

ORDINANCE NO. 2020-_____

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 AMENDING 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 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; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

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

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

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

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

WHEREAS, the City Commission adopted Ordinance No. 2018-110c on June 26, 2018, to implement the Small Cell Statute; and

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

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

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

WHEREAS, it is the City’s intent that rules or regulations imposed by the City relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services, taking into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider’s facilities.. Florida statutes provide that a technology known as “micro wireless facilities” is not required to obtain a city permit to be placed in public rights-of-way under certain conditions, and certain technology may apply to collocate on city-owned poles. ; 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, the City Clerk submitted notice of the first hearing on this proposed Ordinance to the Florida Secretary of State, consistent with Section 337.401(3)(d), Florida Statutes; and

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 Ordinance.

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 amended to read as follows¹:

§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. 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,

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shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law.

(3) This section implements inter alia, Section 337.401, Florida Statutes, as amended, including the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), F.S. In the event ~~Advanced Wireless Infrastructure Deployment Act~~, Section 337.401(7), Florida Statutes 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 and requests for communications facilities or utility poles in the public rights-of-way, will be governed by applicable law. . It is the city's intent not to create any vested rights in placing and maintaining communications facilities in the public rights-of-way as a result of this section or any permit issued pursuant to this section, to the extent not inconsistent with applicable law.

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(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 be presumed to be an abandonment which may be rebutted by the wireless infrastructure provider and/or wireless service provider. 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.

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(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, and includes the National Electrical Safety Code and the ~~2010~~ 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual (“2017 FDOT UAM”) ~~—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 to place a new utility pole used to support a small wireless facility in the public rights-of-way.~~

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(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 F. S. § 337.401(7).

(11) **BACKHAUL FACILITIES.** A physical transmission path, all or part of which is within the public rights-of-way controlled by the city or any government entity, used for the transport of communications voice or data by wire or fiber from a wireless facility to a network. A Backhaul Facility may also consist of an antenna, including a microwave antenna, installed in the public rights-of-way pursuant to a permit, used for the transport of communications voice or data wirelessly from a wireless facility to a network.

(~~11~~12) **BELOW-GRADE COMMUNICATIONS FACILITY.** A communications facility, including manholes or access points that are entirely contained below grade within the public rights-of-way.

(~~42~~13) **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.

(~~43~~14) **CITY ENGINEER.** The City of Pompano Beach, Florida City Engineer or his/her designee.

(~~44~~15) **CITY MANAGER.** The City of Pompano Beach, Florida City Manager or his/her designee.

(~~45~~16) **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.

(~~46~~17) **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.

(~~47~~18) **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.

(~~48~~19) **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).

(~~49~~20) **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.

(2021) **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 F.S. § 202.19, as amended.

(2422) **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 or proposed structures or utility poles within the public rights-of-way.

(23) **EXCAVATE or EXCAVATION.** Consistent with the definition contained in F.S. § 556.102(6), as it may be amended, any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in F.S. § 373.019(22), and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

(24) **EXTENSION OF EXISTING FACILITIES or EXTENSION.** Those extensions of a wireline Communications Facility from the public rights-of-way into private property for purposes of placing a service drop or those extensions from the public rights-of-way into a utility easement to provide service to one or more buildings, customers or potential customers.

(2225) **FCC.** The Federal Communications Commission.

(2326) **FLORIDA BUILDING CODE.** The Florida Building Code promulgated under F.S. Chapter 553, and includes the applicable amendments thereto as both may be amended from time to time.

(2427) **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.

(2528) **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.

(2629) **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~~30) **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~~31) **IN PUBLIC RIGHTS-OF-WAY or IN THE PUBLIC RIGHTS-OF-WAY.** In, on, over, under or across the public rights-of-way.

(~~29~~32) **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~~33) **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~~34) **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~~35) **ORDINANCE or SECTION.** This Ordinance or § 100.46.

(~~33~~36) **PARCEL.** Any piece of real property that has a single parcel identification number assigned to it by the Broward County Property Appraiser.

