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MEMORANDUM

TO: Greg Harrison, City Manager; Mark Berman, City Attorney;
John Sfiropoulos, City Engineer

FROM: Gary I. Resnick, Esq.

DATE: June 21, 2018

SUBJECT: City of Pompano Beach | Communications Rights-of-Way Ordinance | Revisions To Accommodate Comments From Industry

Pursuant to your request, this Memorandum summarizes the revisions to the proposed Communications Rights-of-Way Ordinance that the City Staff has agreed to suggest, to accommodate comments and suggestions provided by members of the communications industry. To review the efforts that led to these revisions, prior to first reading, we conducted a workshop with industry members, received further written comments and suggested revisions from industry members. These were considered by the City Manager, City Engineer and City Attorney. The industry provided further requested revisions at the hearing on first reading. Subsequent to such first reading, we engaged in another workshop, several conference calls, and reviewed additional comments and suggested revisions from industry members.

All of the suggested revisions are shown on the enclosed redline version of the Ordinance. As revealed, the City Staff agreed to many revisions to accommodate the industry's requests to make it less burdensome to place and to maintain communications facilities in the public rights-of-way. There remain a few outstanding issues where industry requests for revision were not accepted by the City Staff. One such outstanding issue is the industry's request to exempt aerial cable and fiber from all permitting requirements. The City Staff did not agree with this for several reasons, including: installation of such aerial cable using heavy equipment could disrupt traffic, inconvenience adjacent properties, and damage public rights-of-way. In addition, Florida Statutes mandate that local governments treat permits for cable the same as permits for other communications facilities, and thus, if the City exempted aerial cable from permitting

Greg Harrison, City Manager; Mark Berman, City Attorney
John Sfiropoulos, City Engineer
June 21, 2018
Page 2

requirements, the City could be subject to claims of violation of Florida law by requiring permits for other communications facilities.

The major suggested revisions are as follows:

Section 100.46(C)(2)(h) and (C)(4)(pages 15-16)¹: The requirement of a cash fund to ensure compliance with the Ordinance and cover potential damages incurred by the City was deleted.

Section 100.46(D)(2)(c)(page 20): Since industry does not need permits to install micro wireless facilities but such facilities are limited in dimension, we added language to allow the industry to confirm dimensions with one submission, as opposed to each time installing such facilities.

Section 100.46(E)(1) (page 20): Eliminated the requirement of a pre-application meeting.

Section 100.46(E)(1)(c)(1)(page 21): Eliminated the requirement of an ALTA survey with an application to show that proposed location is within the public rights-of-way and substituted an FAA certification and site plan.

Section 100.46(E)(1)(c)(1)(page 21): Revised language to eliminate requirement for specific distance measurements and instead incorporate existing features and proposed facility on survey.

Section 100.46(E)(1)(n)(3)(page 23): Eliminated requirement for photo simulations in an application, except for facilities to be placed in Special Districts, such as the CRAs, Overlay Districts and Briney Avenue.

Section 100.46(F)(page 28): Clarified that the bond is a performance construction cash bond to ensure restoration of the public rights-of-way following construction.

Section 100.46(G)(6)(page 31): Revised the prohibition of re-excavation to add the definition of “excavation” from Florida Statutes and to clarify that a subsequent applicant may apply for a permit to re-excavate in the same area of the rights-of-way, provided the permit requires restoration to the original condition. Since there may be more excavation in the public rights-of-way, language was added to strengthen the obligations for restoration of the rights-of-way.

Section 100.46(H)(1)(c)(page 33): Revised to eliminate language that placement of such facilities should not cause unreasonable interference with the “convenience” of adjacent property owners to provide shall not cause interference with accessibility or safety and provided examples such as violation of the City’s noise code or blocking ingress and egress.

¹ Page numbers correspond to the redline version and may differ from the final version on the agenda.

Greg Harrison, City Manager; Mark Berman, City Attorney
John Sfiropoulos, City Engineer
June 21, 2018
Page 3

Section 100.46(H)(1)(g)(page 34 - 35): Revised to include side setbacks within public rights-of-way for utility pole installations if installation at common property line is not possible due to existing conditions.

Sections 100.46(H)(1)(d), (h) and (i) (pages 33 – 37): The prohibition of above-ground communications facilities in the Briney Avenue neighborhood, scenic corridors and special zoning districts, such as the CRAs and Overlay Districts, was eliminated to allow such facilities in such areas. However, in recognition of the City's extensive investment in such areas, specific objective designs standards for above-ground facilities in such areas were added so that, to the extent possible, such new poles, attachments to poles, and equipment facilities up to 28 cu. ft. will blend into such areas.

Sections (H)(3)(e)(1) and (2)(page 39): Revised objective design standards to allow wires to be in conduit on the outside of the pole of the same finish to match the pole and to allow small wireless facilities attached to the pole to extend beyond the diameter of the pole.

Sections (H)(3)(e)(2) (page 40): Revised objective design standards to allow for slim design dimensions to be exceeded by up to 25% if required dimensions cannot be met.

Sections (H)(f)(1)(page 40): Revised the 200-foot spacing requirement for ground-mounted facilities to be only required of the same communications provider.

If there are any questions, please feel free to contact me.