

provider of any such telephone shall then provide on any such restricted telephone a sign, sticker or other notice adequate to inform the public of its outgoing call restricted status.

MISCELLANEOUS PROVISIONS

(S) *Police powers.* Nothing in this chapter nor in any license agreement issued in accordance herewith shall be construed as an abrogation by the city of any of its police powers.

(T) *Interpretation.*

(1) Unless otherwise herein repealed or specifically excepted, changed or differentiated, all qualifying or regulatory ordinances of the city applicable to or affecting any of the persons or agreements covered by this chapter shall be and remain in full force and effect.

(2) Nothing in this chapter shall be construed as a representation, promise or guarantee by the city that any other permit or other authorization required under any city ordinance for the installation of pay telephones shall be issued. The requirements for any and all other permits as may be required by any city ordinance shall still apply and all other applicable fees shall still be due.

(3) All documents referred to in this chapter are subject to approval as to form by the City Attorney.

(U) *Transfers; assignments.*

(1) A license agreement is not transferable or assignable by a qualified provider except if it is made as a general assignment of the qualified provider's entire assets or a pledge of the assets as collateral on a loan, without prior written consent of the City Manager or his/her designee. For the purposes of this section, a merger or consolidation of the qualified provider with another company shall not be deemed a transfer or assignment.

(2) The qualified provider shall provide written notification to the city within 30 days of any proposed sublease, license, or other agreement it enters into with any person authorized to use, lease or license any or all of the qualified provider's facilities and shall furnish the name, address and telephone of sublessee, licensee or other user.

(V) *Service of notice.*

(1) All notices required to be given under any provision of this chapter shall be deemed served when sent through the U.S. mail, certified, return receipt requested postage prepaid, or, delivered by hand in writing during normal business hours to:

To the qualified provider:

At the office or place of business designated in the license agreement.

To the City:

City Manager

City of Pompano Beach

100 West Atlantic Boulevard

Pompano Beach, Florida 33060

With a copy to the City Attorney

(W) All existing pay telephones shall comply with the requirements of this section within 30 days of this section's effective date. Any pay telephone not in compliance by said date shall be subject to the removal and enforcement provisions of this section and shall be considered abandoned.

(Ord. 2000-57, passed 5-9-00; Am. Ord. 2002-21, passed 1-8-02; Am. Ord. 2013-35, passed 1-8-13)

§ 100.46 COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.

(A) *Intent and purpose.* 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 after the effective date of this section; 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.

(B) *Definitions.* For the purposes of this section, the following terms, phrases, words and derivations shall have the meanings given. Where 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. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined in this subsection or in any permit that may be granted pursuant to this section shall be given the meaning set forth in the Communications Act of 1934, 47 USC et seq., as amended (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, shall be construed to mean the common and ordinary meaning.

(1) **CITY.** The City of Pompano Beach, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

(2) **COMMUNICATIONS FACILITY** or **FACILITY** or **SYSTEM.** 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.

(3) **COMMUNICATIONS SERVICES.** 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, and shall also include cable service and video service as defined in F.S. § 610.103 (1) and (11).

(4) **COMMUNICATIONS SERVICES PROVIDER.** Any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way.

(5) **FCC.** The Federal Communications Commission.

(6) **IN PUBLIC RIGHTS-OF-WAY** or **IN THE PUBLIC RIGHTS-OF-WAY.** In, on, over, under or across the public rights-of-way.

(7) **ORDINANCE.** This Ordinance or section.

(8) **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, but shall not include the city.

(9) **PLACE OR MAINTAIN** or **PLACEMENT OR MAINTENANCE** or **PLACING OR MAINTAINING.** 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 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 is not **PLACING OR MAINTAINING** facilities in the public rights-of-way.

(10) **PUBLIC RIGHTS-OF-WAY.** A public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, park, waterway, dock, wharf, court, lane, path, or alley, or any other 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**.

(11) **REGISTRANT** or **FACILITY OWNER.** A communications services provider or other person that has registered with the city in accordance with the provisions of this section.

(12) **REGISTRATION** and **REGISTER.** The process described in this section whereby a communications services provider provides certain information to the city.

(C) *Registration for placing or maintaining communications facilities in public rights-of-way.*

(1) 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 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. A communications services provider with an existing communications facility in the public rights-of-way of the city as of the effective date of this section 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.

(2) A registration shall not convey any title, equitable or legal, 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. Registration does not excuse a communications services provider from complying with all applicable law, including city ordinances, codes or regulations, including this section.