(~~34~~37) **PASS-THROUGH PROVIDER.** Any person, as defined in Section 337.401(6)(a)1., Florida Statutes, who places or maintains a communications facility in the public rights-of-way. 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~~38) **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~~39) **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~~40) **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.

(3841) **PSC.** The Florida Public Service Commission.

(3942) **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**.

(4043) **REGISTRANT** or **FACILITY OWNER.** A communications services provider or other person that has registered with the city in accordance with this section.

(4144) **REGISTRATION** and **REGISTER.** The process described in this section whereby a communications services provider provides certain information to the city.

(45) **REQUESTER.** A person who submits a request pursuant to this Ordinance.

(46) **REQUEST.** Any request other than an Application submitted by a person, associated with the placement or maintenance of a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way. A Request includes, but shall not be limited to, a request for approval of a registration, a request to place or maintain a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way and includes for example, but is not limited to, a permit to construct cable, fiber, conduit, backhaul facilities, pedestals, or a support structure that does not constitute a utility pole for the collocation of a small wireless facility in the public rights-of-way.

(4247) **SHROUD.** A covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure, utility pole or wireless support structure.

(4348) **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.

(4449) **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.

(50) **SMART TECHNOLOGY.** The city's present and future technology to support the city's smart technology initiatives, including but not limited to, sensors and smart lights, fiber, CCTV cameras, digital signage, data sharing with traffic applications, smart solar-powered charging stations, emergency alert applications and other initiatives over time.

(4551) **CAMOUFLAGE 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.

(4652) **SURROUNDING NEIGHBORHOOD.** The area within a 50 linear feet within the public rights-of-way of a communications facility site or proposed communications facility site.

(4753) **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 F.S. §§ 337.401, 337.402, 337.403, and 337.404 as the "utility."

(4854) **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.

(4955) **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.

(5056) **WIRELESS INFRASTRUCTURE PROVIDER.** A person who has been certificated under Chapter 364, Florida Statutes, to provide telecommunications service or under Chapter 610, Florida Statutes, to provide cable or video services in the state, and such person's affiliate, and who builds or installs wireless communications transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

(5157) **WIRELESS PROVIDER.** A wireless infrastructure provider or a wireless services provider.

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

(5359) **WIRELESS SERVICES PROVIDER.** A person who provides wireless services.

(5460) **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, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than five (5) feet in height.

(5561) **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

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~~(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~~ A statement as to whether the registrant is a pass-through provider, as the case may be, and whether the registrant currently remits or intends to remit Communications Service Tax, as authorized in F.S. Ch. 202 in the city as defined herein; and

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(f) A copy showing the number 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, or 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.~~ The registrant's federal employer identification number.

(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. Liability policies in the below b.2., 3., and 4 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. A provider of communications services may add the city to any existing insurance policy and the city shall accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the city is a party.

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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~~ reasonable 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) Review of registration. The City Engineer shall review the information submitted ~~by~~ for the registration ~~applicant~~. If the ~~applicant~~ ~~submits~~ information is in accordance with this subsection C, the city shall notify the ~~applicant~~ requester 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~~ requester in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The city shall ~~so notify an applicant~~ provide such notification within 45 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.

...

(c) Registration renewal. A registrant shall renew its registration with the city by April 1 ~~of even-numbered~~ every five years from the first April after the effectiveness of the registration 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. An existing effective registration pursuant to the city code, prior to the effective date of this Ordinance shall continue to be effective and the registrant shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.

(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, or otherwise caused by the registrant, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this section except for damages caused solely by the negligence, 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, the extent not inconsistent with applicable law. 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:

...

(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, to the extent such activities would otherwise require a permit. Requests for ancillary permits required to operate a communications facility, including but not limited to electrical permits, shall be processed pursuant to the city's rules and regulations.

