

**ORDINANCE NO. --**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 16 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, REGARDING TELECOMMUNICATIONS FACILITIES; PROVIDING FINDINGS OF FACT, INTENT AND PURPOSE; PROVIDING DEFINITIONS FOR TERMS; PROVIDING FOR REGISTRATION OF COMMUNICATIONS FACILITY AND SERVICE PROVIDERS AS WELL AS PASS THROUGH PROVIDERS AS A CONDITION PRECEDENT TO USE OF RIGHTS OF WAY BY SUCH PROVIDERS; PROVIDING FOR RENEWAL AS WELL AS TERMINATION OF REGISTRATIONS; PROVIDING FOR COMPLIANCE BY EXISTING BUT UNREGISTERED PROVIDERS; PROVIDING A PERMITTING PROCESS AND APPLICATION REQUIREMENTS FOR USE AND RESTORATION OF RIGHTS OF WAY, INCLUDING BUT NOT LIMITED TO REASONABLE CONDITIONS RELATED TO THE PUBLIC HEALTH, SAFETY AND WELFARE, AESTHETICS, AND ACCESSIBILITY; PROVIDING UNIFORM, NON-DISCRIMINATORY STANDARDS TO PREVENT OVERCROWDING, PROLIFERATION AND SATURATION OF COUNTY RIGHTS OF WAY, INCLUDING STANDARDS RELATED TO STEALTH DESIGN, PROTECTION OF RESIDENTIAL PROPERTIES, AND EQUIPMENT LOCATION AND SIZE; PROVIDING FOR THE ENCOURAGEMENT OF CO-LOCATION OF COMMUNICATIONS FACILITIES; PROVIDING A PUBLIC NOTICE REQUIREMENT; PROVIDING FOR REVIEW BY THE COUNTY ENGINEER; PROVIDING A WAIVER PROCESS; PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR COMPLIANCE WITH STATE AND FEDERAL APPLICATION PROCESSING TIMEFRAMES; PROVIDING FACILITY MAINTENANCE REQUIREMENTS; PROVIDING REGULATIONS FOR PASS THROUGH PROVIDERS IN ACCORDANCE WITH STATE LAW; PROVIDING INSURANCE, SECURITY FUND AND CONSTRUCTION BOND REQUIREMENTS; PROVIDING INDEMNIFICATION OBLIGATIONS; PROVIDING REGULATIONS FOR ABANDONED COMMUNICATIONS FACILITIES; PROVIDING FOR ENFORCEMENT OF REMEDIES; REQUIRING REPORTS AND RECORDS, AND ALLOWING FOR INSPECTION THEREOF; PROVIDING A RESERVATION OF RIGHTS FOR THE COUNTY TO AMEND THIS ARTICLE; PROVIDING A LACK OF LIABILITY AND

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WARRANTY ON BEHALF OF THE COUNTY; PROVIDING  
FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND  
PROVIDING AN EFFECTIVE DATE.

WHEREAS, this Ordinance promotes the public health, safety and general welfare by regulating the siting of communication facilities within the public rights-of-way; and

WHEREAS, this Ordinance accommodates the growing needs and demand for communications services; and

WHEREAS, this Ordinance seeks to expressly address new communications facilities technologies, while also protecting, preserving, and maintaining the aesthetic character of areas where such rights-of-way exist; 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 county 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, in Resolution 01-14 the County elected to increase the Communications Services Simplified Tax rate in lieu of collecting permit fees from providers of communications services;

WHEREAS, Section 337.401(3)(g), *Florida Statutes*, provides that a county 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, Section 337.401(7), *Florida Statutes*, provides that a county may adopt by ordinance objective design standards that require a small wireless communications facility to meet reasonable location context, color, stealth, and concealment requirements and objective design standards that require a new utility pole that replaces an existing facility to be of substantially similar design, material, and color, and require reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, Section 337.401(7)(d)(12), *Florida Statutes*, provides that the county 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 County's intent to exercise its authority over communications services providers, communications facility providers and pass-through providers' placement and maintenance of facilities in its rights-of-way; and

WHEREAS, it is the City's further intent to treat each such communications services provider in a reasonable, nondiscriminatory and competitively neutral manner in exercising such authority, which authority is limited to only those matters necessary to manage its rights-of-way; and

WHEREAS, the County's rights-of-way are essential for the travel of persons and the transport of goods throughout the County; and are a unique and physically limited resource requiring proper management by the County in order to maximize efficiency, minimize costs to County 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, it is the further intent of the County to exercise its authority to adopt reasonable and nondiscriminatory rules and regulations to the fullest extent allowed by Federal and State law; and

