this section. Written notice of any such transfer, sale or assignment shall be provided by such registrant to the city within 20 days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in subsection 2-467(a) within 60 days of the transfer, sale or assignment.

B. (2) If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the public works division that the transferee, buyer or assignee is the new applicant.

C. (3) Any encumbrance on the communications facilities of the registrant in the public rights-of-way shall be subject and subordinate to the rights of the city under this section and applicable law.

(c) Placement or maintenance of a communications facility in public rights-of-way.

(1) Registrant shall at all times comply with and abide by all applicable provisions of state, federal and local law and city ordinances, codes and regulations in placing or maintaining a communications facility in public rights-of-way.

(2) A registrant shall not commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the city or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the city of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and shall be required to obtain an after-the-fact permit within two business days if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. Registrant acknowledges that as a condition of granting such permits, the city may impose reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The city may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities that may otherwise require individual permits.
(3) As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide the following:

a. An engineering plan signed and sealed by a Florida registered professional engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in public rights-of-way;

b. A description of the manner in which the facility will be installed (i.e., anticipated construction methods or techniques);

c. A maintenance of traffic plan for any disruption of the public rights-of-way;

d. Information on the ability of the public rights of way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons with facilities in the public rights-of-way);

e. If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;

f. The timetable for construction of the project or each phase thereof, and the areas of the city which will be affected; and

g. Such additional information requested by the city that the city finds reasonably necessary to review such permit application.

(4) To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way. The city shall have the power to prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way, for the protection of existing facilities in the public rights-of-way or to accommodate city plans for public improvements or projects that the city determines are in the public interest.

(5) All communications facilities shall be placed and maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. All facilities shall be placed underground to the extent that similarly situated utilities (electric, communications, etc.) are so required. The city may require the use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The public works director may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this section and other applicable law. All facilities shall be placed underground to the extent not in consistent with the rules of the
public service commission. Telecommunications towers and above-ground transmission
facilities shall not be permitted in the public right-of-way.

(6) All safety practices required by applicable law or accepted industry practices and
standards shall be used during the placement or maintenance of communications
facilities.

(7) A registrant shall, at its own expense, restore the public rights-of-way to at least its
original condition before such work after the completion of any placement or
maintenance of a communications facility in public rights-of-way or each phase thereof.
If the registrant fails to make such restoration within 30 days following the completion of
such placement or maintenance, the city may perform such restoration as it deems
necessary and charge all costs of the restoration against the registrant in accordance with
F.S. § 337.402, as it may be amended. The registrant shall guarantee its restoration work
and shall correct any improper restoration work at its own expense for 12 months
following the original completion of the work.

(8) Removal or relocation at the direction of the city of a registrant's communications facility
in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and
337.404, as they may be amended.

(9) A permit from the city constitutes authorization to undertake only certain activities on
public rights-of-way in accordance with this section, and does not create a property right
or grant authority to impinge upon the rights of others who may have an interest in the
public rights-of-way.

(10) A registrant shall maintain its communications facility in public rights-of-way in a
manner consistent with accepted industry practice and applicable law.

(11) In connection with excavation in the public rights-of-way, a registrant shall, where
applicable, comply with the Underground Facility Damage Prevention and Safety Act set
forth in F.S. Ch. 556, as it may be amended.

(12) Registrant shall place or maintain a communications facility in public rights-of-way in
compliance with all applicable standards as established by all local, state or federal law
and in conformance with the city ordinances, codes and regulations. Registrant shall use
and exercise due caution, care and skill in performing work in the public rights-of-way
and shall take all reasonable steps to safeguard work site areas.

(13) In the interest of the public's health, safety and welfare, upon request of the city, a
registrant shall coordinate placement or maintenance activities under a permit with any
other work, construction, installation or repairs that may be occurring or scheduled to
occur within a reasonable timeframe in the subject public rights-of-way. The city may
require registrant to alter its placement or maintenance schedule as city determines to be
reasonably necessary so as to minimize disruptions and disturbance in the public rights-
of-way. The city may provide a more definite time frame based on individual city
construction or maintenance schedules.
(14) A registrant shall not place or maintain its communications facilities so as to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the city or any other person's facilities lawfully occupying the public rights-of-way of the city.

(15) The city makes no warranties or representations regarding the fitness, suitability, or availability of city's public rights-of-way for the registrant's communications facilities and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this section shall affect the city's authority to add, vacate or abandon public rights-of-way and city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

(16) The city shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this section. In the event the city determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide registrant at least three days' written notice setting forth the violation and requesting correction.

(17) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the city, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the city. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the city's geographical database, or other format acceptable to the city. The city shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended.

(18) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. Registrant shall, if registrant so agrees, allow city facilities to be co-located within city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.
(19) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days' advance written notice to arrange for such temporary relocation. If city requests a temporary raising or lowering of a facility for a public purpose, city shall not be charged for the temporary raising or lowering of the facility.

(d) Suspension of permits.

(1) Subject to subsection 2-467(e) below, the city manager, or designee may suspend a permit for work in the public rights-of-way for one or more of the following reasons:
   a. Failure to satisfy permit conditions, including conditions set forth in this section or other applicable city ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way, including without limitation, failure to take reasonable safety precautions to alert the public of work at the work site, or to restore any public rights-of-way;
   b. Misrepresentation or fraud by registrant in a registration or permit application to the city;
   c. Failure to properly renew or ineffectiveness of registration; or
   d. Failure to relocate or remove facilities as may be lawfully required by the city.

(2) After the suspension of a permit pursuant to this section, the city manager or designee shall provide written notice of the reason for the suspension to the registrant.

(e) Appeals.

(1) Final, written decisions of the city manager, or designee, suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the city clerk within 30 days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The city commission shall hear the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within 20 days of the hearing. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

(2) Nothing in this section shall affect the remedies the city has available under applicable law.

(f) Conditional use of public rights-of-way.

(1) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from city for such activities as may be required by applicable law.

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(2) To the extent that a registrant leases or otherwise uses the facilities of a person that is
duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the city, registrant shall make no claim, nor assert any right, which will impede
the lawful exercise of the city's rights, including requiring the removal of such facilities
from the public rights of way of the city, regardless of the effect on registrant's ability to
place or maintain its own communications facilities in public rights of way of the city.

(g) Involuntary termination of registration.

(1) The city may terminate a registration if:

a. A federal or state authority suspends, denies, or revokes a registrant's certification or
license to provide communications services;

b. The registrant's placement or maintenance of a communications facility in the public
rights-of-way presents an extraordinary danger to the general public or other users
of the public rights of way and the registrant fails to remedy the danger promptly
after receipt of written notice; or

e. The registrant ceases to use all of its communications facilities in public rights-of-
way and has not complied with subsection 2-467(n).

(2) Prior to termination, the registrant shall be notified by the city manager, or designee, with
a written notice setting forth all matters pertinent to the proposed termination action,
including which of subsections a. through f. above is applicable as the reason therefore,
and describing the proposed action of the city with respect thereto. The registrant shall
have 30 days after receipt of such notice within which to address or eliminate the reason
or within which to present a plan, satisfactory to the city manager, or designee, to
accomplish the same. If the plan is rejected, the city manager, or designee, shall provide
written notice of such rejection to the registrant and shall make a recommendation to the
city commission regarding a final decision as to termination of registration. A decision
by a city to terminate a registration may only be accomplished by an action of the city
commission. A registrant shall be notified by written notice of any decision by the city
commission to terminate its registration. Such written notice shall be sent within seven
days after the decision.

(3) In the event of termination, the former registrant shall:

a. Notify the city of the assumption or anticipated assumption by another registrant of
ownership of the registrant's communications facilities in public rights-of-way; or

b. Provide the city with an acceptable plan for disposition of its communications
facilities in public rights-of-way. If a registrant fails to comply with this subsection
2-467(g)(3), the city may exercise any remedies or rights it has at law or in equity,
including but not limiting to, taking possession of the facilities, requiring the
registrant's bonding company within 90 days of the termination to remove some or
all of the facilities from the public rights-of-way and restore the public rights-of-way
to its original condition before the removal, or requiring that some or all of the
facilities be removed and the public rights of way restored to its original condition
before the removal at the registrant's expense.

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reflects text changes between First and Second Reading.
(4) In any event, a terminated registrant shall take such steps as are necessary to render every portion of the communications facilities remaining in the public rights-of-way of the city safe.

(5) In the event of termination of a registration, this provision does not permit the city to cause the removal of any communications facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered with the city for such certificated or licensed service, where required.

(h) Existing communications facilities in public rights-of-way. A communications services provider with an existing communications facility in the public rights-of-way of the city has 60 days from the effective date of this section to comply with the terms of this section, including, but not limited to, registration, or be in violation thereof.

Sec. 2-459. - Insurance, indemnification, construction bond and security fund.

A. (i) Insurance.

(1) A registrant shall not commence construction, operation or maintenance of the facility without obtaining all insurance required under this section and approval of such insurance by the city, nor shall a registrant allow any contractor or subcontractor to commence work on its contract or sub-contract 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 registrant has facilities in the public rights-of-way, and for a period thereafter as specified in the minimum coverages described below. If the registrant, 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. For entities that have facilities in the public rights-of-way as of the effective date of this section, the certificate shall be filed within 60 calendar days of the adoption of this chapter, annually thereafter, and as provided below in the event of a lapse in coverage.

(3) These certificates of insurance shall contain a provision that coverages afforded under these policies will not be canceled until at least 45 calendar 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 of Florida. Financial ratings must be no less than "A-VI" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide. A registrant may self-insure. Self-insured status must be confirmed with certification of same by presentation of financial statements which are not more than one year old and signed by the registrant's chief financial officer or designee. Information contained therein is subject to review and approval by city's risk management division.
(4) In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of this contract, then in that event, the registrant shall furnish, at least 30 calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance of equal and like coverage.

(5) A registrant and its contractors or subcontractors engaged in work on the operator's behalf in, on, under or over public rights-of-way, shall maintain the following minimum insurance:

a. Comprehensive general liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

   Bodily injury:
   
   Each occurrence ..... $1,000,000.00
   Annual aggregate ..... 1,000,000.00

   Property damage:
   
   Each occurrence ..... 1,000,000.00
   Annual aggregate ..... 1,000,000.00

   Personal injury:
   
   Annual aggregate ..... 1,000,000.00

   Completed operations and products liability shall be maintained for two years after the abandonment of the facility by the registrant (in the case of the registrant) or completion of the work for the registrant (in the case of a contractor or subcontractor).

   Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.

b. Workers' compensation insurance shall be maintained to comply with statutory limits for all employees, and in the case any work is sublet, each registrant shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each registrant. Each registrant and its contractors and subcontractors shall maintain employers liability insurance. The following limits must be maintained:

   Workers' compensation ..... Statutory
   Employer's liability, per occurrence ..... $500,000.00

c. Comprehensive auto liability:

   Bodily injury:
   
   Compl.
Each occurrence ..... $1,000,000.00
Annual aggregate ..... 3,000,000.00

Property damage:
Each occurrence ..... $1,000,000.00
Annual aggregate ..... 3,000,000.00

Coverage shall include owned, hired and non-owned vehicles.

d. Registrant may satisfy the minimum limits required above for either commercial
general liability, business auto liability and employer's liability coverage under
umbrella or excess liability. The umbrella or excess liability shall have an aggregate
limit not less than the highest "each occurrence" limit for commercial general
liability, business auto liability or employer's liability. The city shall be specifically
endorsed as an "additional insured" on the umbrella or excess liability, unless the
certificate of insurance states the umbrella or excess liability provides coverage on
a "follow-form" basis.

(6) Each communications facility operator shall hold the city, its agents, and employees,
harmless on account of claims for damages to persons, property or premises arising out
of its construction, operation or repair of its communications facility and name the city
as an additional insured.

(7) This section shall not be construed to affect in any way the city's rights, privileges and
immunities as set forth in F.S. § 768.28. Insurance under this section shall run
continuously with the presence of the registrant's facilities in the public rights-of-way and
any termination or lapse of such insurance shall be a violation of this section and subject
to the remedies as set forth herein. Notwithstanding the foregoing, the city may, in its sole
discretion, require increased or decreased levels of insurance for any other object placed
in the city's public rights-of-way by way of individual license agreements.

B. (j) Indemnification:

(1) A registrant shall, at its sole cost and expense, and to the fullest extent permitted by
applicable law, indemnify, hold harmless, and defend the city, its officials, boards,
members, agents, and employees, against any and all claims, suits, causes of action,
proceedings, judgments for damages or equitable relief, and costs and expenses incurred
by the city arising out of the placement or maintenance of its communications system or
facilities in public rights-of-way, regardless of whether the act or omission complained
of is authorized, allowed or prohibited by this section, provided, however, that a
registrant's obligation hereunder shall not extend to any claims caused by the gross
negligence or wanton or willful acts of the city. This provision includes, but is not limited
to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit
or proceedings. City agrees to notify the registrant, in writing, within a reasonable time
of city receiving written notice, of any issue it determines may require indemnification.
Nothing in this section shall prohibit the city from participating in the defense of any
litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted:

a. As denying to either party any remedy or defense available to such party under the laws of the State of Florida;

b. As consent by the city to be sued; or

c. As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.

(2) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

C. (k) Construction bond.

(1) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, city may require a construction bond to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in subsection 2-467(1) below.

(2) In the event a registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.

(3) No less than 12 months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the city engineer or his or her designee to remove the requirement to continue the construction bond. Notwithstanding the city may require a new bond for any subsequent work performed in the public rights-of-way.

(4) The construction 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."

(5) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this section, or at law or equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.
D. (4) **Security fund.** At or prior to the time a registrant receives its first permit to place or maintain a communications facility in public rights-of-way after the effective date of this section, the registrant may be required to file with the city, for city approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of $25,000.00 having as a surety a company qualified to do business in the State of Florida, and acceptable to the city manager or designee, which shall be referred to as the "security fund." The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this section. The bond or guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this section, subject to subsection 2-467(m) 2-460 below, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The city may in its reasonable discretion accept a corporate guarantee of the registrant or its parent company, if the registrant is a publicly traded company and maintains an insurance rating of no less than A.

**Sec. 2-460 (m) Enforcement remedies.**

1. A registrant's failure to comply with provisions of this section article shall constitute a violation of this section article and shall subject the registrant to the code enforcement provisions and procedures as provided in F.S. 166.0415 and F.S. Ch. 162. In addition, violation of this section may be punishable by a fine not to exceed $500.00 or by imprisonment not to exceed 60 days or by both as provided.

2. In addition to any other remedies available at law, including but not limited to, F.S. § 166.0415, and F.S. Ch. 162, or equity or as provided in this section, the city may apply any one or combination of the following remedies in the event a registrant violates this section, or applicable local law or order related to the public rights-of-way:

   a. Failure to comply with the provisions of the section or other law applicable to occupants of the public rights-of-way, may result in imposition of penalties to be paid by the registrant to the city in an amount of not less than $100.00 per day or part thereof that the violation continues.

   b. In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.

3. Before imposing a fine pursuant to subsection 2-467(m)(2)a. of this section article, the city shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have 30 days to either:

   a. Cure the violation to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation; or

   b. File an appeal with the city to contest the alleged violation. Subsection 2-467(e) shall govern such appeal. If no appeal is filed and if the violation is not cured within the

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30-day period, the city may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(43) In determining which remedy or remedies are appropriate, the city shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.

(54) Failure of the city to enforce any requirements of this section shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type, or to seek appropriate enforcement remedies.

(65) In any proceeding before the city where there exists an issue with respect to a registrant's performance of its obligations pursuant to this section, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this section. The city may find a registrant that does not demonstrate compliance with the terms and conditions of this section in default and apply any one or combination of the remedies otherwise authorized by this section.

(76) The city manager or designee shall be responsible for administration and enforcement of this section, and is authorized to give any notice required by law.

**Sec. 2-461 (a) Abandonment of a communications facility.**

1. Upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the city within 90 days.

2. The city may direct the registrant to remove all or any portion of such abandoned facility at the registrant's sole expense if the city determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but is not limited to:
   a. Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;
   b. Prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or
   c. Creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of subsection 2-467(a)(2) b. 2-461(2)(b) above, the city may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

3. In the event that the city does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city, another utility or person at such third party's cost.

4. If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.
(o) **Force majeure.** In the event a registrant's performance of or compliance with any of the provisions of this section is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this section, causes or events not within a registrant's control shall include, without limitation, acts of god, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.

Sec. 2-462 (p) Reports and records; inspections.

(1) Each registrant shall, upon 30 calendar days written notice, if reasonably possible, but in no event less than five business days written notice, provide the city access to all books and records related to the construction, maintenance, or repair of the facility to the extent the city review of the books and records is necessary to manage its rights-of-way.

(2) Any and all non-proprietary or non-confidential books and records may be copied by the city. To the maximum extent permitted by F.S. § 202.195, as amended, such books and records shall be kept confidential and exempt from the provisions of F.S. § 119.07(1). A registrant is responsible for obtaining or maintaining the necessary possession or control of all books and records related to the construction, maintenance or repair of the facility, so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that a record that is a public record must be maintained for the period required by state law.

(3) For purposes of this section, the terms "books and records" shall be read expansively to include information in whatever format stored. Books and records requested shall be produced to the city at City Hall, except by agreement.

(4) If any books and records are too voluminous, or for security reasons cannot be copied and moved, then a registrant may request that the inspection take place at some other location mutually agreed to by the city and the registrant, provided that the registrant must make necessary arrangements for copying documents selected by the city after its review; and the registrant must pay all travel and additional copying expenses incurred by the city in inspecting those documents or having those documents inspected by its designee.

(5) Without limiting the foregoing, a registrant shall provide the city the following within ten calendar days of their receipt or (in the case of documents created by the registrant or its affiliate) filing:

a. Notices of deficiency or forfeiture related to the operation of the facility; and

b. Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the operator or by any partnership or corporation that owns or controls the operator directly or indirectly.

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(6) In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.

A. A registrant shall provide the following documents to the city as they are received or filed:

1. Upon reasonable request, any pleadings, petitions, notices, and documents, which may directly impact the obligations under this article and which are reasonably necessary for the city to protect its interests under this article.

2. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

B. Nothing in this section shall affect the remedies registrant has available under applicable law.

C. In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents and visitors.

D. The city shall keep any documentation, books and records of the registrant confidential if the registrant informs the city in writing of such confidential material, and only to the extent required under Florida Statutes.

Sec. 2-463. – Pass-through provider fees and charges.

A. Pass-through providers shall pay to the city on an annual basis an amount equal to five hundred dollars ($500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the city’s public rights-of-way.

B. The amounts charged pursuant to this section shall be based on the linear miles of city rights-of-way where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.

C. Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits taxes imposed by the city pursuant to chapter 202, Florida Statutes, as may be amended from time to time.

D. Annual payments shall be due and payable on March 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the city shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. All fee payments shall be subject to audit by the city, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the city, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

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E. If the payments required by this section are not made within ninety (90) days after the due date, the city may withhold the issuance of any permits to the registrant until the amount past due is paid in full.

Sec. 2-464. Small Wireless Facilities.

A. Registration required; Application. A person that desires to place or maintain a small wireless facility in public rights-of-way within the city shall first register with the city in accordance with section 2-455 of the city code. As part of any permit application to place a new or replace an existing small wireless facility in the public rights-of-way, the registrant shall provide a proposal to the city that includes the information required under section 2-456(B) of the city code, to the extent such information may be requested under applicable state law, and information documenting compliance with the applicable codes, including but not limited to the design standards applicable to small wireless facilities.

B. Location; alternative location procedure. Small wireless facilities shall not be subject to the minimum separation distances set forth in section 2-457 of the city code, except as expressly permitted by law. Within 14 days after the date of filing a complete application for a small wireless facility, the city may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative city utility pole or support structure or may place a new utility pole. The city and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the city of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the city of such non-agreement and the city shall grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

C. Collocation application process. Within 14 days after receiving an application for a permit to collocate a small wireless facility, the city shall determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the city shall specifically identify the missing information. An application is deemed complete if the city fails to provide notification to the applicant within 14 days. Pursuant to Section 337.401(7), Fla. Stat., as amended from time to time, a complete application to collocate a small wireless facility is deemed approved if the city fails to approve or deny the application within 60 days after receipt of the application. If the city does not use the 30-day negotiation period provided in subsection (A) above, the parties may mutually agree to extend the 60-day application review period. The city shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved collocation application shall remain effective for 1 year unless extended by the city.
D. Consolidated application. An applicant seeking to collocate small wireless facilities within the city may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless facilities, the city may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

E. Written approval or denial. The city shall notify the applicant of approval or denial by electronic mail. The city shall approve a complete application unless it does not meet the applicable codes. If the application is denied, the city shall specify in writing the basis for denial, including the specific code provision(s) on which the denial was based, and send the documentation to the applicant by electronic mail on the day the city denies the application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days after notice of the denial is sent to the applicant. The city shall approve or deny the revised application within 30 days after receipt of the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

F. Basis for denial. The city may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

1. Materially interferes with the safe operation of traffic control equipment;
2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
4. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
5. Fails to comply with applicable codes.

G. Height. The height of a small wireless facility shall not exceed 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole upon which the small wireless facility is to be collocated shall not exceed 50 feet and shall only be as high as reasonably necessary to achieve its intended purpose.

H. Collocation on city utility poles.

1. The rate to collocate a small wireless facility on a city utility pole shall be $150 per pole annually, or the maximum amount permitted under applicable law, whichever is greater.

2. The city may reserve space on city utility poles for future public safety uses. If replacement of the city utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.
(3) For a city utility pole that supports an aerial facility used to provide communication services or electrical service, the city and applicant shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the city for any make-ready work necessary to enable the pole to support the requested collocation will include pole replacement, if necessary.

(4) For a city utility pole that does not support an aerial facility used to provide communication services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the city may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition.

(5) The make-ready work specified in subsections (3) and (4) above shall be subject to the city's usual construction restoration standards for work in the right-of-way. The replaced or altered city utility pole shall remain the property of the city.

I. **Design standards.** The city’s design standards set forth in this article and the applicable codes, including in this article, may be waived by the city commission upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense for a small wireless facility. The waiver shall be granted or denied within 45 days after the date of the request.

J. **Micro Wireless Facilities.** City approval shall not be required for the installation, placement, maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting taxes under chapter 202, Florida Statutes. Notwithstanding the foregoing, the city may require a right-of-way permit for work that involves excavation, closure of a sidewalk or closure of a vehicular lane.

K. **Permitting.** An applicant for installation of a small wireless facility shall obtain a right-of-way permit from the city, except to the extent applicable law prohibits the City from requiring a permit.

L. **Airport airspace.** A structure granted a permit and installed pursuant to this section shall comply with chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protections.

M. **No application to locations subject to HOA restrictions.** This section does not authorize a person to collocate small wireless facilities or micro wireless facilities on a city utility pole or erect a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association.

Deleted portions of the City Code are struck through; added portions are underlined; shaded text reflects text changes between First and Second Reading.
N. Prohibition against placement in location where facilities are placed underground. A wireless service provider, including a communications services provider and communications facilities provider, shall, in relation to a small wireless facility, utility pole or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the city that prohibit above-ground structures in the public rights-of-way.

O. Distance separation between ground-mounted equipment associated with a small wireless facility. Ground-mounted equipment associated with a small wireless facility in the public rights-of-way must be spaced a minimum of three hundred fifty (350) linear feet apart from ground-mounted equipment associated with another small wireless facility.

Sec. 2-465 (q) Reservation of rights and remedies.

A. The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. Registrant may allow city facilities to be collocated within city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the city and within said limits, as may from time to time be altered.

B. (1) The city reserves the right to amend this section article as it shall find necessary in the lawful exercise of its police powers.

C. (2) This section article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this section and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this section, to the full extent permitted by state and federal law.

D. (3) The adoption of this section article is not intended to waive any rights or defenses the city may have under any existing franchise, license or other agreements with a communications services provider, communications facilities provider or a pass-through provider.

E. (4) Nothing in this section article shall affect the remedies the city has available under applicable law.

Sec. 2-466. Compliance with state and federal regulations; preemption.

In implementing this article and the provisions set forth herein, the city shall comply with any applicable state and federal regulations and the provisions of this article shall be given force to the maximum amount and greatest extent permissible under state and federal law.

In the event any provision of this ordinance is specifically preempted, or judicially determined to be preempted by state or federal law, then the preempted provision shall automatically be deemed null and void and the superseding provision of state or federal law shall prevail.

Deleted portions of the City Code are struck through; added portions are underlined; shaded text reflects text changes between First and Second Reading.
Secs. 2-468—2-475. - Reserved.

SECTION 3. All sections or parts of the City Code of Ordinances, 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.

SECTION 4. It is the intention of the City Commission and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Deerfield Beach, and that the sections of this ordinance may be renumbered to accomplish such intent.

SECTION 5. Should any section or provision of this ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

SECTION 6. This ordinance shall be in full force and effect immediately upon its passage and adoption.

PASSED 1ST READING ON THIS ___ DAY OF ____________________, 2018
PASSED 2ND READING ON THIS ___ DAY OF ____________________, 2018.

____________________________________
BILL GANZ, MAYOR

ATTEST:

_________________________________________
SAMANTHA GILLYARD, CMC, CITY CLERK
M E M O R A N D U M

T O: Planning and Zoning Advisory Board

F R O M: City Attorney's Office

D A T E: July 25, 2017

R E: Ordinance Amending Communications Facilities in Rights-of-Way Regulations; Implementing Florida House Bill 687

The City of Deerfield Beach’s telecommunications facilities regulations are primarily located in two parts of the City’s Code of Ordinances (“City Code”). Chapter 98, Section 98-98 “Communications towers and antennas” of the City Code provides general regulations for telecommunications towers and antennas located within the City, including on public and private property. Chapter 2, Article VII “Use of City Rights-of-Way” of the City Code provides regulations for communications facilities installed and maintained in the City’s rights-of-way. The enclosed Ordinance amends Chapter 2, Article VII to revise the City’s communications facilities in rights-of-way regulations to provide for reasonable, competitively neutral regulations and standards for such facilities in compliance with the recently amended state law.

Florida House Bill 687: Advanced Wireless Infrastructure Deployment Act (the “Act”)

The City's rights-of-way are essential for the travel of persons and the transport of goods throughout the City and are a unique and physically limited resource requiring proper management by the City in order to promote the public health, safety and general welfare. Section 337.401, Florida Statutes, authorizes municipalities to adopt regulations for telecommunications facilities in the public rights-of-way that are related to the placement or maintenance of facilities in the public rights-of-way, are reasonable and non-discriminatory, and are necessary to the management of the public rights-of-way.

In the 2017 legislative session, the Florida Legislature passed House Bill 687 (the Act), which substantially amends Section 337.401, Florida Statutes, relating to the use of public rights-of-way, and structures located within the rights-of-way, for broadband or wireless facility infrastructure. The Act was signed by the Governor on June 23, 2017 and is effective as of July 1, 2017. The Act primarily deals with the installation of small wireless facilities, which are defined to include facilities where each antenna is capable of fitting into an enclosure of no more than 6 cubic feet, and the associated equipment is cumulatively no more than 28 cubic feet in volume. With limited exceptions, the Act provides for:
• the collocation of “small wireless facilities” on government owned poles and other poles and structures located in the public rights-of-way;
• installation of new poles in the rights-of-way to support small wireless facilities;
• installation of ground mounted equipment in the rights-of-way;
• installation of micro wireless facilities (smaller versions of small wireless facilities);
• a specified process a government must follow to accept applications for permits and to process and issue permits. Generally, the City must either approve or deny a completed application within 60 days after receipt of the application;
• standards by which an application may be denied. Installation is subject to “applicable codes,” which includes “local codes or ordinances adopted to implement” the Act and “objective design standards adopted by ordinance . . . to meet reasonable location context, color, stealth, and concealment requirements; and
• a restriction on the rate the City may charge to collocate a small wireless facility on a city utility pole to not more than $150 per pole annually.

**Small Wireless Facilities**

The enclosed Ordinance creates a new Section 2-464 of the City Code to implement the Act regarding small wireless facilities. Section 2-464 includes a small wireless facility application review and approval procedure that is consistent with the Act, including a procedure for the City to request an alternative location. The enclosed Ordinance also sets forth the City’s rates ($150 per pole annually), fees and terms for collocation on city utility poles, and sets forth the basis for denying a proposed collocation of a small wireless facility consistent with applicable state law.

**Permit Requirements**

Revised section 2-456 of the enclosed Ordinance provides permit requirements and conditions for work performed in the rights-of-way relating to communications facilities. Revised section 2-456 now includes more permit documentation to be submitted to the City to enhance the City’s ability to analyze the proposed application and its compliance with applicable codes. Note that for small wireless facilities the City is limited to requesting information for permitting only to the extent needed to confirm compliance with “applicable codes”.

**Objective Design Standards**

Courts applying Florida and federal law have held that a municipality may impose reasonable design limitations on telecommunications facilities and may regulate the placement of wireless facilities where such regulation does not prohibit or effectively prohibit the provision of wireless services. The Act also recognizes the City’s ability to apply certain objective design standards adopted by ordinance to small wireless facilities.

Section 2-457 of the enclosed Ordinance provides objective design standards to promote compatibility with the surrounding neighborhood and to mitigate pole proliferation in the City’s rights-of-way. The standards include stealth design requirements, maximum height limitations, limitations on placement within residential zoned districts and minimum
distance separation requirements for certain equipment. The City Commission, upon a four-fifths vote, has the ability to waive design standards under limited circumstances where the applicant can meet the waiver criteria and demonstrate that application of a specific standard would unreasonably discriminate against the applicant in favor of another communications services provider or would otherwise violate applicable law.

**Pass-through Providers**

Pass-through providers are generally entities that place or maintain a communications facility in the City’s rights-of-way but do not directly provide communications services to consumers and do not remit communications services taxes imposed by the City. The enclosed Ordinance adds Section 2-463 of the City Code to provide for the City’s receipt of the charges authorized by state law to be applied to pass-through providers for use of the City’s rights-of-way.
ORDINANCE NO. 2018/

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA, AMENDING CHAPTER 2 “ADMINISTRATION”, ARTICLE VII “USE OF CITY RIGHTS-OF-WAY” OF THE CITY CODE OF ORDINANCES REGARDING COMMUNICATIONS FACILITIES IN RIGHTS-OF-WAY REGULATIONS; PROVIDING AND AMENDING DEFINITIONS OF TERMS; PROVIDING FOR UNIFORM, NONDISCRIMINATORY STANDARDS TO PREVENT OVERCROWDING, PROLIFERATION AND SATURATION OF CITY RIGHTS-OF-WAY, INCLUDING STANDARDS RELATED TO STEALTH DESIGN, PROTECTION OF RESIDENTIAL PROPERTIES, AND EQUIPMENT LOCATION AND SIZE; PROVIDING FOR THE ENCOURAGEMENT OF COLLOCATION OF COMMUNICATIONS FACILITIES; PROVIDING REGULATIONS FOR SMALL WIRELESS FACILITIES; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE

WHEREAS, the provision of communications services to residents of and visitors to the City of Deerfield Beach (“City”) is both an important amenity and a necessity of public and private life in the City; and

WHEREAS, the demand for telecommunications services has grown in recent years and continues to grow exponentially, requiring the continual upgrading of telecommunications facilities and services to satisfy such growing demand; and

WHEREAS, Section 337.401, Florida Statutes, states that because Federal and State law require the nondiscriminatory treatment of providers of all communications services and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities treat providers of communication services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the City’s rights-of-way; and

WHEREAS, Section 337.401(3) (g), Florida Statutes, provides that a municipality may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory and prices of a provider of communications services; and

WHEREAS, Section 337.401(7), Florida Statutes, provides that a municipality may adopt by ordinance objective design standards that require a small wireless facility to meet reasonable
location context, color, stealth and concealment requirements and objective design standards that require a new utility pole that replaces an existing facility to be of substantially similar design, material, and color, and require reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, it is the City’s intent to exercise its authority over communications services providers, communications facility providers and pass-through providers’ placement and maintenance of facilities in its rights-of-way; and

WHEREAS, it is the City’s further intent to treat each such provider in a reasonable, nondiscriminatory and competitively neutral manner in exercising such authority, which authority is limited to only those matters necessary to manage its rights-of-way; and

WHEREAS, the City’s rights-of-way are essential for the travel of persons and the transport of goods throughout the City; and are a unique and physically limited resource requiring proper management by the City in order to maximize efficiency, minimize costs to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, it is the further intent of the City to exercise its authority to adopt reasonable rules and regulations to the fullest extent allowed by Federal and State law.

WHEREAS, NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DEERFIELD BEACH, FLORIDA THAT:

SECTION 1. The above “WHEREAS” clauses are true and correct and are incorporated herein.

SECTION 2. Chapter 2 “Administration”, Article VII “Use of City Rights-Of-Way” of the City of Deerfield Beach Code of Ordinances is hereby amended to read as follows:

ARTICLE VII. USE OF CITY RIGHTS-OF-WAY

Sec. 2-451. - Generally.

Pursuant to Florida law, the City of Deerfield Beach does hereby ratify and confirm the fact that the rights-of-way of the City of Deerfield Beach are to be held by the City of Deerfield Beach for the benefit of the public and no use may be made of said rights-of-way by private parties for the placement of any objects of any kind whatsoever on said rights-of-way whether said objects are placed on, under or above said rights-of-way, without the authorization of the City of Deerfield Beach as provided for within Chapter 2, Article VII of this Code. Authorization for permits for the
construction within the city's right-of-way for infrastructure improvements shall be according to the provisions of section 2-467 of this Code. Authorization for permits for the placement of communication facilities within the city's right-of-way shall be according to the provisions of section 2-468 of this Code.

It is the intent of the City to promote the public health, safety and general welfare by: providing for the placement and maintenance of communications facilities in the public rights-of-way within the City; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401, as it may be amended, the City's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers, communications facilities providers and pass-through providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City shall be governed by and shall comply with all applicable federal and state laws.

Sec. 2-452. - Definitions.

For the purposes of this section, the following terms, phrases, words and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender. "And" and "or" may be read conjunctively or disjunctively. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined in this section shall be given the meaning set forth in Title 47 of the United States Code, and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

Abandonment shall mean the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. For example, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

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

Applicable codes means uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement Section 337.401(7), Fla. Stat. The term includes objective design standards adopted
by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth and concealment requirements.

City shall mean the City of Deerfield Beach, Florida.

City utility pole means a utility pole owned by the City and located in the right-of-way.

Collocate or collocation means to install, mount, maintain, modify, operate or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

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

Communications services provider shall mean any person providing communications services through the placement or maintenance of a communications facility in public rights-of-way. Communications services provider shall also include any person that places or maintains a communications facility in public rights-of-way but does not provide communications services.

Communications facility or facility or system shall mean any permanent or temporary plant, equipment or property, including but not limited to, cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the City and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services; telecommunications towers are excluded and shall not be permitted in the public rights-of-way.

Communications Facilities Provider means a person (other than a communications services provider) operating one or more communications facilities located within the City, who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more communications service providers all or a portion of the tangible personal property used in a communications facility. A pass-through provider may be a communications facility provider.

Communications services means the transmission, conveyance or routing of voice, data, audio, video or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other
medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.
(b) Installation or maintenance of wiring or equipment on a customer's premises.
(c) The sale or rental of tangible personal property.
(d) The sale of advertising, including, but not limited to, directory advertising.
(e) Bad check charges.
(f) Late payment charges.
(g) Billing and collection services.
(h) Internet access service, electronic mail service, electronic bulletin board service or similar online computer services.

Communications services provider means any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way.

Distributed antenna system or DAS means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Existing Structure means a structure within the City’s public right-of-way that exists at the time an application for permission to place a communications facility on the preexisting structure is filed with the City. The term includes utility poles and any structure that:

(i) can structurally support the attachment of a communications facility;
(ii) can be modified or repurposed to support the attachment of a communications facility; or
(iii) can be removed and replaced with a structure of similar design and purpose as the original existing structure that supports the attachment of a communications facility.

FCC shall mean the Federal Communications Commission.

In public rights-of-way or in the public rights-of-way means in, on, over, under or across the public rights-of-way.

Micro wireless facility means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

Deleted portions of the City Code are struck through; added portions are underlined.
**Pass-Through Provider** means any person who places or maintains a communications facility in the City’s public rights-of-way and who does not remit taxes imposed by the City pursuant to chapter 202, Florida Statutes, as same, may be amended from time to time. A utility as defined in 47 U.S.C. § 224 is not a pass-through provider.

**Person** shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative and all other groups or combinations, and but shall not include city to the extent the city acts as a communications services provider permitted by applicable law.

**Place or maintain or placement or maintenance or placing or maintaining** shall mean to erect, construct, install, maintain, grade, excavate, place, repair, extend, replace, expand, remove, occupy, locate or relocate. A communications services provider, communications facilities provider or pass-through provider which owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A party providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute "placing or maintaining" facilities in the public rights-of-way.

**Public rights-of-way** shall mean a public right-of-way, public utility easement, public highway, street, lane, bridge, sidewalk, road, waterway, tunnel, alley or similar property for which the City is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the City holds a property interest therein. "Public rights-of-way" shall not include private property. "Public rights-of-way" shall not include any real or personal city property except as described above and shall not include city buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way. No reference herein, or in any permit, to public rights-of-way shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a registrant shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

**Registrant** shall mean a communications services provider or other person that has registered with the City in accordance with the provisions of this section article.

**Registration** or **register** shall mean the process described in this section article whereby a communications services provider provides certain information to the City.

**Repurposed structure** means an existing structure that has been renovated, reconfigured or replaced with a similar structure so as to continue serving its primary existing purpose while also supporting the attachment of communications facilities through stealth design or otherwise that is approximately in the same location as the existing structure and in such a manner that does not
result in a net increase in the number of structures located within the City’s public rights-of-way and does not interfere with pedestrian or vehicular access, and is compliant with applicable codes. To “repurpose an existing structure” shall mean the act of renovating, reconfiguring or replacing an existing structure as described above.

**Small wireless facility** means a wireless facility that meets the following qualifications:

a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

**Stealth Design** means a method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure or a wrap.

**Surrounding Neighborhood** means the area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

**Utility pole** means a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

**Video Service** means a communications service as defined in section 202.11 (24), Florida Statutes, as may be amended from time to time.

**Wireless Facility** means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

a. The structure or improvements on, under, within or adjacent to the structure on which the equipment is collocated;

b. **Wireline backhaul facilities**; or

Deleted portions of the City Code are struck through; added portions are underlined
c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

*Wireless services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

*Wireless support structure* means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

*Wrap* means an aesthetic covering depicting scenic imagery, such as vegetation, which blends with the surrounding area.

Sec. 2-453. - City authorization required for use of rights-of-way.

No person may place any objects on, under or over rights-of-way for the purpose of conducting any business, commercial activity or profit making endeavor without the authorization of the City of Deerfield Beach, which authorization shall be granted pursuant to the provisions of this article.

Sec. 2-454. - Application for use of rights-of-way by persons other than a communications services provider, communications facilities provider or pass-through provider.

(A) Application. Any person, other than a communications services provider, communications facilities provider or pass-through provider, wishing to place an object under, on or over a right-of-way shall be required to file an application with the City of Deerfield Beach on a form approved by the City Manager or his designee, and such application shall be processed, in accordance with this section. The City Manager may develop different forms for different types of requests, depending upon the nature and extent of the proposed use of the right-of-way.

Sec. 2-455. - Processing of application.

Upon a determination by the City Manager or his designee that the application for use of the right-of-way is complete, and payment of the required applicable fee, if any, the City will process said application.

Sec. 2-456. - Payment of fee.

Any application for use of the right-of-way pursuant to this article shall be accompanied by a fee. For temporary uses of the right-of-way for periods less than 30 days, the fee shall be $100.00. For any use over 30 days, the fee shall be $500.00; for periods in excess of 90 days the fee shall be $1,000.00; in addition to the requirement to place in a cost recovery account, a sum of money deemed appropriate by the city manager to cover the costs of professional services needed in reviewing any application. No application shall be reviewed until such fees are paid and a cost recovery deposit made. Fees for non-profit, tax exempt organizations may be waived.

Sec. 2-457. - Review of applications.

(B) City staff review. Upon certification that the application is complete, the application shall be reviewed by all appropriate city departments as determined as necessary by the City Manager.

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or his designee. During this review, the City Manager or his designee may determine that additional material is needed from the applicant and shall direct the applicant to provide such additional material or information as is deemed necessary and appropriate by the City Manager or his designee.

Sec. 2-458. City commission review of application; approval by ordinance.

(C) **City Commission review.** After review of the application as set forth above, the application shall be transmitted to the City Commission for review. Applications for use of the right-of-way for less than a period of 30 days may be approved by resolution of the City Commission of the City of Deerfield Beach. Applications for use of the right-of-way in excess of 30 days shall be approved by ordinance of the City Commission of the City of Deerfield Beach. Except as otherwise required by law, no other form of approval shall be permitted.

(D) Sec. 2-459. Exemptions.

The following actions are exempt from this section:

1. Uses covered by special event permits;
2. Uses required by the City to enable the City to provide city services;
3. Temporary uses of the right-of-way for non-profit purposes, subject to conditions placed on the use by city manager or city commission;
4. Existing franchise ordinances of public utilities regulated by the public service commission or other entities to the extent of the specific terms and limitations of the franchise ordinance;
5. Existing permission ordinances with Bell South to the extent of their terms; and
6. Garage sales conducted in accordance with city regulation.

(E) Sec. 2-460. Considerations for approval of application. In determining whether to grant or approve an application under this section for use of the right-of-way, the City Commission shall consider all factors it deems relevant for the protection of the public welfare; these factors shall include, but not be limited to, the following:

1. The purposes for which the right-of-way is proposed to be used;
2. The nature and extent of the inconvenience, invasion and interference with the public rights-of-way to be caused by the use of the right-of-way (including any inconvenience, interference, and invasion during placement of objects in, on, over or below the right-of-way);
3. The amount of right-of-way to be used by the applicant;
4. Any safety hazards or danger to the public resulting from the use of the right-of-way;
5. The effect of granting permission on the public's use of the right-of-way, any interference with traffic or pedestrian flow, or other city activity on the right-of-way;
The effect of the granting of permission to use the right-of-way on other previously granted consents to other private parties on their use of the right-of-way;

The impact upon future plans or needs of the City or other entities or projects with respect to the rights-of-way; and

Any other considerations related to the City's use of the rights-of-way, and the benefit to the public of permitting the use of the rights-of-way as proposed by the applicant.

Sec. 2-461. *Indemnification.* In return for the use of the right-of-way, the City commission shall require a complete indemnity, hold harmless and defense provision which shall completely provide for a complete defense, indemnity and hold harmless of the City for any and all causes of actions, judgments, obligations, responsibilities or liability of whatsoever kind relating to the use of the right-of-way by the applicant.

Sec. 2-462. *Payment for use of right-of-way.*

To the extent permitted by applicable law, the City shall require payment for use of the right-of-way, which payment shall be determined in the sole discretion of the City Commission, based upon its considerations of the factors stated above, applicable state and federal law, and such other considerations, including but not limited to the financial benefit to the applicant and the length of the permission, and the extent of the use, and the standards and fees charged by similar communities, as the City deems just and appropriate.

Sec. 2-463. *Additional conditions for granting of permission for use of rights-of-way.*

The city may attach other conditions to the grant of permission for use of the right of way, including, but not limited to the right to payments for annual inspections as to the manner in which the right-of-way is being used, other fees for monitoring the use of the rights-of-way, the right to audit any fees if they are in the nature of franchise fees related to revenues collected from the right-of-way, or any other costs associated with the use of the right-of-way. The city may require annual reimbursement for the costs of enforcement, monitoring, and administration.

Sec. 2-464. *Protection of public welfare.*

The City Commission shall also attach conditions which shall require that any use of the right-of-way not interfere with the right-of-way by the public and include provisions which will enforce and ensure that any use of the right-of-way shall not hinder the public and that if the licensee or franchisee is granted the right to use the right-of-way, that any physical invasion of the right-of-way shall be promptly and quickly remedied in a safe manner satisfactory to the City of Deerfield Beach and that the franchisee or licensee shall be responsible for said maintenance and any actions resulting therefrom. Any other conditions deemed necessary to protect the public welfare may be attached to any permission granted to the extent permitted by applicable law.

Sec. 2-465. *Compliance with state and federal regulations.*

In implementing this article and the provisions set forth herein, the city shall comply with any state and federal regulations and the provisions of this article shall be given force to the maximum amount and greatest extent permissible under state and federal law.
Sec. 2-466.—Assessment of fee on telecommunications companies for telecommunications facilities; when due; interest; review of records.

(a) **Purpose and application.** The purpose of this section is to establish fees for occupation of the city's rights-of-way for telecommunications facilities of telecommunications companies not otherwise paying a fee to the city for occupation of the city's rights-of-way. Any telecommunications company paying fees for the occupation of the city's rights-of-way for telecommunications facilities as of the effective date of this section shall continue to pay fees to the city as the company has been paying them.

The fees imposed pursuant to this section shall apply to all telecommunications companies occupying the city's rights-of-way for telecommunications facilities and not otherwise paying a fee to the city for occupation of the city's rights-of-way.

The fees imposed pursuant to this section are a fee and not a tax as specified in F.S. § 337.401; consequently, (1) the payments to be made pursuant to this section shall not be deemed to be in the nature of a tax; (2) such payments shall be in addition to any and all taxes of a general applicability; and (3) the fee specified herein is consideration for occupation of the city's rights-of-way, including all public easements, for the purpose of creating, constructing and maintaining telecommunications systems.

(b) **Fee for telecommunications company occupation of rights-of-way.**

(1)a. Any telecommunications company providing local telephone service, as defined in F.S. § 203.012(3), in the city and that is occupying municipal streets or rights-of-way within the corporate limits of the city with poles, wires or other fixtures shall pay to the city a fee in the amount of one percent of the gross receipts on recurring local service revenues for services provided within the corporate limits of the city by such telecommunications company. Included within the fee are all taxes, licenses, fees, in-kind contributions accepted pursuant to Section 337.401, Florida Statutes (2000), and other impositions except as valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the city upon the telecommunications company.

b. In the event that a telecommunications company which provides telecommunications services defined as toll services in F.S. § 203.012(7), occupies the city's rights-of-way, the telecommunications company shall pay to the city annually $500.00 per linear mile, which amount is prorated for any portion thereof, for any cable, fiber optic, or other pathway that makes physical use of the city's rights-of-way. Such annual fee shall be prorated to reflect the expiration date of this section and shall be payable annually, in advance. If a telecommunications company that is required to pay a fee pursuant to this subsection (b)(1)b. increases the amount of its facilities occupying the city's rights-of-way after such advance payment has been made, but prior to the expiration date of this section, the fees due for the additional facilities shall be prorated and paid in full at the time the facilities are installed in the city's rights-of-way.

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The fee or other consideration imposed pursuant to this subsection b. shall not apply in any manner to any telecommunications company which provides local telephone service as defined in F.S. § 203.012(3), for any services provided by such telecommunications company.

e. Telecommunications company, as used in this section, shall have the meaning set forth in F.S. § 364.02(12).

(2) The fees provided for in subsection (b)(1)a. shall be paid by the telecommunications company to the city in quarterly installments. The installment payments shall be based upon such gross receipts on recurring local service revenues for the immediately preceding installment period or portion thereof after the effective date of this section and shall be made within 30 calendar days following the end of the period. Past due payments or underpayments shall bear interest accrued from the last day of the quarter for which the payment was due. Interest shall be paid at the Florida statutory rate of interest on judgments as established by F.S. § 55.03. Payments shall include a statement as to how the fee amount was determined and the statement shall be certified by the telecommunications company's chief financial officer or other duly authorized representative of the company.

(3) If the city wishes to verify the payments due to the city under this section, the telecommunications company shall permit the city or a designated representative of the city, upon reasonable advance written notice, and during normal business hours at the location of the telecommunications company where such records are maintained in the city, at another location satisfactory to the city, or elsewhere pursuant to a. or b. below, to review or audit the telecommunications company's billing and payment records kept in the ordinary course of business upon which the payments were based. If a telecommunications company's records are not maintained in the city, the telecommunications company shall either:

a. Pay all reasonable expenses, including travel, following the provisions of F.S. § 112.061(6), (7) and (8), to the city for the city to have a review or audit performed; or

b. Provide the city with access to copies of the telecommunications company's records in the city or within 55 miles of the city or by an electronic method satisfactory to the city.

However, without the specific written consent of a telecommunications company's audit representative, no company records may be duplicated or taken from the telecommunications company's premises, and the city shall maintain the confidentiality of the information disclosed in these records and use the information solely for the purposes of verifying payments by the telecommunications company. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the city may have for sums due and payable under this section unless the city agrees in writing. In the event that the city, pursuant to final audit findings, determines that there exists a difference between the amount due to the city and the amount paid to the city, indicating an underpayment to the city, in excess of five percent of the amount due, such
telecommunications company shall pay all reasonable costs, fees and expenses of the audit.

(4) This section is adopted consistent with the provisions of F.S. § 337.401, and other applicable provisions of law. This section shall not be construed as a waiver or limitation of the power of the city to prescribe and enforce reasonable rules and regulations pursuant to applicable provisions of law.

Sec. 2-467455. – Registration for placement and maintenance of communications facilities.

A. (a) Registration required. for placing or maintaining communications facilities in public rights-of-way.

(1) A communications services provider, communications facilities provider or a pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the City shall first register with the City in accordance with this section. Subject to the terms and conditions prescribed in this section, a registrant may place or maintain a communications facility in public rights-of-way upon complying with all permitting and other applicable requirements. A communications services provider, communications facilities provider or a pass-through provider with an existing communications facility in the public rights-of-way of the City as of the effective date of this section shall comply with this section within 60 days from the effective date of this section, including, but not limited to, registration, or be in violation hereof.

(2) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this section governs only the placement or maintenance of communications facilities in public rights-of-way. 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 in the City’s public rights-of-way. Registration does not excuse a communications services provider, communications facilities provider or a pass-through provider from complying with all applicable city ordinances, codes or regulations, including this section.

B. (3) Registration application. Each communications services provider, communications facilities provider or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the City shall file a single registration with the City which shall include the following information:

a1. Name of the applicant;

a2. Name, 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;

a3. For registrations submitted prior to the effective date of this section, the applicant shall state whether it provides local service or toll service or both;

a4. Evidence of the insurance coverage required under this section and acknowledgment that registrant has received and reviewed a copy of this section;
e5. A copy 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;

f6. For an applicant that does not provide a Florida Public Service Commission certificate of authorization number. If the applicant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by providing including the number of the corporate certificate certification from the State of incorporation; and

g7. A security fund in accordance with this section article.

C(4) Processing. The City Manager, or designee, shall review the information submitted by the applicant. If the applicant submits information in accordance with subsection 2-467(a)(3) (B) above, 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 2-467(a)(3) (B) 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.

D(5) 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 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 facilities in public rights-of-way.

E(6) Registration shall be nonexclusive. Registration shall not in itself establish any right to place or maintain or priority for the placement or maintenance of a communications facility in public rights-of-way within the City, but shall establish for the registrant a right to apply for a permit, if permitting is required by the City. Registrations are expressly subject to any future amendment to or replacement of this section and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.

F(7) Renewal of registration. A registrant shall renew its registration with the City by April 1 of even numbered years in accordance with the registration requirements in this section, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within 30 days of any change in the information required to be submitted pursuant to subsection 2-467(a)(3), a registrant shall provide updated information to the City. Registration renewals shall include an inventory of the registrant’s newly installed facilities or abandoned communications facilities within the City’s public rights-of-way, placed since the most recent renewal or update to the City. If an inventory of the registrant’s facilities within the City had not previously been provided, then the registration renewal shall provide such inventory. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the City restricting the issuance of additional permits until the communications services provider, communications facilities provider or pass-through provider has complied with the registration requirements of this section article.
G(8) **Registration updates.** Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (B) above, a registrant shall provide updated information to the City. In accordance with applicable city sections, codes or regulations and this section, a permit shall be required of a communications services provider that desires to place or maintain a communications facility in public rights-of-way. An effective registration shall be a condition precedent to obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

H(9) **Termination of registration.** A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay compensation to the city as set forth within section 2-466.

1. The involuntary termination of a previously effective registration may only be accomplished by an action of the City Commission. The City may declare the registration terminated and revoke and cancel all privileges granted under that registration if:

   a. A federal or Florida authority suspends, denies or revokes a registrant's certification or license to provide communications service,

   b. The registrant's placement and maintenance in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way, or

   c. The registrant abandons all of its communications facilities in the public rights-of-way.

Prior to such termination for any of the reasons set forth in this section, the City Manager shall notify the registrant in writing setting forth the matters pertinent to such reasons and describing the proposed action of the City with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the City Commission, to accomplish the same.

2. The registrant shall be provided with written notice of the meeting at least five days prior to the meeting where the City Commission is scheduled to consider termination of the registrant's registration. At such meeting, the registrant shall be given the opportunity to address the City Commission regarding the proposed termination action prior to the City Commission’s vote on termination.

3. In the event of a vote by the City Commission to terminate the registration, the registrant shall, within a reasonable time following such termination, provide an acceptable plan for transferring ownership of the communications facilities to another person in accordance with this article or shall remove or abandon the facilities and take such steps as are necessary to render every portion of the facilities, remaining in the public rights-of-way of the City, safe. If the registrant has either abandoned its facilities or chooses to abandon its facilities, the City may either:
a. Require the registrant or the registrant's bonding company to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal;

b. Require that some or all of the facilities be removed and the public rights-of-way restored to its such condition at the registrant's expense, using city employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement; or

c. Utilize or allow other persons to utilize the registrant's abandoned facilities.

The obligations of the registrant hereunder shall survive the termination of a registration. In the event of a declaration of termination of registration, this provision does not permit the City to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered with the City, for such certificated service, where required.

I. Communications services tax in lieu of permit fee. A registrant that places or maintains communications facilities in the City's public rights-of-way and that pays communications services taxes shall not be required to pay a permit fee since the City has elected to collect the communications services tax pursuant to Ch. 202, Florida Statutes, as may be amended from time to time. Pass-through providers shall pay a fee pursuant to city code section 2-463 and section 337.401(5), Florida Statutes, as amended from time to time.

J. Permits required of registrants. In accordance with applicable city ordinances, codes or regulations, a permit may be required of a communications services provider, communications facilities provider or a pass-through provider that desires to place or maintain a communications facility in the City's public rights-of-way. An effective registration shall be a condition precedent to obtaining a permit. Notwithstanding an effective registration, permitting requirements shall also apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all applicable permitting requirements are met.

Sec. 2-456. - Permit requirements and conditions for work in rights-of-way.

A. (1) Permit required. A registrant shall not commence to place or maintain a communications facility in a City public right-of-way until all applicable permits have been issued by the City. The registrant acknowledges that as a condition of granting such permits, the City may impose reasonable conditions governing the placement or maintenance of a communications facility in the City's public rights-of-way related to the public, health, safety and welfare as permitted and set forth in section 337.401, Florida Statutes, as may be amended from time to time; however, no such imposed conditions shall prohibit the provision of communications services. Permits shall apply only to the areas of the City's public rights-of-way specifically identified in the permit. In determining whether to permit and reasonably limit, or impose conditions or prohibit a communications facility to be placed or located within the City's public rights-of-way, the City Engineer shall consider the following standards and minimum requirements in the City Engineer's review and consideration of a permit application and imposition of reasonable permit conditions:
(i) **Sufficiency of space to accommodate present and pending applications for use of the City's public rights-of-way.** The sufficiency of space to accommodate all of the present and pending applications to place communications facilities and pending or planned applications to place and maintain facilities in that area of the City's public rights-of-way;

(ii) **Sufficiency of space to accommodate the City's need for projected public improvements.** The sufficiency of space to accommodate the City’s need for projected public improvements or projects adopted as part of its community investment capital improvements plan that the City determines in the best interest of the public;

(iii) **Impact on traffic and traffic safety.** The impact on traffic and traffic safety;

(iv) **Impact on existing facilities.** The impact upon existing facilities in the City's public rights-of-way;

(v) **Distance separation from edge of pavement.** No new communications facility pole or wireless support structure shall be constructed, operated or maintained in the City's public rights-of-way in violation of the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Streets and Highways, Table 3-13 Minimum Width of Clear Zones. In accordance with Table 3-13, the City Engineer shall have the authority to reduce the four (4) foot minimum offset identified in Table 3-13 where that offset cannot be reasonably obtained and other alternatives are deemed impractical;

(vi) **Distance separation from sidewalk.** No newly installed communications facility pole or wireless support structure shall be placed or maintained in the City's public rights-of-way within one (1) foot of a sidewalk that is five (5) feet or less in width. Collocation on an existing structure is exempt from this requirement; and

(vii) **Installation at outermost boundary of City's Public Rights-of-way.** Where a superior site design results from placement of a communications facility pole or wireless support structure at or near the outermost boundary of the City's public right-of-way, the farthest distance practicable from the centerline thereof and edge of pavement is encouraged. To the extent that the location of the sidewalk within the City's public right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this article, then the City Engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet other requirements of this article.

(2) **Permit not required.** A registrant shall be allowed to perform the following limited work within the public rights-of-way without first obtaining a permit provided that such proposed limited work does not involve excavation, or the closure of a sidewalk or vehicle lane:

(i) routine maintenance or emergency maintenance, subject to the notification provisions of this article;

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(ii) replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

(iii) installation, placement, maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202, Fla. Stat.

B. Permit applications. Except as otherwise provided by applicable law, permit applications to place a communications facility in the City's public rights-of-way shall contain the following:

(1) Site plan. A site plan, in the form of signed and sealed plans from a Florida licensed professional engineer of record that show the location of the proposed facilities in the City's public rights-of-way, in a hard copy format or electronic format specified by the City Engineer. The site plan shall also include:

i. a description of the facilities to be installed, where the facilities are to be located, and the size, dimensions and height of the proposed facilities that will be located in the City's public rights-of-way; and

ii. for new communications facility poles or wireless support structures, how many collocations the new poles or structures can support in terms of capacity; and

iii. sufficient specificity as to demonstrate compliance with the Florida Building Code, specifically in terms of compliance with ASCE-7-10, or latest edition for requirements of wind load; and

iv. for new communication facility poles, wireless support structures, or any excavation work, a geotechnical report for the existing soil conditions, or a soil statement by a Florida licensed professional engineer, attesting to the soil conditions.

(2) Full color photo-simulation. A full color photo-simulation showing the proposed new communication facility poles and wireless support structures installed in accordance with the application from the point of view of properties adjacent to the proposed site.

(3) Description of installation or construction.

i. A description of the type of facility and the manner in which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques); and

ii. a description of stealth design to be utilized. Additionally, each application for a permit to place a communications facility pole or a wireless support structure in the City's public rights-of-way shall include photographs showing the location and condition of the surrounding neighborhood, and a description of the stealth design techniques proposed to minimize the visual impact of the communications facility pole.
or wireless support structure and graphic depictions accurately representing the visual impact of the communications facility pole or wireless support structure when viewed from the street and from adjacent properties.

iii. Alternatively, a signed and sealed statement from a Florida state licensed professional engineer that stealth design cannot be utilized on any particular facility and documentation demonstrating to the satisfaction of the City Engineer that the proposed communications facility cannot employ stealth design and the proposed exterior location and configuration of equipment are the minimum equipment necessary to achieve the needed function.

(4) **Temporary sidewalk closure plan.** A temporary sidewalk closure plan, if appropriate, given the facility proposed, to accommodate placement or maintenance of the communications facility.

(5) **Temporary modification of traffic (MOT) plan.** A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate, given the facility proposed, to accommodate installation and/or modification of the communications facility.

(6) **Capacity of abutting city public rights-of-way to accommodate the cumulative impact of the proposed facility and other facilities within the City’s public rights-of-way.** Information on the capacity of the City's public rights-of-way to accommodate the cumulative impact of (i) the proposed facility together with (ii) other existing and proposed facilities in the adjacent city public rights-of-way, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons).

(7) **Restoration plan and cost of restoration of the City's public right-of-way.** Based on the facility proposed, a restoration plan and an estimate of the cost of restoration of the City's public rights-of-way.

(8) **Timetable for construction or installation and intended areas of service.** The timetable for placement or maintenance of the proposed facility or each phase of the placement or maintenance thereof, and the intended areas of the City to be served by the communications facility.

(9) **Project Permits involving multiple collocations or attachments.** For project permits that involve multiple collocations or attachments to existing structures, repurposed structures or installation of multiple new wireless support structures, the applicant shall only be required to provide a structural certification by a Florida licensed professional engineer as to each type of facility, not for each facility proposed as part of the overall project. No such certification is required with respect to wireline pole attachment installations made in the communications space of utility poles.

(10) **Certification as to removal of abandoned facilities or equipment.** The applicant shall certify that any and all of its abandoned facilities within the City's public rights-of-way has or have been removed, indicating the prior location of such abandoned facilities.

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(11) Information regarding distance separation. In order to assess the impacts on the City's public rights-of-way resources and the potential for collocations or use of repurposed structures, identification of all communications facility poles and wireless support structures in the City's public rights-of-way within a five hundred (500) foot radius of the proposed new communications facility (such information may be produced without certification as to correctness to the extent obtained from other registrants with facilities in the City's public rights-of-way). No such identification is required with respect to wireline pole attachment installations made in the communications space of utility poles or for small wireless facilities.

(12) Identification of all above-grade and below-grade structures within the City's public rights-of-way within a five hundred (500) foot radius. In order to assess the impacts on the City's public rights-of-way resources, the impact on surrounding neighborhoods and other properties within the permit area, and the potential for collocations or use of existing structures, identification of all above-grade structures in the City's public right-of-way within a five hundred (500) foot radius of the proposed new communications facility (including utility poles, equipment boxes, below-grade and above-grade communications service facilities and antennae) shall be provided (such information may be produced without certification as to correctness to the extent obtained from other registrants with facilities in the City's public rights-of-way). No such identification is required with respect to wireline pole attachment installations made in the communications space of utility poles or for small wireless facility installations.

(13) Affidavits.

(i) An application for a permit to install new communications facility pole(s) or new wireless support structures (as opposed to collocations, applications to use an existing structure or wireline pole attachment installations made in the communication space of utility poles) shall include an affidavit from a Florida licensed professional engineer with a statement that it is not feasible to locate applicant's proposed facilities on existing poles along the proposed route and all the facts relied upon in the applicant's attempt to both collocate or attach the proposed new communications facilities on existing structures within the City's public rights-of-way, as well as on property outside the City's public rights-of-way, within a five hundred (500) foot radius of the proposed new communications facility.

(ii) An application for collocation shall include an affidavit from the owner of the facility or existing structure being collocated upon that the applicant has been granted permission to attach to the facility or existing structure being collocated upon or attached to.

(iii) An application from a wireless infrastructure provider to place a new utility pole in the public rights-of-way to support the collocation of small wireless facilities shall include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved.
Public notice of new communications facility poles or new wireless support structures.

(i) Simultaneous with the filing of an application for a permit for the installation of a new communications facility pole or a new wireless support structure, the registrant shall submit an affidavit of mailing, attesting that notice of pending application has been mailed to all interested persons within three hundred (300) feet of the proposed permit area, as certified by the Broward County Property Appraiser's Office.

(ii) As to owners of condominium or cooperative units where the condominium or cooperative is within three hundred (300) feet of the proposed permit area, the registrant shall satisfy the requirements of this subsection by providing written notice to the respective condominium association or cooperative corporation in lieu of written notice to the individual property owners within such condominium or cooperative.

(iii) The notice of pending application shall notify the interested persons that an application for a new communications facility pole or wireless support structure has been filed with the City Engineer.

(iv) The notice of pending application shall invite the interested persons to provide comments, inquiries or objections to the City Engineer and registrant within fifteen (15) days of the date the notice was posted to the U.S. mail.

(v) The notice of pending application shall provide the name, mailing address, e-mail address and phone number of the City Engineer to whom the interested persons should direct their comments, inquiries or objections. The contact information for the City Engineer shall be in 14 point bold faced print.

(vi) The notice of pending application shall contain the following:

a. a hard copy of the site plan submitted with the permit application;

b. a description of the location of the proposed new communications facility poles or new wireless support structures by reference to the property street addresses abutting the proposed site of the new communications facility poles;

c. a description of the new communications facility pole(s) or new wireless support structures to be installed, including the size, dimensions and height of the proposed new communications facility pole(s) or new wireless support structures;

d. a full color photo-simulation showing the proposed new communications facility pole(s) or new wireless support structures installed in accordance with the application from the point of view the properties adjacent to the proposed site, together with depictions of any stealth design features to be utilized; and

e. the location where the interested persons may go to examine any other materials relative to the pending application.
(15) **Registrant agrees to indemnification.** A statement shall be included within the application for a permit that by execution of the application and by applying for the permit, the registrant agrees to be bound to the City with respect to the indemnification provisions set forth in city code section 2-459(B) as though such indemnification provisions are set forth verbatim in the permit application.

(16) **Additional information as reasonably required for review of permit application.** Such additional information as the City Engineer finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application, which information may include, but is not necessarily limited to: (i) evidence satisfactory to the City Engineer that the proposed facility will not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or other dangerous chemicals; and (ii) a written statement from a qualified radio frequency engineer that the construction and placement of the proposed facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television or other communications services enjoyed by adjacent properties.

C. **Permit does not create a property right; program areas where overhead utilities are being placed underground.** A permit from the City constitutes authorization to undertake only certain activities in the City's public rights-of-way in accordance with this article, and does not create a property right to continued occupation of the City's public rights-of-way or grant authority to impinge upon the rights of others who may have an interest in the City's public rights-of-way, nor does it create a property right to maintain collocated communications facilities or facilities hosting on repurposed structures or existing structures when such hosting structures are within a program where overhead distribution utilities are being placed underground pursuant to a city program to underground such overhead distribution facilities.

D. **Avoidance of interference with city public rights-of-way.**

(1) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of the property owners who adjoin the City's public rights-of-way. The registrant shall endeavor to install all communications facilities underground wherever feasible.

(2) All construction or maintenance of communications facilities shall be accomplished in the manner that will result in the least amount of damage and disruption to the rights-of-way.

(3) The use of trenchless technology (i.e. directional bore method) for the installation of facilities in the City's public rights-of-way as well as joint trenching for the collocation of facilities in existing conduit is strongly encouraged, and the City may require such methods wherever feasible and not inconsistent with applicable law.
E. **Avoidance of interference, displacement, damage or destruction of other facilities.** A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to sewers, gas or water mains, storm drains, storm drainage lines, pipes, cables or conduits of the City or any other person's facilities lawfully occupying the City's public rights-of-way. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The City Manager or designee may issue such rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way as may be consistent with this article and other applicable law.

F. **Coordination with other work in city public rights-of-way.** Upon request of the City, and as notified by the City of other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject city public right-of-way, and the registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the City's public rights-of-way and minimize any interference with the existing communications facilities.

G. **Temporary raising and lowering of communications facilities as accommodation.** A registrant shall, on the request of any person holding a permit issued by the City, temporarily support, protect raise or lower its communications facilities to permit the work authorized by the permit within the City's public rights-of-way. The expense of such temporary support, protection, raising or lowering of facilities shall be paid by the person requesting it, and the registrant shall have the authority to require such payment in advance. To the extent possible, the registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary support, protection or relocation. If the City requests the temporary support, protection, raising or lowering of a facility for a public purpose, the City shall not be charged for the temporary support, protection, raising or lowering of the facility.

H. **Restoration of city public rights-of-way.** After the completion of any placement or maintenance work involving a communications facility in a city public right-of-way or each phase thereof, a registrant shall, at its own expense, restore the City public right-of-way to its existing condition prior to such work. If the registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance work, the City may perform restoration and charge the costs of the restoration against the registrant in accordance with section 337.402, Florida Statutes, as may be amended from time to time. For twelve (12) months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense.

I. **Removal or relocation governed by Florida law; conversion of overhead distribution facilities to underground distribution facilities.**
(1) Removal or relocation at the direction of the City of a registrant's communications facilities in a city public right-of-way shall be governed by the provisions of sections 337.402, 337.403 and 337.404, Florida Statutes, as amended from time to time.

(2) Subject to sections 337.402, 337.403 and 337.404, Florida Statutes, as amended from time to time, and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground distribution facilities, any registrant having communications facilities located on a communications facility pole or utility pole which is to be removed as a result of said underground conversion shall arrange at their sole expense for the conversion to underground facilities (for wired facilities) or above ground relocation (for wireless facilities) on the same terms and conditions as the other utility distribution facilities that are being converted to underground distribution facilities.

J. Maintenance in accordance with industry standards and applicable law. A registrant shall maintain its communications facilities in good condition, order and repair in a manner consistent with accepted industry practice and applicable law.

(1) Owners of communications facilities located in city public rights-of-way shall install and maintain communications facilities and other appurtenant equipment in compliance with the requirements of all applicable laws and codes, and in such a manner that will not interfere with the use of other property or facilities within the City's public rights-of-way.

(2) All communications facilities and other appurtenant equipment shall, at all times, be kept and maintained in good condition, order and repair so that the same shall not endanger the life or property of any person or other facilities in the City's public rights-of-way.

K. Maintenance of graffiti plan. Each communications facility within the City's public rights-of-way, including any appurtenant features incorporated therewith under this article, shall be maintained in a neat and clean condition at all times. Specifically, but not without limiting the generality of the foregoing, each communications facility in the City's public rights-of-way shall be regularly maintained so that:

(1) it is free of graffiti visible from the City's public rights-of-way or surrounding neighborhood at grade. All graffiti shall be removed within ten (10) working days from receipt of notice thereof by the City that graffiti exist on the communications facility or any portion thereof. A fine of $50.00 per day shall be imposed for each and every day of non-compliance after receipt of notice by the City; and

(2) it is reasonably free of dirt and grease, rust and corrosion in visible metal areas, chipped, faded, peeling and cracked paint that is visible from the City's public right-of-way at grade. All such conditions shall be remedied within ten (10) working days from receipt of notice thereof from the City.

L. Safety practices; encourage strengthening utility infrastructure and infrastructure hardening plan. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities. The City's policies

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strongly favor strengthening utility infrastructure and in particular as it relates to flooding and hurricane related events, and applicants are encouraged to implement an infrastructure hardening plan for any communications facilities within the City's public rights-of-way.

M. Underground facility damage prevention and safety act. In connection with excavation in the City's public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes, as may be amended from time to time.

N. Use of due caution. Registrants shall use and exercise due caution, care and skill in performing work in the City's public rights-of-way and shall take all reasonable steps to safeguard work site areas, including, but not limited to those safeguards set forth in chapter 33 of the Florida Building Code. A registrant shall not place or maintain its communications facilities so as to interfere, displace, damage or destroy any facilities, including but not limited to sewers, gas or water mains, storm drains, pipes, cables or conduits of the City or any other person's facilities lawfully occupying the public rights-of-way of the City.

O. No warranties or representations regarding fitness, suitability or availability of city public rights-of-way. The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's public rights-of-way for the registrant's communications facilities. Any performance of work, costs incurred or services provided by the registrant shall be at the registrant's sole risk. Nothing in this article shall affect the City's authority to add, vacate or abandon its public rights-of-way, and the City makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

P. Right of inspection. The City shall have the right to make such inspections of communications facilities placed or maintained in its public rights-of-way as it finds necessary and upon reasonable notice to ensure compliance with this article.

1. Upon completion of work authorized by any permit, in the event that field work resulted in changes from the permit plans, the applicant shall furnish to the City, at no cost to the City, one complete set of sealed "as-built" plans, or in the case of any underground utility facilities, a sealed survey showing the exact location of such facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be) of facilities as the City Engineer may approve.

2. The "as-built" plans shall be in an electronic format specified by the City Engineer and shall be provided to the City at no cost to the City.

3. This requirement shall be in addition to, and not in lieu of, any filings the registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes, as may be amended from time to time.
(4) The fact that such "as-built" plans or survey is on file with the City shall in no way abrogate the duty of any person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the City's public rights-of-way.

(5) Any proprietary confidential business information obtained from a registrant in connection with a permit application shall be held confidential by the City to the extent required by section 202.195, Florida Statutes, as may be amended from time to time, provided the registrant so notifies the City which information is confidential in accordance with Florida’s public records laws.

Q. Florida Building Code; high velocity hurricane zone. In addition to the requirements of this article, all permitted facilities shall comply with the applicable provisions of the Florida Building Code. Communications facilities shall be considered to be structures under building risk category IV, Structures, Chapter 16, Section 1620 - 1621, High Velocity Hurricane Zone Area. Signed and sealed design and wind load calculation shall be provided by a Florida licensed professional engineer and a permit under the Florida Building Code shall be required.

R. Permit processing timeframes; "shot clock". The City's action on proposals to place or maintain communications facilities shall be subject to the applicable standards and time frames set out in Section 365.172, Florida Statutes, as may be amended from time to time; and 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same may be amended from time to time. All Federal and State "shot clock" timeframe guidelines that apply to any particular permit are hereby recognized by the City, and the City will make all reasonable efforts to comply therewith.

S. Project permit.

(1) General. The City may issue a single project permit that would otherwise require individual permits for two or more collocations, existing structures, repurposed structures or pole attachments, that form a cluster or multiple clusters to serve a specified service area. New communication facility poles or wireless support structures may not be included in any project permit. The process will start with a preliminary review meeting. After completion of this meeting, a project plan shall be submitted with a permit application. From information gathered at the meeting, a project plan shall be created and submitted with a permit application. At the City Engineer's sole discretion, upon a determination that a proposed project permit is too large to be processed and completed as such, said proposed project permit may be broken into multiple individual permits or smaller project permits, in any combination.
(3) **Project plan.** An organization chart that breaks down the phases of the project shall be included. The organization is arranged to reflect the dependency that exist between sub-projects. The purpose of the preliminary project plan is to show the sequence of completion for the project. The entire project contained in a project permit must be completely constructed within 90 days from permit issuance.

T. **Routine maintenance and emergency notices and permits.** In the case of routine maintenance, a registrant shall provide at least three (3) days' advance written notice to the City identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. In the case of an emergency, a registrant may restore its damaged facilities in the City's public rights-of-way to their pre-emergency condition or replace its destroyed facilities in the City's public rights-of-way with facilities of the same size, character and quality, all without first applying for or receiving a permit.

(1) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.

(2) A registrant shall provide prompt notice to the City of the emergency repair or replacement of a communications facility in the City's public right-of-way, and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in connection with the emergency.

U. **Issuance of permit in violation of city code or construction in violation of city code.**

(1) The issuance of a permit for a communications facility shall not be construed as a right to placement or maintenance of the communications facility that fails to meet the requirements of this article.

(2) The issuance of a permit for a communications facility shall not be deemed or construed to be a permit for or approval of any violation of any of the provisions of this article. A permit presuming to give authority to violate or cancel the provisions of the City Code shall be void and invalid except insofar as the work or use that it authorizes is lawful.

V. **Permit required.** Notwithstanding any other provision to the contrary, a right-of-way permit from the City is required for any work that involves excavation, closure of a sidewalk or closure of a vehicular lane.

W. **No permit fees for work under this article.** Pursuant to section 337.401(3)(c)(1)(b), Florida Statutes, as amended from time to time, and other applicable provisions of law, the City has elected not to charge permit fees to any registrant for permits to do work under this article in the City public rights-of-way. Notwithstanding the foregoing, pass-through providers shall be subject to the fees set forth in city code section 2-463.

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X. Repurposed structures. Unless stated otherwise, or as otherwise limited by applicable law, all requirements imposed on communications facilities shall also apply to repurposed structures. The provider attaching its communications facilities to a repurposed structure shall be responsible for registration and permitting requirements of this article to the extent they were exempted prior to the act of repurposing the existing structure. The provider that later removes a repurposed structure (other than a utility pole) shall reinstall a replacement communications facility pole in the City’s public right-of-way, at the direction of the City.

Sec. 2-457. Design standards for compatibility with surrounding neighborhood; prevention of pole proliferation and saturation of city public rights-of-way.

A. In general. Above-ground communications facilities, including wireless communications facilities and support structures, shall be designed in such a manner that the facilities and structures are compatible with the surrounding neighborhood and minimize any negative visual impact on the surrounding neighborhood. In order to achieve compatibility with the surrounding neighborhood and to minimize the negative visual impact on the surrounding neighborhood, the regulations in this section 2-457 shall apply, unless otherwise provided pursuant to this section.

B. Stealth design. Stealth design for above-ground communications facilities, and in particular, communications facility poles and wireless support structures, shall be utilized wherever possible in order to minimize the visual impact of communications facilities on, and preserve compatibility with, surrounding neighborhoods, and in order to eliminate the need to locate any ground or elevated equipment on the exterior of a communications facility or existing structure. Stealth design is not required with respect to wireline pole attachment installations made in the communication space of utility poles. To the extent reasonably practicable for the site, stealth design features shall include, but are not limited to, the following:

1. For new communications facility poles and new wireless support structures, as well as existing structures in the City's public rights-of-way, (i) top mounted antennas within enclosures that do not extend the diameter of the supporting communications facility pole, wireless support structure, existing structure or other support structure at the level of antenna attachment, or (ii) side mounted antennas within enclosures that extend no more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment shall be utilized. For purposes of calculating the above, the dimensions of the supporting communications facility pole, wireless support structure, existing structure or other support structure do not include any platform, rack, mount or other hardware used to attach an antenna or antenna enclosure to the supporting structure. Nothing contained in this subparagraph (1) shall be construed to limit stealth design as specified in other subparagraphs below.

2. The use of foliage and vegetation based on conditions of the specific area where the facility is to be located. Trees shall be determined and approved by the City's Landscape Plans Examiner under separate permit.

3. Equipment wraps (the imagery in a wrap shall not contain any advertising).
(4) Flag poles.

(5) Street light fixtures.

(6) Other stealth design proposed by an applicant and approved by the City based on unique circumstances applicable to the facility or the location or both.

All stealth designed communications facilities components, including associated hardware, shall be designed and constructed in accordance with the high velocity zone criteria specified in the Florida Building Code, Chapter 16 and considered as structures under building risk category II. Design and wind load calculations shall be provided per ASCE 7 - 10 (170 MPH). Calculations should be accompanied by Miami-Dade County Notice of Acceptance (NOA)/Product Approvals.

C. No Signage. Registrants shall not place or maintain signage on communications facilities in city public rights-of-way, unless otherwise required by federal or state law, provided; however, that existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law or city code, as may be amended from time to time.

D. Exterior finish. Communications facilities not requiring FAA painting or marking shall have an exterior hard durable finish that enhances compatibility with adjacent uses, as approved by the City Engineer.

E. Lighting. A communications facility shall not have any type of lighted signal, lights or illuminations unless required by an applicable federal, State, or local rule, regulation, the FAA or law; provided, however, the City may require the installation of an LED street light on a new communications facility pole or wireless support structure or an existing structure functioning as a light pole.

F. Maximum height restrictions. Subject to the equipment volume and antenna volume limitations, a communications facility, including any attached antennas, shall not exceed the following height:

(1) Poles along roadways. The height of a new communications facility pole or wireless support structure within the public rights-of-way shall only be as high as reasonably necessary to achieve its intended purpose and shall not exceed the height of existing poles or structures in the public rights-of-way within 100 feet of the proposed new communications facility pole or wireless support structure. If no such existing poles are present in the public rights-of-way within 100 feet, the new communications facility pole or a new wireless support structure shall not exceed a height of 30 feet. Height shall be measured from the crown of the road of the nearest public street.

(2) Top mounted Antennas. Top mounted antennas may extend an additional four (4) feet in height in excess of the height limitations set forth in (F)(1), above.

(3) Colocations and repurposed structures. For each collocation or repurposed structure, top mounted antennas may extend an additional six (6) feet in height in excess of the height limitations set forth in (F)(1), above.

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(4) **Above grade requirement.** All antennas shall be no less than eight (8) feet above grade.

(5) **Small wireless facilities.** See section 2-464(B).

G. **Equipment and antenna volume.**

(1) Subject to height limits and antenna volume limits, equipment that may be associated with communications facilities attached to an existing structure or a new communications facility pole or a new wireless support structure or located in the City's public right-of-way at grade, not including associated antenna(s), electric meter, telecom demarcation box, battery-back up power systems, grounding equipment or power transfer switch, shall not exceed seventeen (17) cubic feet.

(2) Antenna volume. Subject to height limits and equipment volume limits, each antenna that may be associated with the installation of a communications facility shall not exceed more than three (3) cubic feet in volume. Each antenna that is exposed and not concealed within a concealment enclosure shall fit within an imaginary enclosure that does not exceed three (3) cubic feet.

H. **Prohibition against placement on certain roadways where the City has plans for sidewalks; preference for arterial or collector roadways.** No communications facility shall be placed or maintained in the swale area on the side of a collector roadway or local roadway where the City has plans to install a sidewalk of five (5) feet in width or more, nor shall such communications facility be located in such a manner that would preclude a five (5) foot clear pathway for the planned sidewalk. Otherwise, communications facilities shall generally be placed in arterial or collector roadways whenever possible. Placement of communications facilities in rights-of-way other than arterial or collector roadways shall be justified by the applicant to the satisfaction of the City Engineer prior to the issuance of any permit. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these areas, subject to any future relocation of the existing structure or repurposed structure to accommodate the sidewalk.

I. **Minimum distance separation from edge of pavement.** No communications facility shall be placed or maintained in the City's public rights-of-way in violation of minimum distance separation from edge of pavement in accordance with the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, Table 3-13, Minimum Width of Clear Zones. In accordance with Table 3-13, the City Engineer shall have the authority to reduce the four (4) foot minimum offset identified in Table 3-13 where that offset cannot be reasonably obtained and other alternatives are deemed impractical. The City Engineer shall have the authority to decide reductions in the clear zone in accordance with the above referenced Table 3-13. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these areas.

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J. Minimum distance separation from existing sidewalk. No communications facility pole or wireless support structure shall be placed or maintained in the City's public rights-of-way within one (1) foot of an existing sidewalk. Collocation and use of repurposed structures are exempt from this requirement.

K. Installation at outermost boundary of city public rights-of-way. Where a superior site design results from placement of a communications facility at or near the outermost boundary of the City's public right-of-way, the farthest distance practicable from the centerline of the public right-of-way and edge of pavement is encouraged. To the extent that the location of the sidewalk within the City's public right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this article, then the City Engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet other requirements of this article. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these restricted areas, subject to any future relocation of the existing structure or repurposed structure to accommodate the sidewalk.

L. Distance separation between communications facility poles and wireless support structures in City public rights-of-way. Communications facility poles and wireless support structures in the City's public rights-of-way must be spaced a minimum of five hundred (500) linear feet apart from each other, along the line of general vehicular travel, except that no distance requirement shall apply to collocations or existing structures.

M. Site Triangles. Except on existing structures, no new communications facility shall be constructed or installed within a triangular shaped area of land, known as a "site triangle", and measured as follows:

1. Ten (10) feet from the intersection point of the edge of a driveway and curb, or in the event that there is no curb, the edge of the alley or street pavement; or

2. Fifteen (15) feet from the intersection point of the extended property lines at an alley and a street; or

3. Twenty-five (25) feet from the intersection point of the extended property lines at a street and a street.

4. The foregoing site triangles may be reduced to no less than ten (10) feet, if the City Engineer, on a case-by-case basis, finds that the proposed reduction complies with all city engineering standards and the City Engineer shall take into consideration neighborhood characteristics such as the location of schools, parks and other community facilities, pedestrian facilities such as adequate sidewalks, street characteristics such as pavement with, width of swale (right-of-way line to curb or edge of pavement for vehicular travelways) the curvature of the street, speed limits and other similar elements.
(5) Site triangles located at the intersection of a local street or driveway within a right-of-way under county, state or federal jurisdictions, may be subject to the site triangle requirements of those jurisdictions.

N. Emphasis on arterial or collector roadways. Registrants seeking to place or maintain a communications facility pole or a wireless support structure in the City's public rights-of-way shall locate their facilities in arterial or collector roadways, whenever possible. An application for a permit to place a communications facility pole or a wireless support structure in a city public right-of-way other than arterial or collector roadways shall explain why the applicant is unable to locate the facilities in an arterial or collector roadway and shall demonstrate to the satisfaction of the City Engineer the need to locate the facilities in the areas proposed in the application. Upon delegation to the City of the regulatory authorities in this article by the County, State or U.S. Department of Transportation or all of the foregoing entities, then the City may enforce such regulations in this article within the corporate boundaries of the City to the extent such authority has been delegated to the City as stated above.

O. Prohibition against placement in a front yard within residentially zoned districts; distance from residential structures. No communications facility pole or a wireless support structure shall be placed within a city public right-of-way that abuts any front yard in a residential zoned district. No antenna attached to a freestanding pole in the public rights-of-way, other than as a collocation with an existing power, light or other utility pole, or unless installed as a stealth facility, shall be permitted within 50 feet of any principal residential structure.

P. Limitation on placement in comer yards within residentially zoned districts. A communications facility pole or a wireless support structure within the city public rights-of-way abutting a corner yard of a corner lot within a residentially zoned district shall not be placed any closer than ten (10) feet from the side property line of the lot abutting and adjacent to the corner lot.

Q. Not significantly impair view from principal structures within residentially zoned districts. All communications facility poles or wireless support structures shall be located such that views from principal structures within residential zoned districts are not significantly impaired. Where possible, newly installed communications facility poles or wireless support structures should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the communications facility pole or wireless support structure within residentially zoned districts. The requirements of this subparagraph shall not apply to existing structures, when there is a one-to-one use or repurposing of an existing structure.

R. Waiver of the requirements of this section by city commission. Nothing in section 2-457 shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of city public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law. The waiver provisions listed in this subsection apply in those circumstances where a communications service provider, communications facility provider or pass-through provider's competitive use of city public rights-of-way is impaired by strict application of the requirements of this section 2-457. The city commission shall have the jurisdiction to grant or deny waivers as set forth in this
subsection. The following provisions shall govern the granting or denying of a request for a waiver under the requirements of this section 2-457(R):

(1) **Filing of request.** A request for a waiver shall be filed with the city contemporaneously with the permit application.

(2) **Contents.** The request for waiver shall contain each subsection within section 2-457 for which a waiver is sought. A request for a waiver shall include all information described in this subsection (R) and any other information the city may reasonably require to process the waiver request. The city commission may deny the request for a waiver if it does not comply with the requirements of section 2-457(R).

(3) **Factors.** The city commission shall consider the following factors and information, which shall be supplied by the applicant in the waiver request, in determining whether to grant a waiver:

   (i) a detailed explanation, with supporting engineering or other data, as to why a waiver from the requirements of section 2-457 is required in order to allow the registrant/applicant to have nondiscriminatory and competitively neutral use of the city's public rights-of-way;

   (ii) availability of collocation opportunities;

   (iii) size and height of the proposed facilities;

   (iv) location and separation distances of the proposed facilities;

   (v) nature and characteristics of surrounding neighborhood;

   (vi) adjacent and nearby topography, tree coverage and foliage of surrounding neighborhood;

   (vii) design of the proposed facilities with particular reference to achieving compatibility with the surrounding neighborhood and elimination of adverse visual impacts of such facilities on the surrounding neighborhood;

   (viii) any other factors the city determines to be relevant and that may be considered under applicable law.

(4) **Conditions.** In granting any waiver, the city commission may impose conditions to the extent the city commission concludes such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the city and its residents.
(5) Four-fifths vote required; criteria. The city commission shall have authority to grant a waiver upon a four-fifths vote of the city commission if the applicant proves by a preponderance of the evidence that each of the below criteria have been met in the application for a waiver:

(i) there are special conditions and circumstance affecting the proposed site that prevent compliance with the subsections for which a waiver is being sought;

(ii) the proposed waiver, if granted, results in a superior site plan;

(iii) the proposed waiver, if granted, will not be incompatible with adjoining properties or the surrounding neighborhood;

(iv) the proposed waiver, if granted, is ADA compliant;

(v) the proposed waiver, if granted, complies with FCC regulations;

(vi) the proposed waiver, if granted, preserves to the city optimum flexibility in its management of its public rights-of-way and

(vii) the applicant for the waiver demonstrates that the subsection for which the waiver is being sought would unreasonably discriminate against the applicant in favor of another communications service provider or would otherwise violate applicable law.

2-458 (b) Transfer, sale or assignment of assets in public rights-of-way.

A. (1) If a registrant transfers, sells or assigns its assets located in public rights-of-way incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this section. Written notice of any such transfer, sale or assignment shall be provided by such registrant to the city within 20 days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in subsection 2-467(a) within 60 days of the transfer, sale or assignment.

B.(2) If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the public works division that the transferee, buyer or assignee is the new applicant.

C.(3) Any encumbrance on the communications facilities of the registrant in the public rights-of-way shall be subject and subordinate to the rights of the city under this section and applicable law.

(e) Placement or maintenance of a communications facility in public rights-of-way.

Deleted portions of the City Code are struck through; added portions are underlined
(1) Registrant shall at all times comply with and abide by all applicable provisions of state, federal and local law and city ordinances, codes and regulations in placing or maintaining a communications facility in public rights-of-way.

(2) A registrant shall not commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the city or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public’s health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the city of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and shall be required to obtain an after-the-fact permit within two business days if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. Registrant acknowledges that as a condition of granting such permits, the city may impose reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The city may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities that may otherwise require individual permits.

(3) As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide the following:

  a. An engineering plan signed and sealed by a Florida registered professional engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in public rights-of-way;

  b. A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);

  c. A maintenance of traffic plan for any disruption of the public rights-of-way;

  d. Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons with facilities in the public rights-of-way);

  e. If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;

  f. The timetable for construction of the project or each phase thereof, and the areas of the city which will be affected; and

  g. Such additional information requested by the city that the city finds reasonably necessary to review such permit application.

(4) To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way. The city shall have the power to prohibit
or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way, for the protection of existing facilities in the public rights-of-way or to accommodate city plans for public improvements or projects that the city determines are in the public interest.

(5) All communications facilities shall be placed and maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. All facilities shall be placed underground to the extent that similarly situated utilities (electric, communications, etc.) are so required. The city may require the use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The public works director may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this section and other applicable law. All facilities shall be placed underground to the extent not in consistent with the rules of the public service commission. Telecommunications towers and above ground transmission facilities shall not be permitted in the public right-of-way.

(6) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.

(7) A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work after the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof. If the registrant fails to make such restoration within 30 days following the completion of such placement or maintenance, the city may perform such restoration as it deems necessary and charge all costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. The registrant shall guarantee its restoration work and shall correct any improper restoration work at its own expense for 12 months following the original completion of the work.

(8) Removal or relocation at the direction of the city of a registrant’s communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended.

(9) A permit from the city constitutes authorization to undertake only certain activities on public rights-of-way in accordance with this section, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(10) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
(11) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended.

(12) Registrant shall place or maintain a communications facility in public rights-of-way in compliance with all applicable standards as established by all local, state or federal law and in conformance with the city ordinances, codes and regulations. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas.

(13) In the interest of the public's health, safety and welfare, upon request of the city, a registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public right-of-way. The city may require registrant to alter its placement or maintenance schedule as city determines to be reasonably necessary so as to minimize disruptions and disturbance in the public rights-of-way. The city may provide a more definite time frame based on individual city construction or maintenance schedules.

(14) A registrant shall not place or maintain its communications facilities so as to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the city or any other person's facilities lawfully occupying the public rights-of-way of the city.

(15) The city makes no warranties or representations regarding the fitness, suitability, or availability of city's public rights-of-way for the registrant's communications facilities and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this section shall affect the city's authority to add, vacate or abandon public rights-of-way and city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

(16) The city shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this section. In the event the city determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide registrant at least three days' written notice setting forth the violation and requesting correction.

(17) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the city; provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the city. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the city's geographical database, or other format acceptable to the city. The city shall maintain the
confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended.

(18) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. Registrant shall, if registrant so agrees, allow city facilities to be co-located within city’s public rights-of-way through the use of a joint trench during registrant’s construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.

(19) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days’ advance written notice to arrange for such temporary relocation. If city requests a temporary raising or lowering of a facility for a public purpose, city shall not be charged for the temporary raising or lowering of the facility.

(d) Suspension of permits.

(1) Subject to subsection 2-467(e) below, the city manager, or designee may suspend a permit for work in the public rights-of-way for one or more of the following reasons:

a. Failure to satisfy permit conditions, including conditions set forth in this section or other applicable city ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way, including without limitation, failure to take reasonable safety precautions to alert the public of work at the work site, or to restore any public rights-of-way;

b. Misrepresentation or fraud by registrant in a registration or permit application to the city;

c. Failure to properly renew or ineffectiveness of registration; or

d. Failure to relocate or remove facilities as may be lawfully required by the city.

(2) After the suspension of a permit pursuant to this section, the city manager or designee shall provide written notice of the reason for the suspension to the registrant.

(e) Appeals.

(1) Final, written decisions of the city manager, or designee, suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the city clerk within 30 days of the date of the final, written decision to be appealed. Any appeal not timely filed
as set forth above shall be waived. The city commission shall hear the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within 20 days of the hearing. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

(2) Nothing in this section shall affect the remedies the city has available under applicable law.

(f) Conditional use of public rights-of-way.

(1) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from city for such activities as may be required by applicable law.

(2) To the extent that a registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the city, registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the city’s rights, including requiring the removal of such facilities from the public rights-of-way of the city, regardless of the effect on registrant’s ability to place or maintain its own communications facilities in public rights-of-way of the city.

(g) Involuntary termination of registration.

(1) The city may terminate a registration if:

a. A federal or state authority suspends, denies, or revokes a registrant’s certification or license to provide communications services;

b. The registrant’s placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; or

c. The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with subsection 2-467(n).

(2) Prior to termination, the registrant shall be notified by the city manager, or designee, with a written notice setting forth all matters pertinent to the proposed termination action, including which of subsections a. through c. above is applicable as the reason therefore, and describing the proposed action of the city with respect thereto. The registrant shall have 30 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the city manager, or designee, to accomplish the same. If the plan is rejected, the city manager, or designee, shall provide written notice of such rejection to the registrant and shall make a recommendation to the city commission regarding a final decision as to termination of registration. A decision by a city to terminate a registration may only be accomplished by an action of the city commission. A registrant shall be notified by written notice of any decision by the city.
commission to terminate its registration. Such written notice shall be sent within seven days after the decision.

(3) In the event of termination, the former registrant shall:

a. Notify the city of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or

b. Provide the city with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection 2-467(g)(3), the city may exercise any remedies or rights it has at law or in equity, including but not limiting to, taking possession of the facilities requiring the registrant's bonding company within 90 days of the termination to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal, or requiring that some or all of the facilities be removed and the public rights-of-way restored to its original condition before the removal at the registrant’s expense.

(4) In any event, a terminated registrant shall take such steps as are necessary to render every portion of the communications facilities remaining in the public rights-of-way of the city safe.

(5) In the event of termination of a registration, this provision does not permit the city to cause the removal of any communications facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered with the city for such certificated or licensed service, where required.

(h) Existing communications facilities in public rights-of-way. A communications services provider with an existing communications facility in the public rights-of-way of the city has 60 days from the effective date of this section to comply with the terms of this section, including, but not limited to, registration, or be in violation thereof.

Sec. 2-459. - Insurance, indemnification, construction bond and security fund.

A. (i) Insurance.

(1) A registrant shall not commence construction, operation or maintenance of the facility without obtaining an insurance required under this section and approval of such insurance by the city, nor shall a registrant allow any contractor or subcontractor to commence work on its contract or sub-contract 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 registrant has facilities in the public rights-of-way, and for a period thereafter as specified in the minimum coverages described below. If the registrant, 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. For entities that have facilities in the public rights-of-way as of the effective date of this section, the certificate shall be filed within 60 calendar days
of the adoption of this chapter, annually thereafter, and as provided below in the event of a lapse in coverage.

(3) These certificates of insurance shall contain a provision that coverages afforded under these policies will not be canceled until at least 45 calendar 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 of Florida. Financial ratings must be no less than "A-IV" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide. A registrant may self-insure. Self-insured status must be confirmed with certification of same by presentation of financial statements which are not more than one year old and signed by the registrant's chief financial officer or designee. Information contained therein is subject to review and approval by city's risk management division.

(4) In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of this contract, then in that event, the registrant shall furnish, at least 30 calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance of equal and like coverage.

(5) A registrant and its contractors or subcontractors engaged in work on the operator's behalf in, on, under or over public rights-of-way shall maintain the following minimum insurance:

a. Comprehensive general liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

   Bodily injury:
   
   Each occurrence ..... $1,000,000.00
   Annual aggregate ..... $3,000,000.00

   Property damage:
   
   Each occurrence ..... $3,000,000.00
   Annual aggregate ..... $3,000,000.00

   Personal injury:
   
   Annual aggregate ..... $3,000,000.00

Completed operations and products liability shall be maintained for two years after the abandonment of the facility by the registrant (in the case of the registrant) or completion of the work for the registrant (in the case of a contractor or subcontractor).

Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.
b. Workers' compensation insurance shall be maintained to comply with statutory limits for all employees, and in the case any work is sublet, each registrant shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each registrant. Each registrant and its contractors and subcontractors shall maintain employers liability insurance. The following limits must be maintained:

Workers' compensation ..... Statutory
Employer's liability, per occurrence ..... $500,000.00

c. Comprehensive auto liability:
   Bodily injury:
   Each occurrence ..... $1,000,000.00
   Annual aggregate ..... 3,000,000.00

   Property damage:
   Each occurrence ..... $1,000,000.00
   Annual aggregate ..... 3,000,000.00

Coverage shall include owned, hired and non-owned vehicles.

d. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The city shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.

(6) Each communications facility operator shall hold the city, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of its construction, operation or repair of its communications facility and name the city as an additional insured.

(7) This section shall not be construed to affect in any way the city's rights, privileges and immunities as set forth in F.S. § 768.28. Insurance under this section shall run continuously with the presence of the registrant's facilities in the public rights-of-way and any termination or lapse of such insurance shall be a violation of this section and subject to the remedies as set forth herein. Notwithstanding the foregoing, the city may, in its sole discretion, require increased or decreased levels of insurance for any other object placed in the city's public rights-of-way by way of individual license agreements.
B. (j) **Indemnification.**

(1) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the city, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the city arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this section, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the gross negligence or wanton or willful acts of the city. This provision includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. City agrees to notify the registrant, in writing, within a reasonable time of city receiving written notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted:

a. As denying to either party any remedy or defense available to such party under the laws of the State of Florida;

b. As consent by the city to be sued; or

c. As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.

(2) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

C. (k) **Construction bond.**

(1) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, city may require a construction bond to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in subsection 2-467(l) below.

(2) In the event a registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.

(3) No less than 12 months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the city engineer or his or her designee to remove the requirement to continue the construction bond. Notwithstanding, the city may require a new bond for any subsequent work performed in the public rights-of-way.
(4) The construction 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 60-30 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."

(5) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this section, or at law or equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.

D. (4)—Security fund. At or prior to the time a registrant receives its first permit to place or maintain a communications facility in public rights-of-way after the effective date of this section, the registrant may be required to file with the city, for city approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of $25,000.00 having as a surety a company qualified to do business in the State of Florida, and acceptable to the city manager or designee, which shall be referred to as the "security fund." The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this section. The bond or guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this section, subject to subsection 2-460 below, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The city may in its reasonable discretion accept a corporate guarantee of the registrant or its parent company, if the registrant is a publicly traded company and maintains an insurance rating of no less than A.

Sec. 2-460 (m) Enforcement remedies.

(1) A registrant's failure to comply with provisions of this section shall constitute a violation of this section and shall subject the registrant to the code enforcement provisions and procedures as provided in F.S. 166.0415 and F.S. Ch. 162. In addition, violation of this section may be punishable by a fine not to exceed $500.00 or by imprisonment not to exceed 60 days or by both as provided.

(2) In addition to any other remedies available at law, including but not limited to, F.S. § 166.0415, and F.S. Ch. 162, or equity or as provided in this section, the city may apply any one or combination of the following remedies in the event a registrant violates this section, or applicable local law or order related to the public rights-of-way:

a. Failure to comply with the provisions of the section or other law applicable to occupants of the public rights-of-way, may result in imposition of penalties to be paid by the registrant to the city in an amount of not less than $100.00 per day or part thereof that the violation continues.
b. In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.

(3) Before imposing a fine pursuant to subsection 2-467(m)(2)a. of this section article, the city shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have 30 days to either:

a. Cure the violation to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation; or

b. File an appeal with the city to contest the alleged violation. Subsection 2-467(e) shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30-day period, the city may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(4) In determining which remedy or remedies are appropriate, the city shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.

(5) Failure of the city to enforce any requirements of this section shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

(6) In any proceeding before the city where there exists an issue with respect to a registrant's performance of its obligations pursuant to this section, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this section. The city may find a registrant that does not demonstrate compliance with the terms and conditions of this section in default and apply any one or combination of the remedies otherwise authorized by this section.

(7) The city manager or designee shall be responsible for administration and enforcement of this section, and is authorized to give any notice required by law.

Sec. 2-461 (n) Abandonment of a communications facility.

(1) Upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the city within 90 days.

(2) The city may direct the registrant to remove all or any portion of such abandoned facility at the registrant's sole expense if the city determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but is not limited to:

a. Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;

b. Prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or

Deleted portions of the City Code are struck through; added portions are underlined.
c. Creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of subsection 2-467(m)(2) b. 2-461(2)(b) above, the city may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

(3) In the event that the city does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city, another utility or person at such third party's cost.

(4) If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.

(o) Force majeure. In the event a registrant's performance of or compliance with any of the provisions of this section is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this section, causes or events not within a registrant's control shall include, without limitation, acts of god, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.

Sec. 2-462 (p) Reports and records; inspections.

(1) Each registrant shall, upon 30 calendar days written notice, if reasonably possible, but in no event less than five business days written notice, provide the city access to all books and records related to the construction, maintenance, or repair of the facility to the extent the city review of the books and records is necessary to manage its rights-of-way.

(2) Any and all non-proprietary or non-confidential books and records may be copied by the city. To the maximum extent permitted by F.S. § 202.195, as amended, such books and records shall be kept confidential and exempt from the provisions of F.S. § 119.07(1). A registrant is responsible for obtaining or maintaining the necessary possession or control of all books and records related to the construction, maintenance or repair of the facility, so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that any record that is a public record must be maintained for the period required by state law.

(3) For purposes of this section, the terms "books and records" shall be read expansively to include information in whatever format stored. Books and records requested shall be produced to the city at City Hall, except by agreement.

(4) If any books and records are too voluminous, or for security reasons cannot be copied and moved, then a registrant may request that the inspection take place at some other location mutually agreed to by the city and the registrant, provided that the registrant must make...
necessary arrangements for copying documents selected by the city after its review; and the registrant must pay all travel and additional copying expenses incurred by the city in inspecting those documents or having those documents inspected by its designee.

(5) Without limiting the foregoing, a registrant shall provide the city the following within ten calendar days of their receipt or (in the case of documents created by the registrant or its affiliate) filing:

a. Notices of deficiency or forfeiture related to the operation of the facility; and

b. Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the operator or by any partnership or corporation that owns or controls the operator directly or indirectly.

(6) In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.

A. A registrant shall provide the following documents to the city as they are received or filed:

1. Upon reasonable request, any pleadings, petitions, notices, and documents, which may directly impact the obligations under this article and which are reasonably necessary for the city to protect its interests under this article.

2. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

B. Nothing in this section shall affect the remedies registrant has available under applicable law.

C. In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents and visitors.

D. The city shall keep any documentation, books and records of the registrant confidential if the registrant informs the city in writing of such confidential material, and only to the extent required under Florida Statutes.

Sec. 2-463. – Pass-through provider fees and charges.

A. Pass-through providers shall pay to the city on an annual basis an amount equal to five hundred dollars ($500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the city’s public rights-of-way.

B. The amounts charged pursuant to this section shall be based on the linear miles of city rights-of-way where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.

C. Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits taxes imposed by the city pursuant to chapter 202, Florida Statutes, as may be amended from time to time.

Deleted portions of the City Code are struck through; added portions are underlined
D. Annual payments shall be due and payable on March 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the city shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. All fee payments shall be subject to audit by the city, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the city, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

E. If the payments required by this section are not made within ninety (90) days after the due date, the city may withhold the issuance of any permits to the registrant until the amount past due is paid in full.

Sec. 2-464. Small Wireless Facilities.

A. Location; alternative location procedure. Small wireless facilities shall not be subject to the minimum separation distances set forth in section 2-457 of the city code, except as expressly permitted by law. Within 14 days after the date of filing a complete application for a small wireless facility, the city may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative city utility pole or support structure or may place a new utility pole. The city and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the city of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the city of such non-agreement and the city shall grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

B. Height. The height of a small wireless facility shall not exceed 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole upon which the small wireless facility is to be collocated shall not exceed 50 feet and shall only be as high as reasonably necessary to achieve its intended purpose.

C. Collocation application process. Within 14 days after receiving an application for a permit to collocate a small wireless facility, the city shall determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the city shall specifically identify the missing information. An application is deemed complete if the city fails to provide notification to the applicant within 14 days. Pursuant to Section 337.401(7), Fla.
Stat., as amended from time to time, a complete application to collocate a small wireless facility is deemed approved if the city fails to approve or deny the application within 60 days after receipt of the application. If the city does not use the 30-day negotiation period provided in subsection (A) above, the parties may mutually agree to extend the 60-day application review period. The city shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved collocation application shall remain effective for 1 year unless extended by the city.

D. Written approval or denial. The city shall notify the applicant of approval or denial by electronic mail. The city shall approve a complete application unless it does not meet the applicable codes. If the application is denied, the city shall specify in writing the basis for denial, including the specific code provision(s) on which the denial was based, and send the documentation to the applicant by electronic mail on the day the city denies the application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days after notice of the denial is sent to the applicant. The city shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

E. Consolidated application. An applicant seeking to collocate small wireless facilities within the city may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless facilities, the city may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

F. Basis for denial. The city may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

1. Materially interferes with the safe operation of traffic control equipment;
2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
3. Materially interferes with compliance of the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
4. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
5. Fails to comply with applicable codes.

G. Collocation on city utility poles.

1. The rate to collocate a small wireless facility on a city utility pole shall be $150 per pole annually.
2. The city may reserve space on city utility poles for future public safety uses. If replacement of the city utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.
(3) For a city utility pole that supports an aerial facility used to provide communication services or electrical service, the city and applicant shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the city for any make-ready work necessary to enable the pole to support the requested collocation will include pole replacement, if necessary.

(4) For a city utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the city may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant’s expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition.

(5) The make-ready work specified in subsections (3) and (4) above shall be subject to the City’s usual construction restoration standards for work in the right-of-way. The replaced or altered city utility pole shall remain the property of the city.

H. Design standards. The City’s design standards set forth in the applicable codes, including in this article, may be waived by the city commission upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense for a small wireless facility. The waiver shall be granted or denied within 45 days after the date of the request.

I. Permitting. An applicant for installation of a small wireless facility shall obtain a right-of-way permit from the city, except to the extent applicable law prohibits the City from requiring a permit.

J. Airport airspace. A structure granted a permit and installed pursuant to this section shall comply with chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protection.

K. No application to locations subject to HOA restrictions. This section does not authorize a person to collocate small wireless facilities or micro wireless facilities on a city utility pole or erect a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners’ association.

L. Prohibition against placement in location where facilities are placed underground. A wireless service provider, including a communications services provider and communications facilities provider, shall, in relation to a small wireless facility, utility pole or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the city that prohibit above-ground structures in the public rights-of-way.

Deleted portions of the City Code are struck through; added portions are underlined.
M. Distance separation between ground-mounted equipment associated with a small wireless facility. Ground-mounted equipment associated with a small wireless facility in the public rights-of-way must be spaced a minimum of three hundred fifty (350) linear feet apart from ground-mounted equipment associated with another small wireless facility.

Sec. 2-465 (q) Reservation of rights and remedies.

A. The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. Registrant may allow city facilities to be colocated within city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the city and within said limits, as may from time to time be altered.

B. (1) The city reserves the right to amend this section or article as it shall find necessary in the lawful exercise of its police powers.

C. (2) This section or article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this section and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this section, to the full extent permitted by state and federal law.

D. (3) The adoption of this section or article is not intended to waive any rights or defenses the city may have under any existing franchise, license or other agreements with a communications services provider, communications facilities provider or a pass-through provider.

E. (4) Nothing in this section or article shall affect the remedies the city has available under applicable law.

Sec. 2-466. - Compliance with state and federal regulations; preemption.

In implementing this article and the provisions set forth herein, the city shall comply with applicable state and federal regulations and the provisions of this article shall be given force to the maximum amount and greatest extent permissible under state and federal law.

In the event any provision of this ordinance is specifically preempted, or judicially determined to be preempted by state or federal law, then the preempted provision shall automatically be deemed null and void and the superseding provision of state or federal law shall prevail.

Secs. 2-468—2-475. - Reserved.
**SECTION 3.** All sections or parts of the City Code of Ordinances, 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.

**SECTION 4.** It is the intention of the City Commission and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Deerfield Beach, and that the sections of this ordinance may be renumbered to accomplish such intent.

**SECTION 5.** Should any section or provision of this ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

**SECTION 6.** This ordinance shall be in full force and effect immediately upon its passage and adoption.

PASSED 1ST READING ON THIS 5TH DAY OF DECEMBER, 2017

PASSED 2ND READING ON THIS 16TH DAY OF JANUARY, 2018

BILL GANZ, MAYOR

ATTEST:

SAMANTHA GILLYARD, CMC, CITY CLERK