(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. that is in compliance with this Ordinance shall be allowed to perform routine maintenance, service restoration work on existing facilities, or repair work, including but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers without a permit. A registrant performing excavation work without a permit shall ensure that there is photographic and video documentation of the work, including depiction of the area of the public rights-of way impacted, and such photographic and video documentation shall be provided to the city upon the city's request, or if not requested, within thirty (30) business days. 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 notice to the city within 48 hours after any of placement or maintenance of a communications facility in public rights-of-way in the event of an emergency service restoration or repair work that involves excavation and, within 30 days of~~

completing the emergency maintenance, shall apply for a permit if such activity required a permit under this section.

(b) A registrant shall be allowed to perform routine maintenance or repair work to existing facilities within the public rights-of-way without a permit; further a registrant shall be allowed to replace existing wireless facilities with substantially similar facilities of the same size or smaller without a permit. Notwithstanding the foregoing, a permit shall be required for work that involves excavation, closure of a sidewalk or closure of a vehicular lane or parking lane, unless the registrant is performing service restoration on an existing facility and the work is done in compliance with the 2017 FDOT UAM. 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. A registrant shall be allowed to perform maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way without first obtaining a permit. In addition, no permit is required from a registrant that in compliance with this Ordinance for the maintenance, repair, replacement, extension, or upgrade of existing aerial wireline communications facilities on utility poles, or for aerial wireline facilities between existing wireline communications facility attachments on utility poles.

(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 30 days prior to commencing said work,~~ the registrant shall attest or submit a ~~certification or manufacturer's specifications of~~ notarized letter to the city from or on behalf of the communications services provider, which shall be effective upon filing, attesting that the micro wireless facility's dimensions ~~to the city for review to confirm dimensions~~ comply with F.S. § 337.401(7), and this Ordinance. A registrant's submission to demonstrate a micro wireless facility's dimensions may apply to all ~~identical~~ of the same, substantially similar, or smaller size 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. If such replacement will require the closure of a rights-of-way, the registrant shall obtain an appropriate road or sidewalk closure permit consistent with the city's rules and regulations. A registrant shall provide 48 hours' notice to the city prior to such work being done.~~

(3) Notwithstanding the exceptions to permit requirements contained in this subsection, a registrant shall obtain from the city a right-of-way permit for work that involves excavation, closure of a sidewalk regardless how temporary, or closure of a vehicular lane or parking lane regardless how temporary, unless the registrant is a communications services provider that is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, including but not limited to, the requirement to notify Sunshine 811 prior to any excavation or demolition activities in accordance with Chapter 556, Florida Statutes, and to comply with all city codes. In such instance, to the extent not inconsistent with the 2017 FDOT UAM, the communications services provider shall provide information acceptable to the city as to the service restoration work within thirty (30) days. The city may require a maintenance of traffic or sidewalk closure plan, as applicable.

(3.4.) 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~~ information requirements and review procedures.*

(1) ~~Application~~ Requirements. As part of any permit application or request, 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~~ person seeking the permit is not the registrant, a statement of authority ~~for the applicant~~ to act on behalf of the registrant. If the ~~applicant~~ person seeking the permit is a contractor, the contractor's license or registration confirming the contractor's authority to perform construction in the city

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

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

1. For any application that seeks to replace or place a new utility pole to support a communications services facility, except for an application to collocate a small wireless facility on an existing utility pole, an FAA-1A certification letter and a 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~~ camouflage 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 to determine compliance with Applicable Codes.

(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 or request that by execution of the application or request for

the permit, the Applicant registrant 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~~ certification of compliance with F.S. Chapter 333, and all city, state and federal laws and regulations pertaining to airport airspace protections.

...

(l) Pole attachment agreement. Except for parties whose pole attachments are regulated by 47 U.S.C. § 224, if applicable, the applicant registrant 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 registrant 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~~ the city's permit form, a registrant certifies that it has authority from the utility pole owner to attach its facility.

...