WHEREAS, the County has reviewed its ordinances, and has received input from representatives of the communications service industry and other interested stakeholders, and as a result of the foregoing has concluded that the County Code must be updated, in conformance with Federal and State laws and rules, in order to adequately regulate the placement and maintenance of existing, new and expanded communications facilities in the County's rights-of-way; and

WHEREAS, adoption of the following ordinance is necessary to satisfy the above objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, that:

**SECTION 1.** Chapter 16, Article IV of the Code of Laws of Leon County, Florida, is hereby renamed "Utility Placement Within the Public Rights-of-Way" and amended to read as follows:

#### **ARTICLE IV. UTILITY PLACEMENT WITHIN THE PUBLIC RIGHTS-OF-WAY**

##### **Sec. 16-81. Required.**

In accordance with Section F.S. §-125.42, F.S., any person who desires to construct, maintain, repair, operate, or remove lines for the transmission of water, sewage, gas, power, telephone, other public utilities, and television under, on, over, across, or within the right-of-way limits of ~~and along~~ any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription shall be required to obtain a license from the county, or if providing communications services as defined in Section 202.11(1), F.S., as amended, to register with the county and obtain an appropriate permit in accordance with the provisions of this article.

##### **Sec. 16-82. Provisions of License.**

Any such license or permit granted by the county ~~or registration filed with the county~~ shall contain adequate provisions:

- (1) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public.
- (2) To require the licensee and/or ~~registrant-permittee~~ to repair any damage or injury to the road or highway created during the installation of a utility facility and to repair said road or highway promptly, restoring ~~the same~~ it to a condition at least equal to that immediately prior to the infliction of such damage or injury.
- (3) Whereby the licensee and/or ~~registrant-permittee~~ shall hold the Board of County Commissioners of Leon County, Florida, members and officers, agents, and employees thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating such license ~~and/or permit by being required to register with the county.~~
- (4) As may be reasonably necessary for the protection of the county and the public.

**Sec. 16-83. When bond may be required.**

The ~~Board of County Commissioners~~ County Administrator or designee may require the licensee and/or ~~registrant-permittee~~ to furnish performance bonds, maintenance bonds, and/or cash bonds to ensure compliance with the provisions of this ~~article~~ chapter.

**Sec. 16-84. Fees authorized.**

The Board of County Commissioners may adopt by resolution a fee schedule relating to ~~is hereby authorized to charge reasonable fees for~~ the issuance of licenses hereunder and utility placement permits, ~~such fees to be established in accordance with section 16-87.~~

**Sec. 16-85. Term of license.**

A license under this article may be granted in perpetuity or for a term of years, subject, however, to termination by the county. The renewal of any license granted hereunder may be authorized by the county administrator, or his or her designee. ~~A utility required to file a registration hereunder, shall be required to update said registration annually.~~

**Sec. 16-86. Moving or removal of utility lines.**

In the event of widening, ~~or~~ repair, or reconstruction of any road, the licensee ~~or registrant~~ shall move or remove any water, gas, sewage, power, telephone, and other utility lines and television lines, communications services, and television facilities at no cost to the county should they be found by the county to be interfering, except as provided in Section 337.403, as amended.

**Sec. 16-87. Authority to implement article.**

The ~~Board of County Commissioners~~ County Administrator or designee is authorized to adopt, modify, and repeal rules and regulations to carry out the intent and purposes of this article. A Right-of-way Manual shall be developed by the County to outline engineering requirements and procedures that must be followed by the County in issuing permits or licenses within the Leon County rights-of-way. This Right-of-way Manual shall be separately approved and adopted by resolution of the Board of County Commissioners.

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**Sec. 16-88. Noncompliance unlawful.**

It shall be unlawful for any person to construct, maintain, repair, operate, or remove lines for the transmission of water, sewage, gas, power, telephone, other public utilities, ~~communications services~~, and television under, on, over, across, or within the right-of-way limits of and along any road described in section 16-81 above without fully complying with this article or the rules and regulations promulgated hereunder.

**Sec. 16-89. Penalty.**

Any person violating this article or the rules and regulations promulgated hereunder shall be punished as provided in section 1-9.