(3) Each communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file an original registration, along with two complete copies with the City Engineer that shall include the following information:

- (a) Name of the applicant;
- (b) Name, address and telephone number of the applicant's primary contact person in connection with the registration;
- (c) For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides or expects to provide 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; and
- (e) A copy of federal or state certification authorizing the applicant to provide communications services, if any;
- (f) If the applicant is a corporation, proof of authority to do business in the State of Florida, including the number of the corporate certification; and
- (g) A security fund in accordance with division (M) of this section.

(4) The City Engineer shall review the information submitted by the applicant, and distribute the copies of same to the City's Risk Manager, and Revenue Collections Manager. If

the applicant submits information in accordance with division (C)(3), above, the registration shall be effective and the City Engineer 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 division (C)(3), above, the City Engineer shall notify the applicant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The city shall so notify an applicant within 30 days after receipt of registration information from the applicant.

(5) A registrant may cancel a registration upon written notice to the city that the registrant will no longer place or maintain any communications facilities in public rights-of-way, and will no longer need to obtain permits to perform work in the 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.

(6) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any particular area in public rights-of-way within 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.

(7) 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 division (C)(3), except, as of October 1, 2001, division (C)(3)(c), 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 section.

(8) In accordance with applicable city ordinances, 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 of 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.

(9) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay compensation to the city as required by applicable law and ordinances of the city. A registrant that places or maintains communications facilities in the public rights-of-way, other than a registrant that provides local services as defined in F.S. § 203.012(3), within the city, shall pay to the city the fees required to be paid by providers of toll service within the city.

(10) A registrant must provide the City Engineer with information enabling the city to contact appropriate registrant's personnel in emergency situations, or when registrant's construction or equipment have caused damage to other property.

(a) The registrant shall provide the city with the name, address, and telephone number of a contact person to provide the city and its residents with information regarding the registrant's telecommunications facilities in the right-of-way, and who shall accept and coordinate any damage claims. Such information shall be updated as necessary by the registrant to provide the city with current and accurate information.

(b) A registrant shall provide the city with a current telephone number available and monitored 24 hours per day, every day, by registrant, to be utilized by the city in case of an emergency.

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

(1) Registrant agrees at all times to comply with and abide by all applicable provisions of the state statutes 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 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. 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 or may impose lesser requirements.

(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 a proposal for construction of the communications facility that sets forth at least 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 and/or techniques);

(c) A traffic maintenance 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 the permit application.

(4) 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, or to safely accommodate additional installations at any location, or 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 interfere unreasonably with the use of the public rights-of-way by the public, and so as not to cause unreasonable interference 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) are so required. Additionally, a registrant shall endeavor to place all facilities underground unless prevented from doing so by existing technology or by the physical characteristics of the installation location. Any above-ground installation shall only be done with prior written approval of the city, which shall not be unreasonably withheld. 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 solely 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 appropriate city official 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 section and other applicable law.

(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 in public rights-of-way was initiated, subject to the city's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. If the registrant fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the city, the city may, after written notice to the registrant, perform such restoration using city employees, agents or contractors, and charge all costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the bill by the city to the registrant.

(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 time frame in the subject public rights-of-way. The city may require a registrant to alter reasonably its placement or maintenance schedule as 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 specific 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) City makes no warranties or representations regarding the fitness, suitability or availability of 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 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 no less than 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 and "as-builts" upon completion of any installation or construction. 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 registrant shall provide such plans at no cost 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 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 the city requests a temporary raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary raising or lowering of the facility.

(E) *Suspension of permits.*

(1) Subject to division (F) below, the City Engineer or designee may suspend a permit issued or deny an application for a subsequent permit to a registrant for work in the public rights-of-way for one or more of the following:

(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;

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

(2) After the suspension or denial of a permit pursuant to this division (E), the city shall provide written notice of the reason to the registrant.

(F) *Appeals.*

(1) Final, written decisions of the City Engineer 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 Manager 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 Manager shall hear or appoint a hearing officer to consider 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 or limit the remedies the city has available under applicable law.

(G) *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 any person or 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, such person or 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.

(H) *Termination of registration.*

(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 state authority suspends, denies, or revokes a registrant's certification or license to provide communications service;

(b) The registrant's placement and maintenance of the public rights-of-way presents an extra-ordinary 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 public rights-of-way.

(2) Prior to such termination for any of the reasons set forth in this division, the City Manager or his designee 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 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.

(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, 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) The city may 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) *Transfer or control, sale or assignment of assets.*

(1) If a registrant transfers, sells or assigns its registration or its facilities in the 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 to the city within 20 days of 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 division (C) of this section within 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 appropriate city officials that the transferee, buyer or assignee is the new applicant.

(2) Pledges in trust or mortgages of the registrant may be made to any person with notice to the city. Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the city under this section and applicable law.

(J) *Insurance.*

(1) 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 in Best's Insurance Guide of A or better, or having a rating acceptable to the city. All liability policies shall provide that the city is an additional insured in the endorsement. 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-days advance written notice by registered or certified mail 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. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the city.

(2) The limits of coverage of insurance required shall be not less than the following:

(a) *Worker's compensation and employer's liability.* Insurance employer's liability: \$500,000 limit each accident; \$500,000 limit per each employee.

(b) *Comprehensive general liability.* Bodily injury and property damage: \$3,000,000 combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations, independent or contractors.

(c) *Automobile liability.* Bodily injury and property damage: \$3,000,000 combined single limit each accident.

(3) *Umbrella or excess liability.* 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.

(4) *Self-insurance.* Registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan and/or retention. Registrant agrees to notify the city, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The city reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity to self-insure.

(5) *Right to review.* City, by and through its Risk Management Department, reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this division. City reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.

(6) This division 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 division shall run continuously with the presence of the registrant's facilities in the public right-of-way, and any termination or lapse of such insurance shall be a violation of this division 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 rights-of-way by way of individual license agreements.

(K) *Indemnification.* 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. 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 notice, of any issue it determines may require indemnification. Nothing in this division 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 division shall be construed or interpreted:

(1) As denying to either party any remedy or defense available to such party under the laws of the state of Florida;

(2) As consent by the city to be sued; or

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

(L) *Construction bond.*

(1) Prior to performing any work in the public rights-of-way, a registrant shall establish in the city's favor a construction bond to secure the restoration of the public rights-of-way, and to

ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the City Code. 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 division (M) herein.

(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 Planning and Development Director or 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 division are in addition to all other rights and remedies the city may have under this division, 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.

(M) *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 shall be required to file with the city, for city approval, an annual bond or cash deposit in the sum of \$25,000, having as a surety a company qualified to do business in the state of Florida, and acceptable to the city's Risk Manager, 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 other 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 division (N) of this section, 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.

(N) *Enforcement remedies.*

(1) In addition to any other remedies available at law, including but not limited to F.S. §§ 125.69, (counties), 166.0415, (municipalities), and Ch. 162, (municipalities and counties), or equity or 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 this 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 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.

(2) Before imposing a fine pursuant to division (N)(1)(a), 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. Division (F) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(O) Reports and records.

(1) Upon reasonable request, a registrant shall provide the following documents to the city as received or filed:

(a) Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this section and which are reasonably necessary for the city to protect its interests under this section.

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

(c) Nothing in this subsection shall affect the remedies registrant has available under applicable law.

(2) 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.

(3) The city shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.

(P) 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 owner uses all practicable means to expeditiously cure or correct any such inability to 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 division, 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.

(Q) *Reservation of rights.*

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

(2) This section 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 placed in the public rights-of-way prior to the effective date of this section, to the full extent permitted by state and federal law.

(R) *Dimensional limits.* No communications facility, located aboveground, excluding telephone poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed within the corporate limits of the city on any public rights-of-way, following the effective date of subsections (R) through (T), unless:

(1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public right-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and

(2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and

(3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to adjoining properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians at the proposed site and does not negatively impact or interfere with drainage of rights-of-way, with applicable access requirements under the Americans with Disabilities Act 42 U.S.C. Sec. 1201 et seq., nor with other utilities or communications systems already located at the desired site, including the ability to perform their intended functions or impairment of access for repair or modification to said utilities; and

(4) The communications facilities proposed by the communications provider does not otherwise create a hazard to the public health, safety and welfare, not set forth in subsection (3) above.

(S) *Notice to residential areas.* Whenever a communications service provider submits a permit application to locate communications equipment which exceeds the dimensional limits in subsection (R) above, within residentially-zoned districts in the city, the city's Engineering Department shall provide notice of same by posting an 18" x 24" sign at the proposed location advising residents that they may review the permit application at the Engineering Department and provide their comments to the City Engineer. Said sign will also advise the location of the Engineering Department, the times that the material is available for review and a due date for

any such comments. Public commentary should be specifically related to the criteria contained in subsection (R) above. The sign shall be posted a minimum of 14 days prior to any decision being made on the permit application to allow adequate time for input by residents and so as not to unduly delay the processing of any application.

(T) *Florida Consumer Choice Act of 2007*. This section shall be construed in accordance with the Florida Consumer Choice Act of 2007 ("the Act") so that the city shall retain all rights and obligations permitted by the Act to be retained by the city as of June 30, 2007, and so that the obligations and rights of all persons which have previously obtained permits and previously entered into agreements with the city and all persons which shall obtain permits in the future and enter into agreements with the city in the future for work to be performed or conducted within the city's public right-of-way, shall be construed as in force as of June 30, 2007 so as to comply with the nondiscriminatory mandate of the Act.

(Ord. 2001-47, passed 3-13-01; Am. Ord. 2009-33, passed 5-12-09; Am. Ord. 2013-35, passed 1-8-13)

TELECOMMUNICATIONS

§ 100.60 DEFINITION.

The term **TELECOMMUNICATIONS COMPANY**, as used in this subchapter, shall have the meaning set forth in F.S. § 364.02(12).

(Ord. 2001-32, passed 1-23-01)

§ 100.61 PURPOSE.

The purpose of this subchapter 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 or not otherwise having an agreement with the city for occupation of the city's rights-of-way. Any telecommunications company paying fees or having an existing agreement with the city for the occupation of the city's rights-of-way for telecommunications facilities as of the effective date of this subchapter shall continue to pay fees to the city as the company has been paying them or pursuant to the existing agreement.

(Ord. 2001-32, passed 1-23-01)

§ 100.62 APPLICATION OF FEES.

The fees imposed pursuant to this subchapter shall apply to all telecommunications companies occupying the city's rights-of-way for telecommunications facilities and which are not otherwise paying a fee to the city or not under an existing agreement for occupation of the city's rights-of-way.

(Ord. 2001-32, passed 1-23-01)

§ 100.63 FEES SEPARATE FROM TAXES.

The fees imposed pursuant to this subchapter are a fee and not a tax as specified in F.S. § 337.401; consequently,

(A) The payments to be made pursuant to this subchapter shall not be deemed to be in the nature of a tax;

(B) Such payments shall be in addition to any and all taxes of a general applicability; and

(C) 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.

(Ord. 2001-32, passed 1-23-01)

§ 100.64 DETERMINATION OF FEES.

The fees to be paid by telecommunications companies to the city for occupation of the city's rights-of-way shall be determined as follows:

(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 F.S. § 337.401, and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and business tax receipts levied or imposed by the city upon the telecommunications company.

(B) In the event that a telecommunications company that 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, at a rate of \$.50 per linear foot, 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 subchapter and shall be payable annually, in advance. If a telecommunications company that is required to pay a fee pursuant to this division 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 subchapter, 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.

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

(Ord. 2001-32, passed 1-23-01; Am. Ord. 2007-57, passed 7-10-07)

§ 100.65 PAYMENT OF FEES.

The fees provided for in § 100.64(A) of this subchapter 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 subchapter, and shall be made within 30 calendar days following the end of the period. Past due payments or underpayments shall accrue interest at rate of 18% per annum from the first day after the day the payment was due to the city until paid to the city, and the company shall reimburse the city for any actual and reasonable out-of-pocket costs associated with collecting any sums required to remit to the city. 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.

(Ord. 2001-32, passed 1-23-01)

§ 100.66 REVIEW OR AUDIT OF RECORDS BY CITY.

(A) 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 subdivisions (1) or (2) 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:

(1) 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

(2) Provide the city with access to copies of the telecommunications company's records in the city or within 50 miles of the city or by an electronic method satisfactory to the city.

(B) 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 to the extent permitted by applicable law and shall 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 subchapter 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.

(Ord. 2001-32, passed 1-23-01)

§ 100.67 APPLICABLE PROVISIONS OF LAW.

This subchapter 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.

(Ord. 2001-32, passed 1-23-01)

§ 100.68 REGISTRATION.

If required by applicable city ordinances, codes or regulations, a telecommunications company shall be registered with the city and obtain all permits that may be required by the city regarding occupation of the city's public rights-of-way for telecommunications facilities.

(Ord. 2001-32, passed 1-23-01)

Disclaimer:

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2017 American Legal Publishing Corporation
techsupport@amlegal.com
1.800.445.5588.