(o) Consolidated permit application, single application or request for multiple locations. The City may authorize a registrant to file a single application or request to place or to maintain multiple facilities in the public rights-of-way, where it would be more efficient for the registrant and the City to address multiple facilities in one permit. Notwithstanding the foregoing, 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, including any utility poles to support a small wireless facility. 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 for the placement of communication services facilities, including any 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's ability to process permit applications ("force majeure event"). If ~~an applicant registrant~~ the applicant registrant takes the position that the force majeure event does not extend the time periods, the applicant registrant 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. Except as otherwise provided herein, requests for permits for the placement of communications facilities in the public rights-of-way, including but not limited to backhaul facilities, shall be subject to the time frames and review procedures set forth in this subsection; requests shall be considered to be applications; and requesters shall be considered to be applicants for purposes of time frames as referenced in this subsection. The time frames and procedures herein shall not apply to other requests that do not involve the placement of communications facilities in the public rights-of-way, including but not limited to, request for permits to perform maintenance on existing communications facilities in the public rights-of-way.

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.

...

5. The City Engineer may deny a proposed collocation of a small wireless facility or to place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed ~~collocation~~ small wireless facility or utility pole to support a small wireless facility:

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

...

e. Fails to comply with applicable codes.

f. Fails to comply with objective design standards set forth in this section.

6. Cure Procedure.

a. If the application or request 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 or request.

b. The ~~applicant~~ registrant may cure the deficiencies identified by the city and resubmit the application or request within 30 days after the notice of denial is sent.

c. If an attempt to cure is ~~made~~ submitted by the ~~applicant~~ registrant within such 30-day period, the city will

approve or deny the revised application or request within 30 days after receipt of the revised application. If the ~~applicant~~ registrant revises any information in the application or request other than to address expressly the deficiencies identified by the city, the ~~applicant-registrant~~ shall submit a new application or request and the denial of the pending application or request shall be final.

...

7. A permit issued pursuant to an approved application or request to install a new communications facility shall remain in effect for one year unless otherwise extended, suspended, or terminated by the city pursuant to this section. If a communications facility including a small wireless facility or utility pole is going to be installed without a permit pursuant to this section or applicable state or federal law, the applicant or requester 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;

...

3. Any material misrepresentation of fact in permittee's request or application for a permit or Registration;

...

(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;

...

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. A request for waiver of the objective design standards contained herein shall include a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole, or are technically infeasible with supporting information from a licensed engineer, or that the design standards impose an excessive expense on the registrant with information as to the additional costs of compliance with the standards and the registrant's anticipated revenue from the proposed facility or assets. The City Engineer shall grant or deny a request for a waiver of objective design standards within forty-five (45) days after receiving the request for waiver unless the applicant and city consent to an extension, subject to a force majeure event; and

78. 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 of any other requirement of the city code pursuant to the city's standard rules and regulations.~~ 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.

(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 shall be waived.~~ The City Manager shall hear or appoint a hearing officer to consider the appeal. The hearing shall occur within 30 days of receipt of the appeal, unless waived by the applicant, and a written decision shall be rendered within 20 days of the hearing. To the extent required by applicable law, the city shall waive any claim or defense based on failure to exhaust administrative remedies if the city's administrative review is not complete within 45 days after a person files a complete request for review.

(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, except as otherwise provided below, 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 determined by the City as provided by this Ordinance 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 (excepting any liabilities caused by the city's negligence, gross negligence or willful conduct), 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." The performance construction bond shall be for a term of not less than one year but not more than 18 months after the date of the completion of construction, including restoration of the rights-of-way and inspection by the city. 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. Notwithstanding this provision, to the extent required by applicable law, the city shall accept a surety bond, cash payment, or letter of credit or similar financial instrument as a construction bond issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add the city

to any existing bond, or other relevant financial instrument, and the city shall accept such proof of coverage without any conditions other than consent to venue in Broward County for purposes of any litigation to which the city is a party.

(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. The rights reserved by the city with respect to any performance construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under the city code, 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.

(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 and the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. For purpose of complying with the notice and approval requirements contained within the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, the registrant shall provide notice and seek approval from the City Engineer. Construction in the public rights-of-way located within a residential area shall only occur during normal business hours, and shall not occur during weekends or holidays, except for emergencies or to restore an out of service situation.