**Secs. 16-90 – 16-99. Reserved.**

**SECTION 2.** Chapter 16 of the Code of Laws of Leon County, Florida, is hereby amended to create a new article to be numbered Article V and entitled “Communications Facilities Within the Public Rights-of-Way,” which shall hereafter read as follows:

**ARTICLE V. COMMUNICATIONS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY**

Division 1. Administration, Enforcement, Appeals

**Sec. 16-100. Intent and Purpose.**

The county hereby declares as a legislative finding that the Public Rights-of-Way within the county are a unique and physically limited resource that are critical to the travel and transport of persons and property within the county; that the Public Rights-of-Way must be managed and controlled in a manner that enhances the health, safety and general welfare of the county and its citizens; and that the use and occupancy of the Public Rights-of-Way by providers of communications services must be subject to regulation which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of an optimal number of providers of cable, telecommunications, and other services in the public interest.

It is the intent of the county to promote the public health, safety and general welfare by:

providing for the placement or maintenance of Communications Facilities in the Public Rights-of-Way within the county limits; adopting and administering reasonable rules, regulations and general conditions not inconsistent with State and Federal law, including Section 337.401, Florida Statutes (2016), as it may be amended from time to time, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other Federal and State law; establish reasonable rules, regulations and general conditions necessary to manage the placement and maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers; minimize disruption to the Public Rights-of-Way; and require the restoration of the Public Rights-of-Way to original condition.

Persons seeking to place or maintain Communications Facilities on private property or other property to which the City, County, School Board, State of Florida, or federal government has a fee simple or leasehold interest in real property, exclusive of the Public Rights-of-way, located within the jurisdictional boundaries of the County shall comply with the provisions of section 10-6.812 to the extent it applies.

**Sec. 16-101. Authority to implement article.**

The County Administrator is authorized to adopt, modify, and repeal rules and regulations to carry out the intent and purposes of this article.

**Sec. 16-102. Definitions.**

For purposes of this article, the following terms, phrases, words and their 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. Words not otherwise defined shall be construed to have their common and ordinary meaning.

*Abandonment or Abandoned* means the cessation of all uses of a Communications Facility for a period of ninety (90) 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.

*Abut*, when used in conjunction with a Lot or Parcel of land or Public Right-of-way, means a Lot or Parcel of land or Public Right-of-way that shares all or a part of a common lot line or boundary line with another Lot or Parcel of land or Public Right-of-way.

*Adjacent Properties or Properties Adjacent* means (i) those Lots or Parcels of land that Abut another Lot or Parcel of land or Public Right-of-way that is contiguous to a Communications Facility site or proposed site and (ii) the Lots or Parcels of land or Public Right-of-way that would be contiguous to Lots or Parcels or Public Rights-of-way but for an intervening Local or Collector roadway.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing Wireless Service.

Applicable laws means the Florida Building Code, National Electric Safety Code, Florida Administrative Code and all applicable FCC, State and local laws and regulations.

Applicant means any Person who submits an application to the County for a Permit to locate a Communications Facility within the Public Rights-of-way.

Arterial Roadway means a route within the County that has been designated as an Arterial Roadway by the Florida Department of Transportation or identified as an Arterial Road in the Comprehensive Plan.

As-built Plans means a set of drawings submitted upon completion of a project and such drawings reflect all changes made during the construction process, and show the exact dimensions, geometry and location of all elements of the work completed under the permit.

At-grade communications facility means a Communications Facility, the structure of which is affixed to the ground at grade with a portion of the structure extending vertically above grade. At-grade Communications Facilities may also, but not necessarily, extend vertically below grade. Utility Poles and Wireless Support Structures shall not be considered At-grade Communications Facilities.

Authority Utility Pole means a Utility Pole owned by the County, City, or Florida Department of Transportation in the Public right-of-way. This term does not include a Private Utility Pole.

Below-grade communications facility means a Communications Facility that is entirely contained below grade within the Public Rights-of-way.

Board or Board of County Commissioners means the Board of County Commissioners of Leon County, Florida.

City means as indicated by the context used, either Tallahassee, Florida, as a geographic location, or Tallahassee, Florida, a Florida municipal corporation, as a legal entity.

Code means the Code of Laws of Leon County, Florida.

Collector Roadway means a route within the County that has been designated as a Collector Roadway by the Florida Department of Transportation or identified as a Collector Road in the Comprehensive Plan.

Collocation or Collocate or Attach means the placement or attachment of a Wireless Communications Facility on any Existing Structure, regardless of whether or not there is an existing Communications Facility located upon the Existing Structure. Collocating or Attaching a Wireless Communications Facility onto an Existing Structure does not automatically transform the Existing Structure into a Wireless Support Structure. The term *Collocation* includes the ground or platform

installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and any other equipment association with the location and operation of the Wireless Communications Facility.

