

ORDINANCE NO. 2018-_____

POMPANO BEACH, FLORIDA
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 100, "STREETS AND SIDEWALKS," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY DELETING SECTION 100.46, "COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY," IN ITS ENTIRETY AND CREATING A NEW SECTION 100.46, "COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY," PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE BOND; PROVIDING FOR CONSTRUCTION METHODS FOR PLACING OR MAINTAINING FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; AND BY DELETING SECTION 100.60, "DEFINITION," IN ITS ENTIRETY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Pompano Beach ("City") has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the City of Pompano Beach by regulating the siting of 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, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and

WHEREAS, Chapter 610, Florida Statutes, addresses the provision of cable and video service in Florida, and provides in Section 610.102, that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality or county may not grant a new franchise for the provision of cable or video service within its jurisdiction; and

WHEREAS, Section 610.114(2), Florida Statutes, provides: “Notwithstanding any other provision of law, a ... municipality may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificateholder that is placing and maintaining facilities in or on a public rights-of-way in the municipality or county. In accordance with s. 337.402, the permit may require the permitholder to be responsible, at the permitholder’s expense, for any damage resulting from the issuance of such permit and for restoring the public rights-of-way to its original condition

before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public rights-of-way.” and

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

WHEREAS, the Act 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 and micro wireless facilities, and the collocation of small wireless facilities and micro wireless facilities in the public rights-of-way; and

WHEREAS, the Act provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, 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 Act also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, county liability, and county warranties provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, it is the City’s intent to implement the Act and 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’s further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner; 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 elected to increase the Communications Services Tax rate in lieu of collecting permit fees from providers of communications services; 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 plans; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach, Florida; and

WHEREAS, a public hearing before the City Commission was held pursuant to the aforesaid notice at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were in fact heard; now, therefore,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Subsection.

SECTION 2. That Section 100.46, "Communications Facilities in the Public Rights-of-Way, of Chapter 100, "Streets and Sidewalks," of the Pompano Beach Code of Ordinances, is

hereby deleted in its entirety and a new Section 100.46, “Communications Facilities in the Public Rights-of-Way,” is hereby created to read as follows:

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

(A) *Intent and purpose; Applicability; Authority to Implement.*

(1) 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 the United States and Florida Constitutions, F.S. § 337.401, as it may be amended, the City's home-rule authority, the Federal Telecommunications Act of 1996, the Spectrum Act, FCC regulations, 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 after the effective date of this Section; and minimizing disruption to the public rights-of-way.

(2) This Ordinance shall apply to all facilities for communications services placed or maintained in the City public rights-of-way pursuant to Section 337.401, F.S., including but not limited to any person holding a certificate of franchise authority pursuant to Section 610.103, Florida Statutes, communications services providers, pass-through providers, and wireless providers. To the extent not prohibited by applicable law, this Ordinance shall apply to all applications pending at the time of adoption of this Ordinance, to place or maintain communications facilities in the public rights-of-way. Persons seeking to place or maintain communications facilities on private property or other property to which the City or other governmental entity has a fee simple or leasehold interest, not within and exclusive of the public rights-of-way, located within the jurisdictional boundaries of the City shall comply with the provisions of Section 155.4204(C) of the Zoning Code, to the extent it applies, unless such property is addressed expressly in this Section. This Section is not applicable to communications facilities outside the public rights-of-way. Pursuant to this Section, a wireless provider may be authorized to place or to maintain communications facilities including but not limited to, backhaul facilities, fiber, small wireless facilities, micro wireless facilities, or utility poles for collocation of small wireless facilities in the public rights-of-way. Wireless support structures, telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law. This Section shall not apply to wireless facilities owned by the City or a person, including an electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis by said person.

(3) This Section implements the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), F.S. In the event the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), is repealed, amended, or overturned by a court of competent jurisdiction, in whole or in part, provisions of this Section may no longer apply, in which case pending and future applications for small wireless facilities or utility poles intended to support the collocation of small wireless facilities in the public rights-of-way, will be governed by applicable law. In addition, permits issued pursuant to this Section may be suspended or revoked, and facilities installed pursuant to this Section may be required to be removed at the facility owner's expense, to the extent consistent with applicable law.

(4) To the extent any provision of this Section 100.46 conflicts with the Code of Ordinances or Zoning Code of the City of Pompano Beach, this Section shall control.

(5) Authority to implement section. The City Manager is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent and purposes of this Section.

(6) Reservation of rights.

(a) The City reserves the right to amend this Section as it shall find necessary in the lawful exercise of its police powers.

(b) 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. A person with existing communications facilities in the public rights-of-way shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance or prior to the issuance of a permit pursuant to this Ordinance. This provision shall not require removal or modification of communications facilities placed or maintained in the public rights-of-way pursuant to applicable law or a previously issued permit prior to the effective date of this Ordinance unless such facilities are abandoned, or proposed to be altered or removed in a manner that requires a permit.

(7) This Ordinance does not apply to the placement of electric utility poles for an electric distribution system located within the City public rights-of-way pursuant to a valid franchise agreement with the City. However, collocation of small wireless facilities on such utility poles and any other utility poles placed or maintained by a City franchised utility in the public rights-of-way will be governed by the applicable provisions of this Ordinance. Ordinances approving a

franchise agreement with an electric utility shall remain in full force and effect, notwithstanding any provision of this Ordinance.

(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 U.S.C. *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) ***ABANDONMENT OR ABANDONED.*** The cessation of all uses of a communications facility for a period of 180 or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be *Abandonment* of a communications facility. A wireless infrastructure provider’s failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine months after the application is approved in accordance with Section 337.401(7)(j), F.S., shall constitute abandonment. The terms Abandonment or Abandoned are not intended to include a dropped line from a potential or existing customer in the event the communications services provider, communications facility provider, or pass-through provider reasonably anticipates future use of the dropped line.

(2) ***ABUT.*** When used in conjunction with a lot or parcel of land or public rights-of-way, means a lot or parcel of land or public rights-of-way that shares all or a part of a common lot line or boundary line with another lot, parcel of land or public rights-of-way.

(3) ***ADJACENT PROPERTIES OR PROPERTIES ADJACENT.*** (i) Those lots or parcels of land that abut another lot or parcel of land or public rights-of-way that is contiguous to a communications facility site or proposed site and (ii) the lots or parcels of land or public rights-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

(4) ***ANTENNA.*** Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

(5) ***APPLICABLE CODES.*** Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including expressly the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2010 Florida Department of Transportation Utility Accommodation Manual, and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, and City codes or ordinances adopted to implement Section 337.401(7), Florida Statutes. The term includes objective design standards adopted by City ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by City ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the City upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense.

(6) ***APPLICANT.*** A registrant who submits an application for a permit pursuant to this Ordinance.

(7) ***APPLICATION.*** A request submitted by an applicant to the City for a permit to collocate small wireless facilities or for any relief pursuant to this Section.

(8) ***AS-BUILT PLANS.*** A set of final and complete drawings in a format as specified by the City Public Works Director submitted upon completion of a project, signed and sealed by professional surveyor or mapper as defined in Section 472.005, F.S., that reflect all changes made during the construction process, and show the exact dimensions, geometry and location of all elements completed under the permit.

(9) ***AUTHORITY.*** The City to the extent it has jurisdiction and control of the public rights-of-way. The term does not include the Florida Department of Transportation.

(10) ***AUTHORITY OR CITY UTILITY POLE.*** A utility pole owned by the City in the public rights-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or other utility pole exempt pursuant to Section 337.401(7), Florida Statutes.

(11) ***BELOW-GRADE COMMUNICATIONS FACILITY.*** A communications facility, including manholes or access points that are entirely contained below grade within the public rights-of-way.

(12) **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.

(13) **CITY ENGINEER.** The City of Pompano Beach, Florida City Engineer or his/her designee.

(14) **CITY MANAGER.** The City of Pompano Beach, Florida City Manager or his/her designee.

(15) **CLEAR ZONE.** The roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

(16) **COLLOCATION OR COLLOCATE.** To install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

(17) **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, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, 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. A utility pole intended for collocation of a small wireless facility shall be considered a facility or for purposes of this section.

(18) **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, including wireless services, 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).

(19) **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, or a wireless infrastructure provider.

(20) **COMMUNICATIONS SERVICES TAX.** The local communications services tax authorized to be levied and collected by counties and municipalities upon communications service providers for communications services, pursuant to Section 202.19, F.S. as amended.

(21) **CONSOLIDATED PERMIT APPLICATION.** A single permit application that would otherwise require individual permit applications for the collocation of between two and thirty small wireless facilities to existing structures within the public rights-of-way.

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

(23) **FLORIDA BUILDING CODE.** The Florida Building Code promulgated under Chapter 553, Florida Statutes and includes the applicable amendments thereto as both may be amended from time to time.

(24) **FLORIDA GREENBOOK.** The latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, construction and Maintenance of Streets and Highways.

(25) **GRAFFITI.** Any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility. A wrap shall not be considered graffiti.

(26) **HISTORIC PROPERTY.** Any prehistoric or historic district, site, building, object or other real or personal property, of historical, architectural or archaeological value. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to City history, government, or culture.

(27) **HOMEOWNERS' ASSOCIATION.** An incorporated association whose members consist of owners of single-family homes or condominium units that manage or control property owned by the association.

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

(29) **LICENSED ENGINEER.** A Florida Registered Professional Engineer, or a person who is exempt from such registration requirements as provided in F.S. § 471.003.

(30) **LOT.** A designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

(31) **MICRO WIRELESS FACILITY.** A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

(32) **ORDINANCE or SECTION.** This Ordinance or Section 100.46.

(33) **PARCEL.** Any piece of real property that has a single parcel identification number assigned to it by the Broward County Property Appraiser.

(34) **PASS-THROUGH PROVIDER.** Any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the City pursuant to Chapter 202, F.S., as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this Section.

(35) **PERMIT.** The public rights-of-way permit that must be obtained before a person may construct in the public rights-of-way and shall include, but not be limited to, rights-of-way engineering and construction permits issued by the City.

(36) **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.

(37) **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. To the extent required by applicable law, 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.

(38) **PSC.** The Florida Public Service Commission.

(39) **PUBLIC RIGHTS-OF-WAY.** A public rights-of-way, public easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley, or any other way 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. **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 in the **PUBLIC RIGHTS-OF-WAY**.

(40) **REGISTRANT** or **FACILITY OWNER**. A communications services provider or other person that has registered with the City in accordance with this Section.

(41) **REGISTRATION** and **REGISTER**. The process described in this Section whereby a communications services provider provides certain information to the City.

(42) **SHROUD**. A covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure or wireless support structure.

(43) **SIGNAGE**. Any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the wireless facility provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

(44) **SMALL WIRELESS FACILITY**. A wireless facility that meets the following qualifications:

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

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

(45) **STEALTH DESIGN**. A method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole which is designed to

enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

(46) ***SURROUNDING NEIGHBORHOOD.*** The area within a 500 foot radius of a communications facility site or proposed communications facility site.

(47) ***UTILITY.*** 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 in Florida Statutes Sections 337.401, 337.402, 337.403, and 337.404 as the “utility.”

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

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

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

(b) Wireline backhaul facilities; or

(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.

(50) ***WIRELESS INFRASTRUCTURE PROVIDER.*** A person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communications transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

(51) ***WIRELESS PROVIDER.*** A wireless infrastructure provider or a wireless services provider.

(52) **WIRELESS SERVICES.** Any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

(53) **WIRELESS SERVICES PROVIDER.** A person who provides wireless services.