...

(6) Limits on excavation. The city reserves the right to place reasonable requirements on any excavation in the interest of public safety or maintenance of the public rights-of-way as allowed by applicable law. ~~For the purpose of this section, excavation shall have the meaning set forth in F.S. § 556.102(6), 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 except as may be required in relation to restoration, unless the subsequent permittee applies for and the city issues a permit that requires the subsequent permittee to restore the portion of the public rights-of-way applicable to its permit 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.

(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.

...

(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 documented and adopted city plans for public improvements, other approved capital improvements projects as part of the City Comprehensive Plan or Capital Improvement Plan, to accommodate or avoid interference with the city's smart technology, 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 that prohibit above-ground structures in the public rights-of-way subject to the provisions of Section

337.401(7), Florida Statutes. 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. In accordance with the provisions outlined in subsection (5) below, 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 except as may be provided by subsection (5) below and Section 337.401(7)(i), F.S. 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. For small wireless facilities installed before the city adopts requirements that public utility lines must be placed underground, the city shall: (a) allow a wireless provider to maintain the small wireless facility in place subject to any applicable pole attachment agreement with the pole owner; or (b) allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with the objective design standards contained within this section.

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

5. Notwithstanding the provisions of this subsection, the city may approve a permit for a new utility pole for collocation of a small wireless facility in an area where all public utility lines must be placed underground, as follows :

a. The City has, at least 90 days prior to the submission of an application, to require all public utility lines to be placed underground;

b. Structures that the City allows to remain above ground are reasonably available to the wireless provider for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities; and

c. A wireless provider may install a new utility pole in the designated area in the right-of-way that otherwise complies with this Ordinance and it is not reasonably able to provide wireless service by collocating on a remaining utility pole or other structure in the right-of-way.

...

(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 or located directly adjacent to the replaced utility pole. Any replaced utility pole shall be removed when all existing facilities have been removed from the pole or within 60 days from the installation of the new pole, whichever is later. . The replaced utility pole shall be of substantially similar color 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. 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, on the exterior of poles in the Special Districts. All wires, cables and fiber shall be concealed within the pole if feasible, otherwise it shall be concealed in a shroud flush-mounted to the pole and painted to match the pole finish. 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. Equipment associated with 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~~ fifteen 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:

...

(2) Collocation on city utility poles.

(a) Reservation of space. The city ~~may reserve space on city utility poles for future public safety uses~~ hereby reserves the top one-third of the useable space of the vertical pole component of all city utility poles in the public rights-of-way for future public safety uses. The City Manager may waive the reservation of space on city utility poles. 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.

...

(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 accommodate the city's equipment and intended function and shall remain the property of the city.

...

(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 consistent with the following standards. The following objective design standards regulating the location context, color, camouflage design, and concealment of the proposed small wireless facility shall apply, unless waived by the City Engineer.

...

(d) Camouflage 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 shall be removed when all existing facilities have been removed from the pole or within 60 days from the installation of the new pole, whichever is later..

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

...

4. A new utility pole shall be designed to blend with the style, design, color and material of the predominant type of other utility poles at the proposed location 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) Camouflage ~~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. A small wireless facility shall meet reasonable location context, color, camouflage, and concealment requirements as provided in

~~this subsection. 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 12 inches beyond the diameter or six inches 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 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 ~~fifteen~~ 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 cubic feet in dimension ~~shall be located with reasonable spacing of at least 200 feet from other ground-mounted small wireless facilities up to 28 cubic feet of the same communications provider and, if possible, from other such equipment.~~

2. A ground-mounted small wireless facility shall meet reasonable location context, color, camouflage, and concealment requirements, as provided in this subsection. ~~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, and where mutually agreed upon ~~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, and where mutually agreed upon ~~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;

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;

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. .

...

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

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

SECTION 5. This ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2020.

PASSED SECOND READING this _____ day of _____, 2020.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK