

**CITY OF STUART, FLORIDA
AGENDA ITEM REQUEST
City Commission**

Meeting Date: 6/13/2022

Prepared by: Erin Wohlitka

Title of Item:

REPEAL & REESTABLISH CHAPTER 36, ARTICLE V, CODE OF ORDINANCES (RC):

ORDINANCE No. 2488-2022; AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

Summary Explanation/Background Information on Agenda Request:

This ordinance has been drafted in order to address updates to the Florida State Statutes regarding small-cell wireless communications facilities in the public rights-of-way. This ordinance provides registration requirements and reasonable regulations for communications providers who wish to utilize public rights-of-way for the installation and maintenance of communications facilities.

Funding Source:

N/A

Recommended Action:

Approval of Ordinance No. 2488-2022

ATTACHMENTS:

1. A1. ORDINANCE No. 2488-2022
2. A2. EXHIBIT 'A'
3. B1. BACKUP - NOTICE TO FL SECRETARY OF STATE



**BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA**

ORDINANCE NUMBER 2488-2022

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AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, REPEALING AND REESTABLISHING CHAPTER 36, ARTICLE V, COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY, OF THE CITY OF STUART CODE OF ORDINANCES; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING THE REQUIREMENT OF A PERMIT; PROVIDING FOR APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR FEES AND TAXES; PROVIDING FOR A RESERVATION OF RIGHTS AND REMEDIES; PROVIDING ENFORCEMENT AUTHORITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITIES; PROVIDING FOR AN EFFECTIVE DATE.

*** * * * ***

WHEREAS, the City Commission of the City of Stuart, Florida has determined that the following amendments promote and protect the general health, safety and welfare of the residents

of the City of Stuart by providing reasonable regulations to communications facilities and utility poles within the public rights-of-way; and

WHEREAS, this Ordinance accommodates the growing needs and demand for communications services and new facilities and technologies; and

WHEREAS, Section 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

WHEREAS, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, in 2017, Florida enacted the Advanced Wireless Infrastructure Deployment Act, codified in Subsection 337.401(7), *Florida Statutes* (“the Small Cell Statute”); and

WHEREAS, the Small Cell Statute creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to support small wireless facilities, micro wireless facilities, and the collocation of small wireless facilities and micro wireless facilities in the public rights-of-way; and

WHEREAS, the Small Cell Statute provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, camouflage and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, the Small Cell Statute also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance construction bonds, force majeure, abandonment, and city liability provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, in 2019, the Florida Legislature enacted and the Governor approved CS/CS/CS/SB 1000 (“SB 1000”), amending Section 337.401, Florida Statutes, including portions of the Small Cell Statute; and

WHEREAS, it is the City Commission’s intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and

WHEREAS, it is the City Commission’s further intent to treat each communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; and

WHEREAS, it is the City’s intent that rules or regulations imposed by the City relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services; 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 to ensure public safety, 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, the City Commission has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the city’s Comprehensive Plan; and

WHEREAS, the City Clerk submitted notice of the first hearing on this proposed Ordinance to the Florida Secretary of State, consistent with Section 337.401(3)(d), Florida Statutes; and

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance. The Regulation of Communications Facilities on Private Property is found within Chapter 36, Article V, of the City of Stuart Code of Ordinances.

SECTION 2. That CHAPTER 36, ARTICLE V; SECTION 36-128 through 36-153 COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT OF WAYS, is hereby repealed and replaced with such language attached as **Exhibit “A”**;

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5. This ordinance shall become effective upon passage.

Passed on first reading the ___ day of _____ 2022.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

MERRITT MATHESON, MAYOR
TROY MCDONALD, VICE MAYOR
BECKY BRUNER, COMMISSIONER
EULA R. CLARKE, COMMISSIONER
MIKE MEIER, COMMISSIONER

YES	NO	ABSENT	ABSTAIN

ADOPTED on second and final reading this _____ day of _____, 2022.

ATTEST:

MARY R. KINDEL
CITY CLERK MAYOR

MERRITT MATHESON

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

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CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before The above Ordinance, Acceptance and Agreement was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2022 Merritt Matheson, Mayor, and Mary Kindel, City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation, who are personally known to me or have produced _____ as identification.

(Notary Seal)

Signature of Notary Public

Printed Name: _____

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CHAPTER 36 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE V. – Communications Facilities In The Public Rights-Of-Way.

Sec. 36-128. - Intent and purpose; Applicability; Authority to Implement.

It is the intent of the city to promote the public health, safety and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the city; adopting and administering reasonable rules and regulations consistent 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 or maintenance of communications facilities in the public rights-of-way by all communications services 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. 36-129. - Definitions.

For purposes of this article, the following terms, phrases, words, and their derivations shall have the meanings given. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

Abandonment means the cessation of all uses of a communications facility for a period of time not less than 90 days; 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. By way of example, and not limitation, 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 frequency signals used in providing wireless services.

City means the City of Stuart, Florida.

Collocate or collocation means to install, mount, maintain, modify, operate, or replace one (1) 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 means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, for purposes of this article "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 may be subject to other ordinances of the city.

Communications services provider means any person, including a municipality or county, providing communications services through the placement or maintenance of a communications facility in public rights-of-way. This definition shall also include any person, including a municipality or county, that places or maintains a communications facility in public rights-of-way but does not provide communications services.

Communications facility or facility or system means any permanent or temporary plant, equipment, and 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.

FCC means 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 twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and an exterior antenna, if any, no longer than eleven (11) inches.

Person shall include any individual, 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 shall include the city to the extent the city acts as a communications services provider.

Place or maintain or placement or maintenance or placing or maintaining means to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate, or relocate. A communications services provider that 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 person 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 means a public right-of-way, public utility easement, highway, street, bridge, tunnel, or alley for which the city is the authority that has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface, and the area below the surface. "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.

Registrant means a communications services provider that has registered with the city in accordance with the provisions of this article.

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

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

Each antenna associated with the facility is located inside an enclosure of no more than six (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 six (6) cubic feet in volume; and

All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (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.

Utility pole, with regard to Chapter 36, 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 fifteen (15) feet in height or less.

Wireless facility means equipment at a fixed location that 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
- 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 infrastructure provider means a person who has been certified to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless service provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

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

Wireless services provider means a person who provides wireless services.

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.

Sec. 36-130. - Registration for placing or maintaining communications facilities in public rights-of-way.

- (a) A communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city's building department in accordance with this article. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a communications facility in public rights-of-way.
- (b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this article governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes, or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another entity's facilities. Registration does not excuse a communications services provider from complying with all applicable city ordinances, codes, or regulations, including this article.
- (c) Each communications services 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:
 - (1) Name of the applicant;
 - (2) 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;
 - (3) For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;
 - (4) Evidence of the insurance coverage required under this article and acknowledgment that the registrant has received and reviewed a copy of this chapter, which acknowledgment shall not be deemed an agreement;
 - (5) The number of the applicant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any; and
 - (6) 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, such as the number of the certificate from or filing with the Florida Department of State.

- (d) The city shall review the information submitted by the applicant. Such review shall be by the public works director or their designee. If the applicant submits information in accordance with subsection (c) above, the registration shall be effective, and the city shall notify the applicant of the effectiveness of the registration in writing. If the city determines that the information has not been submitted in accordance with subsection (c) above, the city shall notify the applicant, in writing, of the non-effectiveness of the registration, and reasons for the non-effectiveness. The city shall so reply to an applicant within thirty (30) days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has thirty (30) days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in Chapter 36 of the Code of Ordinances.
- (e) 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.
- (f) Registration does not in and of itself establish a right to place or maintain, or the 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. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.
- (g) A registrant shall renew its registration with the city's building department by April 1 of even numbered years in accordance with the registration requirements in this article, 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 thirty (30) days of any change in the information required to be submitted pursuant to subsection (c), except, as of October 1, 2001, subsection (c)(3), a registrant shall provide updated information to the city. 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 has complied with the registration requirements of this article.
- (h) An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

Sec. 36-131. - Notice of transfer, sale, or assignment of assets in public rights-of-way.

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 article. Written notice of any such transfer, sale, or assignment shall be provided by such registrant to the city's building department within twenty (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 section 36-130 within sixty (60) days of the transfer, sale, or assignment. If permit applications are pending in the registrant's name, the transferee, buyer, or assignee shall notify the building official that the transferee, buyer, or assignee is the new applicant after the requirements of this section are satisfied.

Sec. 36-132. - Placement or maintenance of a communications facility in public rights-of-way.

- (a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and city ordinances, codes, and regulations in placing or maintaining a communications facility in public rights-of-way.
- (b) 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. The 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 if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. The registrant acknowledges that, as a condition of granting such permits, the city may impose reasonable rules or regulations governing the placement, relocation, 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.

- (c) 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:
 - (1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of the facilities that will be located in public rights-of-way;
 - (2) A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);
 - (3) A maintenance of traffic plan for any disruption of the public rights-of-way, in accordance with the standards promulgated by the Florida Department of Transportation;
 - (4) 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);
 - (5) If appropriate, given the facility proposed, a certified estimate of the cost of restoration to the public rights-of-way, subject to approval by the public works director or designee;
 - (6) The timetable for construction of the project, or each phase thereof, and the areas of the city which will be affected; and
 - (7) Such additional information as the city 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.
- (d) 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.
- (e) 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 property owners who adjoin any of the public rights-of-way. 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, is strongly encouraged and should be employed wherever feasible. The public works director or their designee may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this article and other applicable law.
- (f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.
- (g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to their original condition before 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, the city may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. For twelve (12) months following the original completion of the work, the registrant shall

guarantee its restoration work and shall correct, at its own expense, any restoration work that does not satisfy the requirements of this article.

- (h) 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.
- (i) A permit from the city constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article 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.
- (j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (k) 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.
- (l) The 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. Further, the registrant shall be responsible for restoring the right-of-way and preventing damage to any other utilities or services in the right-of-way.
- (m) Upon the request of the city, and as notified by the city of the 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 time frame in the subject public rights-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 public rights-of-way.
- (n) 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, pipes, cables, or conduits of the city or any other entity's facilities lawfully occupying the public rights-of-way of the city.
- (o) 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, and 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 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) 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 article.
- (q) 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.
- (r) 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 types of 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. 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. Should the registrant be required to relocate its facilities in conjunction with such installation and alteration, the registrant shall be required to pay all costs associated with such relocation.

- (s) 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 thirty (30) days' advance written notice to arrange for such temporary relocation.
- (t) A wireless facility that is a portion of a communication facility, such as an antenna ("wireless facility(ies)"), which is attached to a legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole ("vertical structure(s)"), shall be subject to the criteria below and processed in accordance with the timeframes specified in F.S. ch. 337.401:
- (1) Such wireless facilities may not extend more than ten (10) feet above the highest point of the vertical structure (i.e., utility pole). Unless waived by the City Commission, the height of a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, measured from grade in place within five hundred (500) feet of the proposed location. If there is no utility pole within five hundred (500) feet, the height of the new utility pole shall be limited to fifty (50) feet;
 - (2) Such wireless facilities that are attached to a vertical structure located in public rights-of-way that is fifteen (15) feet or less in width and is located adjacent to real property used as a single-family residence shall be flush mounted to the vertical structure;
 - (3) Such wireless facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation, or law;
 - (4) Such wireless facilities shall comply with any applicable Federal Communications Commission Emissions Standards;
 - (5) The design, construction, and installation of such wireless facilities shall comply with any applicable local building codes;
 - (6) No commercial advertising shall be allowed on such wireless facilities; and
 - (7) Any accessory equipment and related housing in the public rights-of-way that are used in conjunction with such a wireless facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment;
 - (8) Any new or replacement poles shall be of similar design, material, and color to the utility poles within two hundred fifty (250) feet in the same right-of-way, or as otherwise approved;
 - (9) Wireless facilities, including ground-mounted equipment, shall be placed so as to not interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation, pedestrians, public safety purposes, or the free flow of vehicular and pedestrian traffic;
 - (10) The city may request that ground-mounted equipment use materials, colors, textures, screening, and landscape that will blend into the natural setting and surrounding built environment to minimize the visual impact, as permitted by F.S. § 337.401;
 - (11) The city may request ground-mounted equipment be placed no closer than five hundred (500) feet from existing ground-mounted equipment servicing the same carrier, as permitted by F.S. § 337.401;
 - (12) Ground-mounted equipment shall be placed so as to not interfere with the intended purpose of the right-of-way, swales, or stormwater drainage features and appurtenances.
 - (13) The city may deny a proposed collocation of a new small wireless facility in the public rights-of-way if the proposed collocation materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (14) The city may deny a proposed collocation of or a new small wireless facility in the public rights-of-way if it materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

- (u) Vertical structures, such as towers, having a sole purpose to serve as a mounting devise for antennae, are express prohibited from being placed in the public rights-of-way, except as permitted by F.S. § 337.401.

Sec. 36-133. - Suspension of permits.

- (a) The city may suspend a permit for work in the public rights-of-way for one (1) or more of the following reasons, subject to section 36-144 of this article:
 - (1) Violation of permit conditions, including conditions set forth in the permit, this article, or other applicable city ordinances, codes, or regulations governing placement or maintenance of communications facilities in public rights-of-way;
 - (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
 - (3) Failure to properly renew or ineffectiveness of the registration; or
 - (4) Failure to relocate or remove facilities as may be lawfully required by the city.
- (b) The building official shall provide notice and an opportunity to cure any violation of subsections (1) through (4) above, each of which shall be reasonable under the circumstances.

Sec. 36-144. - Appeals.

Final, written decisions of the building official 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 building official within thirty (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 board of adjustment shall hear the appeal as set forth in chapter VIII, section 8.00.02, of the city's land development code. The hearing shall occur within forty-five (45) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.

Sec. 36-145. - Involuntary termination of registration.

- (a) The city may terminate a registration if:
 - (1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services;
 - (2) 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
 - (3) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with section 36-151 of this article.
- (b) Prior to termination, the registrant shall be notified by the building official with a written notice setting forth all matters pertinent to the proposed termination action, including which of subsections (1) through (3) above is applicable as the reason therefor, 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 address or eliminate the reason or within which to present a plan satisfactory to the building official to accomplish same. If the plan is rejected, the building official shall provide written notice of such rejection to the registrant and shall make a recommendation to the City Commission regarding a 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 (7) days after the decision.
- (c) In the event of termination, the former registrant shall:

- (1) 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
 - (2) 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 (c), which determination of non-compliance is subject to appeal as provided in section 36-144, the city may exercise any remedies or rights it has at law or in equity, including, but not limited to, taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities or requiring the registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to their original condition before the removal.
- (d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the city.
- (e) In the event of termination of a registration, this section does not authorize the city to cause the removal of communications facilities used to provide another service for which the registrant or another entity that owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the city, if required.

Sec. 36-146. - 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 sixty (60) days from the effective date of this article to provide registration pursuant to this article or be in violation thereof.

Sec. 36-147. - Insurance.

- (a) A registrant shall provide, pay for, and maintain satisfactory to the city the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the city. All liability policies shall provide that the city is an additional insured as to the activities under this article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the city annually. Thirty (30) days' advance written notice by registered, certified mail, or facsimile must be given to the city of any cancellation, intent not to renew, or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.
- (b) The limits of coverage of insurance required shall be not less than the following:
- (1) Workers' Compensation and Employer's Liability Insurance Workers' Compensation-Florida Statutory Requirements Employer's Liability—\$1,000,000.00 limit each accident.
 - (2) Comprehensive general liability bodily injury and property damage—\$1,000,000.00 combined single limit each occurrence.
 - (3) Automobile liability bodily injury and property damage—\$1,000,000.00 combined single limit each accident.

Sec. 36-148. - Indemnification.

- (a) 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 article; provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, 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. The city agrees to notify the registrant, in writing, within a reasonable time of the city receiving 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; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

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

Sec. 36-149. - Construction surety.

- (a) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, the city may require a construction surety to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction surety hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in section 36-150.
 - (1) Twelve (12) months after the completion of the restoration in public rights-of-way in accordance with the surety, the registrant may eliminate the surety. However, the city may subsequently require a new surety for any subsequent work in the public rights-of-way.
 - (2) The construction surety shall be issued by a surety having a rating reasonably acceptable to the city; shall be subject to the approval of the finance director and city attorney; and shall provide that: "For 12 months after issuance of this surety, this surety may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the surety of intent to cancel or not to renew."
- (b) The rights reserved by the city with respect to any construction surety established pursuant to this section are in addition to all other rights and remedies the city may have under this article, or at law or equity.
- (c) The rights reserved to the city under this section are in addition to all other rights of the city, whether reserved in this article or authorized by other law, and no action, proceeding, or exercise of a right with respect to the construction surety will affect any other right the city may have.

Sec. 36-150. - Security fund.

- (a) 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 article, the registrant may be required to file with the city, for city approval, an annual surety, cash deposit, or irrevocable letter of credit in the sum equal to \$50,000.00, having a surety a company qualified to do business in the State of Florida, and acceptable to the finance director and city attorney, which shall be referred to as the "security fund."
- (b) The security fund shall be maintained from such time through the earlier of:
 - (1) The transfer, sale, assignment, or removal of all communications facilities in public rights-of-way; or
 - (2) Twelve months after the termination or cancellation of any registration.
- (c) The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties, and obligations imposed upon the registrant by the provisions of this article. The security fund 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 article, subject to section 36-154 of this article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the city as a result, including the full

amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund.

Sec. 36-151. - Abandonment of a communications facility.

- (a) At such time that a communications facility owned by a registrant in public rights-of-way ceases to be active for longer than thirty (30) days, the registrant shall notify the city within ninety (90) days.
- (b) The city may direct the registrant by written notice 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 shall not be limited to, a determination that such facility: (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 use of the public rights-of-way. In the event of (b), 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.
- (c) In the event 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 or another person at such third party's cost.
- (d) 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.

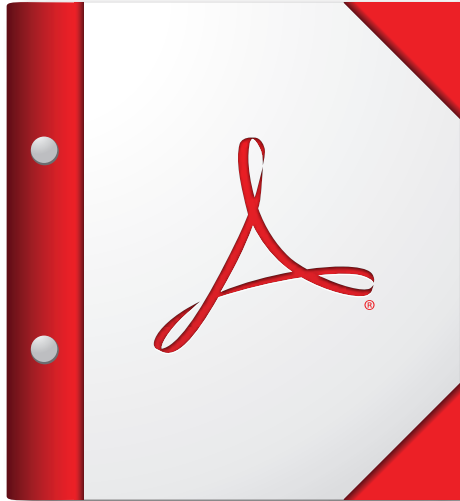
Sec. 36-152. - Reservation of rights and remedies.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this article and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law.
- (c) The adoption of this article is not intended to affect any rights or defenses of the city or a communications services provider under any existing franchise, license, or other agreements with a communications services provider.
- (d) Nothing in this article shall affect the remedies the city or the registrant has available under applicable law.
- (e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

Sec. 36-153. - Enforcement authority.

It shall be unlawful for any person to violate the provisions of this chapter or fail to comply with any of its requirements. Any person who violates this chapter or who fails to comply with any of its requirements shall be subject to the provisions of this article, as well as the provisions of Chapter 26, Article II, of the City Code of Ordinances.

Secs. 36-154 – 36-173. – Reserved.



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