(54) **WIRELESS SUPPORT STRUCTURE.** 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.

(55) **WRAP.** An aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

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

(1) All persons seeking to place or maintain a communications facility, backhaul facility, or utility pole for collocation of a small wireless facility in the City's public rights-of-way pursuant to this Section shall first register with the City in accordance with this Section before being eligible to receive a permit. Subject to the terms and conditions in this Section and approval of a permit if required, a registrant may place or maintain a communications facility in public rights-of-way. A person with an existing communications facility in the City's public rights-of-way as of the effective date of this Section has 90 days from this Section's effective date to obtain an effective registration.

(2) Requirements for an effective registration. A person that desires to place or maintain a communications facility, backhaul facilities and an infrastructure provider that seeks to apply to install a utility pole for collocation of a small wireless facility in the 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 registrant; and

(b) Name, address and telephone number of the registrant's primary contact person in connection with the registration and name, address, telephone number and email addresses of the registrant's primary contact person in the event of an emergency or issue involving its facilities, which shall be monitored 24 hours per day, 7 days per week; and

(c) The type of communications services that the registrant provides or intends to provide within the City (if more than one, state all that apply), or, if none, indicate that the registrant is a communications facility

provider, wireless infrastructure provider, or pass-through provider, as the case may be, and whether the registrant currently remits or intends to remit Communications Service Tax, as authorized in Ch. 202, F.S.; and

(d) Evidence of the insurance coverage required under this Section; and

(e) Acknowledgment that registrant has received and reviewed a copy of this Section; and

(f) A copy of the registrant's certificate of authorization, public convenience and necessity, or other similar certification or licenses issued by the Florida Public Service Commission, the Florida Department of State, the FCC, or other federal authority. A copy of federal or state certification authorizing the registrant to provide communications services, if any; and

(g) If the registrant is a corporation, proof of authority to do business in the State of Florida, including the number of the corporate certification.

(3) Insurance.

(a) Registrant shall provide, pay for and maintain satisfactory to the City, the types of insurance described herein, from responsible companies duly authorized to do business in 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. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the City.

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

1. Worker's compensation and employer's liability. Insurance employer's liability: Florida statutory requirements.

2. 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.

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

4. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for commercial general liability, business auto liability or 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.

5. Self-insurance. Registrant may satisfy the insurance requirements and conditions of this Section under a self-insurance plan and/or retention if acceptable to the City in its sole discretion based on the City's evaluation of the registrant's ability to comply with the City Code. 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.

(c) Right to review. The City 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 Section. 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.

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

(4) Review of registration. The City Engineer shall review the information submitted by the registration applicant. If the applicant submits information in accordance with this subsection C, the City shall notify the applicant of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with this subsection C, the City 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. A notice of registration non-effectiveness shall not preclude an applicant from reapplying.

(5) Regulations Applicable to Registrations.

(a) A registration shall be non-exclusive and shall not convey any title, equitable or legal, in the public rights-of-way. Within 30 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information.

(b) To the extent that a person with communications facilities in the public rights-of-way is not registered as required herein, said person shall register with the City pursuant to this Section within 90 days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way and such persons may be subject to enforcement remedies.

(c) Registration renewal. 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, as may be amended, 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. 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 permits until the registrant has complied with the requirements of this Section.

(d) 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 except for the willful misconduct or gross negligence of the City and to the extent not inconsistent with applicable law. In no event shall the City be liable for any damage or destruction to a communications facility placed in the City public rights-of-way including on a City utility pole. 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 subsection 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 subsection 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.

(e) Termination of registration. The City may terminate a registration with prior written notice and a reasonable opportunity for a registrant to respond with an appropriate plan, if:

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

2. The registrant's placement or maintenance of a communications facility 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;

3. The registrant abandons its facilities; or

4. The registrant commits substantive and material repetitive violations of any of the provisions of this section.

(f) 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 closing date of the transfer, sale or assignment. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Section as it may have been amended, then the transferee, buyer or assignee shall register as provided in 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 City that the transferee, buyer or assignee is the new applicant.

(D) *Requirement of a permit.*

(1) A City rights-of-way use permit shall be required to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this Section. An effective registration shall be a condition of obtaining a permit. Registrant shall comply with all City requirements for issuing permits, including 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 to the extent such activities would otherwise require a permit.

(2) Limited Exception to Permit Requirement.

(a) A registrant shall be allowed to perform emergency maintenance within the public rights-of-way without first obtaining a permit. The term EMERGENCY shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and, within 15 days of completing the emergency maintenance, apply for a permit if such activity required a permit under this Section.

(b) A registrant shall be allowed to perform routine maintenance within the public rights-of-way if such proposed routine maintenance or replacement of existing ~~wireless~~ facilities with substantially similar facilities of the same size or smaller, and such work does not involve excavation, construction, or disruption to transportation in the public rights-of-way. In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the City identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed.

(c) A permit shall not be required for the installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cable strung between Existing Utility Poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under Chapter 202, Florida Statutes. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, at least thirty (30) days prior to commencing said work, the registrant shall submit a certification or manufacturer's specifications of the micro wireless facility's dimensions to the City for review to confirm dimensions comply with Section 337.401(7), F.S. and this Ordinance. A registrant's submission to demonstrate a micro wireless facility's dimensions may apply to all identical micro wireless facilities sought to be placed in the public rights-of-way by such registrant and the registrant is not required to submit a new certification or manufacturer's specifications confirming a micro wireless facility's dimensions unless the registrant seeks to place a micro wireless facility with a different manufacturer or with different dimensions in the public rights-of-way.

(3) The City Manager may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such

serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies as set forth in this section and Florida law.

(E) *Permit application requirements and review procedures.*

(1) Application requirements. As part of any permit application, a registrant or a registrant's agent shall provide a permit application that sets forth, at a minimum, the information required in the City's application form as it may be amended, including:

(a) If the applicant is not the registrant, a statement of authority for the applicant to act on behalf of the registrant. If the applicant is a contractor, the contractor's license or registration confirming the contractor's authority to perform construction in the City and whether the contractor has any open permits with the City, and if so, the permit identification number or information.

(b) Confirmation that the applicant has an effective registration.

(c) Engineering plan. An engineering plan signed and sealed by a Licensed Engineer, that includes the following:

1. Except for an application to collocate a small wireless facility on an existing utility pole, an FAA-1A certification letter and site plan, or a survey as may be required in the application form demonstrating that the proposed location is within the public rights-of-way and documenting the edge of pavement, sidewalks, driveways, ramps, residential properties, drainage systems, trees, ground-mounted equipment, structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way within a 50 foot radius of the proposed facility;

2. The type, location, dimensions, height, footprint, stealth design, and concealment features of the proposed facility;

3. Sufficient specificity demonstrating compliance with applicable codes;

4. The routes of fiber or other lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);

5. Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment, sight

lines, clear zones, or result in the public rights-of-way being inconsistent with the Florida Greenbook;

6. Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and

7. Other engineering information that may be requested by the City.

(d) Trees or landscaping to be removed or impacted upon the placement or maintenance of the proposed facility.

(e) Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.

(f) A description of the method by which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques) and timetable.

(g) A temporary sidewalk closure plan, traffic lane closure plan, and maintenance of traffic plan, if applicable, to accommodate placement or maintenance of the facility.

(h) A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way to its original condition.

(i) Indemnification. A statement shall be included with the permit application that by execution of the application for the permit, the Applicant shall be bound to the City with respect to indemnification provisions set forth in subsection 100.46(C)(5)(d).

(j) Airport airspace protection. If applicable, Applicant shall confirm compliance with Chapter 333, F.S. and all City, State and federal laws and regulations pertaining to airport airspace protections.

(k) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an officer that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communications service within nine months after the date the application is approved.

(l) Pole attachment agreement. Except for parties whose pole attachments are regulated by 47 U.S.C. § 224, if applicable, the

applicant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete agreement, the applicant may provide the first page and signature page of such agreement or a notarized letter of authorization from the owner of the utility pole indicating the registrant is authorized to install its facility. By submitting an application, an applicant certifies that it has authority from the utility pole owner to attach its facility.

(m) For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the height and location of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade in place within 500 feet of the proposed location of the utility pole. If there is no utility pole within 500 feet of the proposed pole as of July 1, 2017, the applicant shall so certify.

(n) In addition to the requirements herein, as part of any permit application for a small wireless facility, the applicant shall provide:

1. Documentation to the satisfaction of the City from a Licensed Engineer that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with applicable codes;

2. A description to the satisfaction of the City how the proposed small wireless facility complies with the objective design standards set forth herein; and

3. For proposed facilities in the locations covered by Special Districts as referenced within this Ordinance, accurate photo simulations of the proposed utility pole, small wireless facility and if applicable, as collocated on the utility pole.

(o) Consolidated permit application, single application for multiple locations. An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit ("Consolidated Permit") for the collocation of up to 30 small wireless facilities. The application must include the information required for an application for all proposed small wireless facilities. If the application includes multiple small wireless facilities, the City may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

(2) Application review and procedures.

(a) The following review procedures and time frames shall apply solely to an application for collocation of small wireless facilities, a

utility pole to support a small wireless facility, or ground based small wireless facilities. Time periods within this subsection may be extended for the period of time impacted by a force majeure event or by a declared State of Emergency that impacts the City (“force majeure event”). If an applicant takes the position that the force majeure event does not extend the time periods, the applicant shall so notify the City Engineer within 24 hours of the force majeure event or declaration of emergency, or shall be deemed to have consented to such extension required by the force majeure event.

1. Within 14 days after receiving an application, the City Engineer will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the City will specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within 14 days.

2. Negotiation Process.

- a. Within 14 days after the date of filing the application, the City Engineer may request that the proposed location of a small wireless facility be moved to another location in the rights-of-way and placed on an alternative City utility pole or support structure or may place a new utility pole. The City Engineer and the applicant may negotiate the alternative location, objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request.

- b. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the City of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.

- c. If an agreement is not reached, the applicant must notify the City of such nonagreement and the City must grant or deny the original application within 90 days after the date the application was filed. Failure of the applicant to so notify the City shall be deemed to constitute the applicant’s rejection of the City’s alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

3. Unless the City and the applicant engage in negotiations as provided above, the City Engineer will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within 60 days after the receipt of a completed application.

4. Extension of Time. If the City and the applicant do not engage in negotiations, the parties may mutually agree to extend

the 60-day application review period. The City shall grant or deny the application at the end of the extended period.

5. The City Engineer may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

a. Materially interferes with the safe operation of traffic control equipment.

b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

d. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.

e. Fails to comply with applicable codes, including but not limited to this Ordinance.

6. Cure Procedure.

a. If the application is denied, the City will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the City denies the application.

b. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after the notice of denial is sent.

c. If an attempt to cure is made by the applicant, the City will approve or deny the revised application within 30 days after receipt of the revised application. If the applicant revises any information in the application other than to address expressly the deficiencies identified by the City, the applicant shall submit a new application.

d. The City's second and subsequent reviews of revised applications will be limited to the deficiencies cited in the denial notice.

7. A permit issued pursuant to an approved application shall remain in effect for one year unless otherwise extended, suspended, or terminated by the City pursuant to this Section. If a small wireless

facility or utility pole is installed without a permit pursuant to applicable state or federal law, the applicant shall nevertheless be required to have an effective registration, comply with development standards and provide the performance construction bond required in this Section prior to performing construction.

(3) Suspension of permits.

(a) The City may order the suspension of placement and maintenance work under a permit and ultimately may revoke any permit, in the event of a material breach of the terms and conditions of any applicable codes, State and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:

1. The violation of any material provision of the permit or applicable codes;
2. An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City;
3. Any material misrepresentation of fact in permittee's request for a permit or Registration;
4. The failure to maintain the required performance construction bond, insurance, to properly restore the public rights-of-way, to comply with an order issued by the City Engineer or to comply with registration requirements;
5. The failure to relocate or remove facilities pursuant to this Section and Sections 337.402, 337.403 and 337.404, F.S., as amended; or
6. Conducting work in the public rights-of-way without a permit, if required.

(b) If the City determines that the permittee has committed a substantial breach of a term or condition of the permit, the City shall make a written demand upon the permittee to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the City Engineer may place additional or revised permit conditions on the permit following a substantial breach. Within thirty (30) days of receiving notification of the breach, the permittee shall contact the City with a plan, acceptable to the City. The City shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the City, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or

suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with this Section.

(c) If a permit is revoked, the permittee shall reimburse the City for the City's reasonable costs, including restoration costs, administrative costs, and the cost of collection.

(d) The City may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

(4) Requests for waivers.

(a) A request for a waiver shall be filed with contemporaneously with the permit application. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:

1. A detailed explanation as to why a waiver from the requirements of this Section is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;

2. Nature and characteristics of the surrounding neighborhood;

3. Any special conditions and circumstances affecting the proposed site which prevent compliance with the provision for which a waiver is being sought;

4. If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;

5. Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;

6. If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. Sec. 12101, et seq., and applicable codes; and

7. Any other information the City may reasonably require to process the request for waiver.

(b) The City Engineer shall grant or deny a request for a waiver within 45 days after receiving the request for waiver. In granting any

waiver, the City may impose conditions to the extent such conditions are necessary to minimize adverse effects of the proposed facility on the surrounding neighborhood or to protect the public health, safety and welfare.

(c) Should a request for waiver, and ultimately a permit, be denied by the City Engineer, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Section.

(5) Appeals. Final, written decisions of the City Engineer or City Manager suspending or denying a permit, denying a registration, denying renewal of a registration or denying a waiver 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. An applicant shall waive any appeal that is not timely filed. The City Manager shall hear or appoint a hearing officer to consider the appeal. The hearing shall occur within 30 days of receipt of the appeal, unless waived by the applicant, and a written decision shall be rendered within 20 days of the hearing.

(F) *Performance construction bond.*

(1) Prior to the issuance of any permit in accordance with this Section, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law, a registrant shall establish in the City's favor a performance construction cash bond acceptable to the City 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. The performance construction bond must be a cash bond and shall name the City as obligee and be conditioned upon the full and faithful compliance by the registrant with all requirements, duties, and obligations imposed by the permit and provisions of this section during and through completion of the placement or maintenance project. The performance construction bond shall be in an amount as determined by the City based on the estimated costs of the restoration of the public rights-of-way plus ten percent (10%). The bond shall be in the form of cash payment to be maintained in a City account and issued by a registrant or a surety licensed to operate in Florida having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; and shall be subject to the approval of the City Attorney's Office. 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. No performance construction bond is required if the estimated costs of the restoration of the public rights-of-way is less than one thousand dollars (\$1,000).

(2) The performance construction bond must be issued as non-cancelable and shall provide the following: "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." In the event the term of any performance construction bond expires, or is reasonably expected to expire, prior to one-year after the completion of construction, restoration and City inspection, the registrant shall immediately obtain, pay for, and file with the City a replacement performance construction bond. No less than 12 months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the City to remove the performance construction bond requirement and the City will return the cash bond without interest. The rights reserved by the City with respect to any performance construction bond are in addition to all other rights and remedies the City may have under this Section, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance construction bond will affect any other right the City may have.

(3) In the event a registrant subject to such a performance construction bond fails to complete the work in a safe and timely manner to the City's satisfaction 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. Further, in the event multiple registrants performed excavation within the same area of the rights-of-way within a 12-month period and the City and parties involved cannot reasonably determine the cause of damage to the rights-of-way for failure to properly restore the right-of-way, including above, at-grade and below grade infrastructure, including proper drainage, or such damage was not immediately visible or measurable at the time of City inspection upon project completion, the City shall be entitled to recover damages jointly and severally from each registrant that performed work within the vicinity of the damaged rights-of-way, as well as pursue other remedies available to the City under applicable law.

(G) *Construction methods for placing or maintaining communications facilities in public rights-of-ways.*

(1) A registrant shall place and maintain its communications facility in public rights-of-way consistent with all safety practices required by applicable codes or accepted industry practices and standards, including but not limited to, Chapter 33 of the Florida Building Code. Construction in the public rights-of-way shall only occur during normal business hours, and shall not occur during weekends or holidays, except for emergencies.

(2) 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. The registrant shall be solely liable for the displacement, damage or destruction of any property, irrigation system, utility, 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 method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this section and other applicable law. The provisions of this

subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that such method has been approved by the City.

(3) To minimize adverse impacts and disruption in the public rights-of-way and to other municipal improvements, the City Engineer may require a permittee to coordinate the placement or maintenance of facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the application. The City Engineer may require a registrant to alter reasonably its schedule and may establish a more definite time frame as necessary to minimize disruptions and disturbance in the public rights-of-way. Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers consistent with the federal requirements of 47 U.S.C. §224. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(4) A registrant shall not prune, remove or irreversibly damage trees during placement or maintenance of communications facilities or utility poles in the public rights-of-way or otherwise violate the City landscaping code, set forth in the City's Zoning Code, Article 5, Part 2, Section 155.5204(C), entitled "Tree Removal." Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be damaged or removed during placement or maintenance of communications facilities or underground construction pursuant to a permit issued by the City pursuant to the City Zoning Code. The City may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan.

(5) Restoration of public rights-of-way. 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. Such restoration shall ensure that the public rights-of-way are restored, as applicable, to the same grade, material, color or finish, design, and other characteristics of the public rights-of-way to at least its original condition. Registrant shall warrant its restoration for a period of 12 months after the City's acceptance 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 to 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 invoice by the City to the registrant.

(6) Limits on excavation. The City reserves the right to limit excavation in the interest of public safety or maintenance of the public rights-of-way. For the purpose of this Section, excavation shall have the meaning set forth in Section 556.102(6), Florida Statutes, as it may be amended. To avoid continual disruption and degradation to the public rights-of-way, an area of the public rights-of-way that has been subject to excavation and has not been fully restored shall not be subject to re-excavation until such time as the area where excavation occurred is fully restored by the permittee and approved by the City, unless the subsequent permittee applies for and the City issues a permit that requires the subsequent permittee to restore the public rights-of-way to the original condition.

(7) 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.

(8) 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.

(9) 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. The City shall have access without charge to any manholes or handholes at any time, provided the City has given reasonable prior notice so that such registrant can have trained personnel present. 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 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.

(10) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, 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.

(11) 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.

(12) A registrant shall, on the request of any person holding a City permit, 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 to the extent consistent with applicable law.

(13) Abandonment. Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-way is to be abandoned, the provider shall notify the City no later than 90 days from such determination, or no later than 30 days following such abandonment, whichever is sooner. The City may independently establish that a communications facility has been abandoned. In reaching such determination, the city may request documentation and/or affidavits from the registrant regarding the active use of the facility. If the registrant fails to provide the requested documentation within 30 days, a rebuttable presumption shall exist that the registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant or communications services provider at its expense within 30 days of receipt of notice from the City. Failure to remove an abandoned facility within the 30 days' period shall be grounds for the City to remove the facility at the registrant's or provider's expense. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

(H) *Development and objective design standards for the placement or maintenance of communications facilities in the public rights-of-way.*

(1) Location context and public safety regulations. A proposed facility shall comply with the following location context requirements unless waived by the City.

(a) Registrant shall comply with and abide by all applicable provisions of the state law and City ordinances, applicable codes and regulations and applicable provisions of federal statutes, FCC regulations and PSC regulations in placing or maintaining a communications facility in the public rights-of-way. Wireless facilities shall be considered to be structures under the Florida Building Code, Building Risk Category IV, Structures, Chapter 16 Section 1620 – 1621, High Velocity Hurricane Zone Area.

(b) All communications facilities shall be placed and maintained so as not to interfere unreasonably with the use of bicycle lanes, multipurpose trails, or the public rights-of-way by the traveling public.

(c) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights, accessibility, or safety of property owners who abut the public rights-of-way or access to any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits lawfully occupying the public rights-of-way. By way of example, the placement or maintenance of a communications facility in the public rights-of-way shall not cause excessive noise levels in violation of Chapter 97, Noise Control, of the City Code, shall not impede ingress and egress to adjacent property, and to the fullest extent possible, communications facilities shall be located so as not to block views materially from or into a business or residence, or materially block visibility of address or other signage on abutting properties.

(d) The City may 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 requests to place and maintain facilities in that area of the public rights-of-way, for the protection of existing facilities, or to accommodate City plans for public improvements, other approved capital improvements projects as part of the City Comprehensive Plan or Capital Improvement Plan, or projects the City determines are in the public interest. .

(e) Facilities to be installed underground.

1. All Facilities shall be subject to the City's non-discriminatory undergrounding requirements in areas that prohibit above-ground structures in the public rights-of-way. All facilities shall be placed underground, to the extent that utilities other than fire hydrants, including compatible utilities (electric, communications) are required to be underground. 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.

2. A permit from the City does not create any rights to place or to maintain utility poles for collocation of small wireless facilities or collocated wireless facilities including small wireless facilities on utility poles when electric and communications utilities in the location of the proposed facility have been installed underground or where the City has determined that existing utility poles for electric distribution and communications utilities should be removed and electric and communications utilities should be relocated underground.

3. Small wireless facilities and utility poles for the collocation of a small wireless facility shall comply with nondiscriminatory undergrounding requirements of the City that prohibit above-ground utilities in the public rights-of-way. Any such requirements may be waived by the City. For purposes of this Section, adoption of a final resolution by the City Commission shall constitute an undergrounding requirement over any area of the public rights-of-way. This Section does not apply to the installation, placement, maintenance, or

replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that if the City notifies the registrant of the micro wireless facility that aerial communications or electric distribution utilities will be converted to underground utilities, the micro wireless facility shall be removed at the registrant's expense. The presence of a micro wireless facility shall not be a basis not to comply with the City's undergrounding requirements.

4. Wireline fiber or coaxial backhaul facilities shall be installed underground consistent with applicable codes, unless waived by the City.

(f) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities or micro-wireless facilities shall not be collocated in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. For purposes of this Section, a location in a public rights-of-way that on both sides of its width abuts lots or parcels within a homeowners' association or was established by plat by the developer of the homeowners' association shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association unless the applicant demonstrates through the plat or other documentation that such rights-of-way is not subject to such homeowners' association authority. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any duly authorized aerial communications facility.

(g) Placement in relation to adjacent uses of property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design standard, new communications facilities and new utility poles for collocation of small wireless facilities shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, business, or any other principal use building located on property that abuts the public-rights-of-way. For placement within residentially zoned blocks, utility poles shall be placed at the common property line in the public rights-of-way of the parcels that abut the public rights-of-way. Should registrant demonstrate placement at the common property line is prevented by existing conditions, it may locate such facilities as close to the common property line as possible, but in no circumstance beyond the extended required side setback lines for either parcel as set forth in the city's Code.

(h) In recognition of the City's substantial investment in certain areas of the City, it is encouraged that no new wireless facilities, small wireless facilities or new utility poles for collocation of small wireless facilities shall be placed above-ground within a designated scenic or gateway corridor, as described in the City Comprehensive Plan, Capital Improvement Plan or otherwise

designated by the City. To the extent that the City may have permitting authority, the following roadways, while not all City public rights-of-way are presently designated for purposes of this Section:

1. A1A;
2. Riverside Drive;
3. Briny Avenue;
4. Atlantic Boulevard;
5. Martin Luther King Boulevard;
6. Dixie Highway; and
7. Federal Highway.

(i) Specific Districts. In recognition of the City's substantial investment in certain Special Districts referenced herein, or other Special Districts that may be created in the future, the following regulations and objective design standards shall apply to communications facilities in such Special Districts, notwithstanding other objective design standards or regulations contained within this Ordinance. No above-ground fiber, cable or wireline communications facilities shall be placed within the public rights-of way in the City's Special Districts referenced herein. A registrant may at its cost replace a utility pole to accommodate a small wireless facility and such replaced utility pole shall be in substantially the same hole as the existing utility pole being replaced to maintain the location attributes of the original pole. The replaced utility pole shall be of the same height, finish, material and design as the existing utility pole. A registrant may place a new utility pole in the public rights-of-way for collocation of a small wireless facility in such Special Districts provided the registrant demonstrates to the satisfaction of the City that replacing an existing utility pole would not be technically feasible to accommodate the small wireless facility. In such case, the new utility pole shall be of the same height and equidistant from adjacent utility poles in the same public rights-of-way and shall be of the same height, finish, material, and design as the adjacent utility poles. There shall be no exposed wires or fiber, nor shrouds or conduit on the exterior of poles in the Special Districts. A new utility pole shall not prohibit access to parking spaces or pathways through the public rights-of-way. Small wireless facilities collocated on utility poles in Special Districts shall be of the same architectural design and color as existing fixtures on the utility poles, or alternatively, the registrant may suggest an architectural design that compliments the existing fixtures on the pole. By way of example, the collocated small wireless facility may be designed to resemble a light fixture to be located on the opposite side of the pole from an existing light fixture. Small Wireless Facilities no greater than 28 cubic feet may be located in either of the following locations in order of preference: (i) within the base of the utility pole

consistent with bases of other utility poles in the same public rights-of-way, (ii) installed underground, or (iii) within twenty feet of the utility pole and of the same design, color and material as existing infrastructure or public art in the public right-of-way, such as waste receptacles or artistic fish. Ground-mounted small wireless facilities shall not prohibit access to parking spaces or pathways through the public rights-of-way. Alternatively, a registrant may propose a ground-mounted small wireless facility that is enclosed in a wrap with a design approved by the City and maintained at the cost of the registrant. In addition, the placement and maintenance of communications facilities in Special Districts shall comply with the regulations applicable to such Special Districts. The current Special Districts consist of the following:

1. The Downtown Pompano Beach (DP) Overlay District, set forth in the City's Zoning Code, Article 3, Part 7, Section 155.3708 with standards included in Sections 155.3708(I) and 166.3708(J); the East Overlay District (EOD), set forth in the City's Zoning Code, Article 3, Part 7, Section 155.3709, with standards included in Sections 155.3709(F)(2) and 155.3709(H); and the Atlantic Boulevard Overlay District (AOD) set forth in the City's Zoning Code, Article 3, Part 7, Section 155.3703. The City may waive the restrictions set forth herein.

2. Community Redevelopment Agency Districts. The City established the Community Redevelopment Agency (CRA), pursuant to State Statutes, to carry out redevelopment activities that include reducing or eliminating blight, improving the economic health of an area, and encouraging public and private investments in a CRA District, the boundaries of which are shown in the map on the City's website: <http://pompanobeachfl.gov/assets/docs/pages/cra/about/EAST%20CRA-24X36.pdf>, and the Northwest CRA District, the boundaries of which are shown in the map on the City's website: <http://pompanobeachfl.gov/assets/docs/pages/cra/about/DistrictMap-NW-CRA.pdf>.

3. Briny Avenue Neighborhood.

(j) A structure granted a permit and installed pursuant to this Section shall comply with Chapter 333, F.S., and City, county, state and federal regulations pertaining to airport airspace protections.

(k) Historic preservation. This Section does not limit the City's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws on or before April 1, 2017. Communications facilities shall not be collocated on nor interfere with historic property or landmark that may be within or adjacent to the public rights-of-way unless waived by the City. Small wireless facilities, utility poles for the collocation of small wireless facilities and

micro wireless facilities shall not be located in a manner that would impact negatively historic property unless waived by the City. Historic properties may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in the City Register of Historic Places or Historic Property, pursuant to City ordinance in effect on April 1, 2017, as it may be amended.

(2) Collocation on City utility poles.

(a) Reservation of space. The City may reserve space on City utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the City utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the City.

(b) The rate to collocate a small wireless facility on a City utility pole shall be \$150 per pole annually, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the City. The fee shall be paid upon issuance of a permit to collocate a small wireless facility on a City utility pole and annually thereafter.

(c) For a City utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations. The good faith estimate of the City for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

(d) For a City utility pole that does not support an aerial facility used to provide communications services or electric service, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the City may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The City may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the

rights-of-way. The replaced or altered utility pole shall remain the property of the City.

(e) The City may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(f) A collocation of a small wireless facility on a City utility pole shall comply with all applicable codes and shall not compromise the City utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions. Prior to the placement or maintenance of any small wireless facility on a City utility pole, the registrant shall provide reasonable notice to the City to have an observer present, if so desired. To the extent not inconsistent with applicable law, the City may charge the registrant costs of such observer.

(3) Objective design standards.

(a) Small wireless facilities in the public rights-of-way and utility poles installed or repurposed for collocation of small wireless facilities shall be designed in such a manner to maximize compatibility with the surrounding neighborhood. The following objective design standards regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the City Engineer.

(b) Applicants shall not place or maintain signage on communications facilities unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.

(c) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, or local, state or federal laws and regulations or as permitted by the City.

(d) Stealth design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall meet the following design standards unless waived by the City Engineer:

1. A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be located in substantially the same place as the original utility pole. The original pole must be removed within 30 days of use of the replacement pole.

2. The replaced or restructured utility pole shall be substantially similar in finish, design and composition as the original pole being replaced, unless the City requires a different design, color or composition.

3. The height for a new utility pole or replaced utility pole shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same rights-of-way, measured from grade, in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet in the same public rights-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, masts or other attachments to the utility pole.

4. A new utility pole shall be designed to blend with the style, design, color and material of other utility poles in the area of the public rights-of-way. If there are no other utility poles in the area of the public rights-of-way, the new utility pole shall be designed to resemble other poles in the public rights-of-way.

(e) Stealth design for collocated small wireless facilities.

1. Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being within the utility pole, covered with a shroud or conduit that is of the same finish as the pole. No exposed wires or cables are permitted.

2. Unless consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a pole that accommodates a traffic control device. Slim design shall be used wherein the top mounted antenna does not exceed more than twelve inches (12") beyond the diameter or six inches (6") beyond each side, as may be applicable based on the shape of the supporting utility pole at the level of the antenna attachment, and side mounted enclosures, if any, do not extend more than 30 inches (30") beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna. The dimensions above may be exceeded by up to 25% when approved by the City Engineer upon demonstration of inability to meet the required dimensions.

3. Maximum Height Restrictions. A small wireless facility, including any attached antennas, shall not exceed ten feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.

(f) The following objective design standards shall apply to ground-mounted small wireless facilities unless waived by the City Engineer:

1. Ground-mounted small wireless facilities shall be located within a ten foot radius of the existing structure or utility pole for the collocated small wireless facility. Ground-mounted small wireless facilities may be no greater than 28 cu. ft. in dimension shall be located with reasonable spacing of at least 200 feet from other ground-mounted small wireless facilities up to 28 cu. feet of the same communications provider and, if possible, from other such equipment.

2. A ground-mounted small wireless facility shall be architecturally designed and of the same materials and color finish to resemble other at-grade infrastructure such as waste receptacles or utility facilities in the public rights-of-way.

3. To the extent not inconsistent with applicable codes, at the City's direction, ground mounted small wireless facilities shall be enclosed in a wrap consistent with the City's Public Art Ordinance, Title XV, Chapter 160 of the City Code, and the Annual Public Art Plan adopted pursuant to such provision. The registrant shall maintain the wrap in good condition at its sole cost and expense.

4. To the extent not inconsistent with applicable codes, at the City's direction the registrant owner of a ground mounted communications services facilities in the public rights-of-way shall conceal the facility with landscaping, plantings, or wraps or any combination thereof as determined appropriate for the location by the City Engineer. Notwithstanding anything inconsistent in the City Zoning Code, the registrant shall have the responsibility for installing and maintaining such landscaping, plantings and wraps in the public rights-of-way at its sole cost and expense and the abutting parcel owner shall not be responsible for installing and maintaining such landscaping, plantings, and wraps.

(g) Development standards for communications facilities other than small wireless facilities.

1. Dimensional limits. No communications facility located above-ground, excluding utility 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 this subsection unless:

2. The communications service provider can properly demonstrate in its permit application 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

3. The communications 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

4. 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 abutting 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. §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

5. The communications facilities proposed by the communications provider does not otherwise create a hazard to the public health, safety and welfare.

6. Notice to residential areas. Whenever a communications service provider submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection (h)1. 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 a minimum of 14 days prior to any decision being made on the permit application advising residents that they may review the permit application at the Engineering Department and provide their comments to the City Engineer. The City may require concealment standards for such facilities including, but not limited to, a wrap with a design approved by the City.

(I) *Fees and taxes for access to public rights-of-way.*

(1) A registrant that places or maintains communications facilities in the public rights-of-way shall pay fees and taxes as required by applicable law and ordinances of the City.

(2) Pass-through providers shall pay to the City prior to issuance of a permit and on an annual basis thereafter on October 1, an amount equal to \$500 per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Section shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers. The amount due may be modified based upon the as-builts submitted by the pass-through provider. Fees not paid within ten days after the due date shall bear interest at the rate of one percent per month from the date due until paid.

(3) The City shall discontinue charging pass-through provider fees to a person that has ceased being a pass-through provider. Any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits communications services taxes imposed by the City pursuant to Chapter 202, F.S., as amended.

(4) If the payments required by this Section are not made within ninety (90) days after the due date, the City may withhold the issuance of any permits to the registrant until the amount past due is paid in full, in addition to any other remedies available pursuant to this Section and applicable law.

(J) *Enforcement remedies.*

(1) Nothing in this Section shall affect or limit the remedies the City has available under applicable law. In addition to any other remedies available at law including, but not limited to, F.S. § 166.0415 (municipalities), and Ch. 162, F.S. at equity or provided in this section, the City may apply any one or combination of remedies in the event a registrant violates this Section, or applicable local law or order.

(2) 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 consistent with Chapter 162, Florida Statutes.

(3) In addition to or instead of any other remedy, the City may seek legal or equitable relief from any court of competent jurisdiction.

(4) Before imposing a fine, 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, with the City's good faith reasonable efforts to assist; or

(b) File an appeal with the City to contest the alleged violation pursuant to this Section, which 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.

(5) 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 to prevent further violations, and such other matters as the City determines are appropriate to the public interest. 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. 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 concerning its compliance with this Section.

(K) *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 Section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.

SECTION 3. Section 100.60, "Definition," of Chapter 100, "Streets and Sidewalks," of the Pompano Beach Code of Ordinances is hereby deleted in its entirety.

SECTION 4. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 5. 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 6. This ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2018.

PASSED SECOND READING this _____ day of _____, 2018.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB:jrm
7/3/18
L:ord/ch100/2018-110c