

## ORDINANCE 23-01

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 46 “TELECOMMUNICATIONS,” OF THE CITY OF MARCO ISLAND CODE OF ORDINANCES BY CREATING A NEW ARTICLE IV “TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY,” TO PROVIDE FOR REGULATIONS RELATED TO BONDING, INSURANCE, AND REQUIRED REPAIR AND RESTORATION FOR WORK CONDUCTED IN THE PUBLIC RIGHT-OF-WAY FOR THE PLACEMENT AND MAINTAINENCE OF TELECOMMUNICATIONS EQUIPMENT WITHIN THE CITY’S RIGHTS-OF-WAY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Section 337.401, Florida Statutes, authorizes local governments to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining of communications utilities within the local government’s rights-of-way; and

**WHEREAS**, more specifically, Section 337.401(7)(d)(12), Florida Statutes, authorizes local governments to require a bond to secure restoration of post-construction rights-of-way to pre-construction conditions; and

**WHEREAS**, the City of Marco Island (the “City”) issues permits to various telecommunication companies to erect hardware and necessary apparatus to provide telecommunication services within the City’s rights-of-ways, and desires to require a bond to secure post-construction to pre-conditions as authorized by Section 337.401; and

**WHEREAS**, City Council deems it to be in the best interest of the City to approve this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:**

**SECTION 1. Recitals.** The foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true, correct, and reflective of the legislative intent of this Ordinance.

**SECTION 2. Amendment and Adoption.** That Chapter 46 “Telecommunications,” of the Code of Ordinances of the City of Marco Island, Florida, be, and the same is hereby amended to include a new Article IV entitled, “Telecommunications Facilities in Public Rights-of-Way” to read as follows:<sup>1</sup>

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<sup>1</sup> Additions to existing city code text are shown by underline; deletions from existing city code text are shown by ~~strikethrough~~.

## **CHAPTER 46 – TELECOMMUNICATIONS**

### **ARTICLE IV. TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY**

#### **Sec. 46-44.-Intent and Purpose.**

It is the intent of the City of Marco Island to promote the public health, safety, and general welfare by providing for the use of the City's public rights-of-way and to adopt and administer reasonable, nondiscriminatory regulations consistent with State and Federal laws, including Section 337.401 (1)(a), Florida Statutes, which authorizes local governments to prescribe and enforce reasonable, nondiscriminatory rules and regulations with reference to the placing and maintaining of any electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to Section 337.401.

#### **Sec. 46-45.-Definitions**

*Applicant.* Any person who is a resident of Florida, or a corporation, which is organized under the laws of Florida or licensed to do business within Florida.

#### **Sec. 46-46.-Permits to Use Rights-of-Way**

Applicant shall obtain any and all required permits and pay any and all required fees before commencing any construction on or otherwise disturbing any public rights-of-way as a result of its construction in accordance with Federal, State and local laws.

City may grant written permits for use of utilities in public rights-of-way. If the City elects to require a permit, it must accept applications for permits and must process and issue permits consistent with Section 337.401, Florida Statutes, as may be amended from time to time. Applicant agrees at all times to comply with and abide by all applicable provisions of the State statutes and local laws including, but not limited to, applicable zoning regulations not inconsistent with State and Federal laws.

#### **Sec. 46-47.-Restoration of Post-Construction Rights-of-Way**

City may require the Applicant to provide a construction bond to secure restoration of affected property to as good a condition as existed prior to the commencement of the work consistent with Section 337.401(7)(d)(12), Florida Statutes. Construction bonds must be time-limited, not to exceed 18 months after construction.

All safety practices required by applicable law or accepted industry practices and standards shall be used during construction, maintenance, and repair of telecommunications facilities.

#### **Sec. 46-48.-Insurance Requirements**

Applicant shall at all times maintain insurance coverage in the amounts required by the City insuring the Applicant and naming the City, its officers, boards, Councilors, Council members, agents and employees as an additional insured.

## **Sec. 46-49.-Indeminificaiton**

Applicant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, Council, Council members, agents, and employees, against any and all claims, suits causes of actions, proceedings, judgments for damages, or equitable relief, and costs and expenses arising out of the construction, maintenance or operation of its telecommunication system or facilities in accordance with Section 337.401, Florida Statutes, as amended from time to time.

**SECTION 3. Codification.** It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code of the City of Marco Island, and that the sections of this Ordinance may be renumbered to accomplish such intent.

**SECTION 4. Conflicts.** All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of the provisions of this Ordinance.

**SECTION 5. Severability.** If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

**SECTION 6. Effective Date.** This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 4<sup>th</sup> day of December 2023.

**ATTEST:**

**CITY OF MARCO ISLAND, FLORIDA**

\_\_\_\_\_  
Joan Taylor, City Clerk

By: \_\_\_\_\_  
, Chairman

Approved as to form and legal sufficiency:

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Alan L. Gabriel, City Attorney