County means as indicated by the context used, either Leon County, Florida, as a geographic location, or Leon County, Florida, a charter county and political subdivision of the State of Florida, as a legal entity.

County Engineer means the licensed engineer designated by the Board of County Commissioners to furnish engineering assistance for the administration of these regulations. For the purposes of this article, the term County Engineer shall also include his or her designee.

County Administrator means the chief administrative officer of the county, or the county administrator's designee. The term county administrator also includes his or her designee.

Communications Facility means any tangible thing located in a Public Right-of-way that may be used to deliver, route, receive, transmit, amplify or distribute Communications Services. Multiple cables, conduits, strands, or fibers located within same conduit shall be considered one Communications Facility. The term Communications Facility for the purposes of this Article shall not include:

- (a) Utility Poles;
- (b) Aerial facilities located between Utility Poles with associated Pole Attachments which do not provide Wireless Services; or
- (c) Micro Wireless Facilities that are suspended on cables strung between existing poles, and that are installed in compliance with Applicable Laws by a Communications Services Provider authorized to occupy the Public Rights-of-way and who is remitting taxes under Chapter 202, F.S., as amended.

Communications Facility Provider means a Person, other than a Communications Services Provider, who has been certified to provide Communications Services in the State and operates one or more Communications Facilities located within the county, and is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more Communications Service Providers all or a portion of the tangible personal property used in a Communications Facility. A Communications Facility Provider can also be a Wireless Infrastructure Provider pursuant to Section 337.401, F.S., as amended.

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Communications Services means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including Video Services, 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 of hereafter devised, regardless of the protocol used for such transmission or conveyances. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to a voice-over-internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Notwithstanding the forgoing, the term does not include:

- (a) Information services;

- (b) Installation or maintenance of wiring or equipment on a customer's premises;
- (c) The sale or rental of tangible personal property;
- (d) The sale of advertising, including, but no limited to, directory advertising;
- (e) Bad check charges;
- (f) Late payment charges;
- (g) Billing and collection services;
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services;
- (i) Services used exclusively for the internal communications of an electric utility or other person in the business of transmitting or distributing electric energy.
- (j) Services used exclusively by a public entity, including the county, to the extent such facilities are utilized on an internal, non-commercial basis by said public entity.

Communications Services Provider means any Person providing Communications Services through the placement or maintenance of a Communications Facility in Public Rights-of-way, including without limitation wireline telecommunication providers and Wireless Service Providers.

Communications Services Tax means the local communications services tax authorized to be levied and collected by counties and municipalities upon chargers for Communications Services, pursuant to Section 202.19, F.S. as amended.

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Consolidated Permit Application means a single permit application that would otherwise require individual Permit Applications for the Collocation of between two (2) and thirty (30) Small Wireless Communications Facilities to Existing Structures within the Public Rights-of-Way.

Construct or construction means to construct, install, place, excavate or obstruct poles, signs, utility facilities or other physical features, other than landscaping, on, above, within or under any part of the rights-of-way.

Corner Lot means a Lot located at the intersection of two (2) or more streets with a property line bordering on at least two (2) of the streets.

Corner Yard means that portion of a Corner Lot, which Abuts the street and is not the Front Yard.

Day(s) means, for purposes of computing any period of time expressed in day(s) in this Article, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Eligible Facilities Request means a request to place a Wireless Communications Facility in the Public Rights-of-way that, in accordance with the definitions contained in FCC regulations codified at 47 C.F.R. § 1.40001, does not substantially change the physical dimensions of the Existing Structure and is requesting:

- (a) Collocation of new transmission equipment;
- (b) Removal of existing transmission equipment; or
- (c) Replacement of existing transmission equipment.

*Existing Structure* means a structure within the Public Right-of-way that exists at the time an application to place a Communications Facility on the preexisting structure is filed with the county. The term includes Utility Poles and Repurposed Structures. The term *Existing Structure* does not include below-grade communications facilities and at-grade communications facilities. An Existing Structure is not transformed into a Communications Facility by the Collocation or Attachment of a Wireless Communications Facility.

*FCC* means the Federal Communications Commission.

*Florida Building Code* means the Florida Building Code promulgated under Chapter 553, *Florida Statutes* and includes the Leon County amendments thereto as both may be amended from time to time.

*Front yard* means that portion of a Lot or parcel of land which is adjacent to and Abuts the street, which contains the Lot or parcel's main entrance, which extends the full width of the Lot or parcel between the side property lines and includes the Front Yard setback as proscribed by the LDC.

*Graffiti* means 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.

*In Public Rights-of-way or in the Public Rights-of-way* means across, above, within, on or under the Public Rights-of-way.

*LDC* means the county's Land Development Code, Chapter 10 of the Code of Laws of Leon County, Florida.

*Local Roadway* means a route within the County that has been designated as a Local Roadway by the Florida Department of Transportation or identified as unclassified or as a Local Road in the Comprehensive Plan.

*Lot* means 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, but excluding areas designated for open spaces, whether or not these areas are designated as lots on the plat.

*Micro Wireless Facility* means a Wireless Communications Facility that provides wireless service that is not larger in dimension than 24 inches in length, 15 inches in width, 12 inches in height, that has an exterior antenna, if any, no longer than 11 inches, and that is suspended on cables strung between Existing Structures by or for a Communications Services Provider authorized to occupy the Public Rights-of-way and who is remitting taxes under Chapter 202, F.S., as amended

Parcel means any piece of real property that has a single parcel identification number assigned to it by the county property appraiser.

Pass-Through Provider means any Person who places or maintains a Communications Facility in the Public Rights-of-way and who does not remit taxes imposed by the County pursuant to Chapter 202, F.S., as amended. A Pass-Through Provider can also be a Wireless Infrastructure Provider pursuant to Section 337.401, F.S., as amended, and/or a Communications Facility Provider pursuant to this Article.

Deleted: A Utility as defined in 47 U.S.C. § 224 is not a Pass-Through Provider.

Permit means the Public Right-of-way permit that must be obtained before a Person may construct in the Public Right-of-way and shall include, but not be limited to, Right-of-Way engineering and construction permits issued by the County Engineer.

Person means any natural person or corporate, business association or other business entity, including, but not limited to a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, an utility, a successor or assign of any of the foregoing or any other legal entity and shall include the county to the extent the county acts as a Communications Services Provider.

Place or Maintain or Placement or Maintenance or Placing or Maintaining means to erect, construct, install, extend, expand, remove, occupy, locate, relocate, or significantly alter the configuration of a Communications Facility. A Person who owns or exercises physical control to maintain and repair is placing or maintaining the Communications Facility. A Person providing service only through resale or only through use of a third Person's Communications Facility is not placing or maintaining the Communications Facility through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-way does not constitute placing or maintaining a Communications Facility in the Public Rights-of-way.

Private Utility Pole means a Utility Pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities or a utility pole by a person other than the County, City, or Florida Department of Transportation within the Public Rights-of-way.

~~Pole Attachment means any attachment of a Communications Facility by a Communications Services Provider, Communications Facility Provider or a Pass-Through Provider to an Existing Structure within a Public Right-of-way.~~

Public Rights-of-way or Rights-of-way means land in which the county owns the fee or has an easement devoted to or required for use as a transportation facility and may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface of such right-of-way. Transportation facility means any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. Public Rights-of-way or Rights-of-way shall not include: (1) City, State, or federal rights-of-way unless those rights-of-way are within the unincorporated boundaries of the county over which the City, State or federal government has jurisdiction and authority under the Florida Transportation Code, Chapter 334, Florida Statutes, as amended, and where the City or State or both have delegated to the county the authority to regulate the registration, permitting, placement,

installation, and maintenance of Communications Facilities; (2) platted utility easements that are not part of a dedicated public right-of-way; (3) property owned by any Person other than the county; (4) service entrances or driveways leading from the road or street onto adjacent property; or (5) any real or personal county property except as described above and shall not include county buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-way.

Registrant means any Communications Services Provider, Communications Facility Provider or a Pass-Through Provider who has an active Registration with the county.

Registration or Register means the process described in this article whereby a Communications Services Provider, Communications Facility Provider or Pass-Through Provider provides certain information to the county by which it is determined whether the Person will be authorized to obtain Permits to Place or Maintain Facilities within the Public Rights-of-way.

Repurposed Structure means an Existing Structure that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its primary existing purpose while also supporting the attachment of Communications Facilities through Stealth Design or otherwise that is approximately in the same location as the Existing Structure and in such a manner that does not result in a net increase in the number of structures located within the Public Rights-of-way and does not interfere with pedestrian or vehicular access, and is compliant with Applicable Laws. Unless stated otherwise, or as otherwise limited by applicable law, all requirements imposed on Small Wireless Communications Facilities and Wireless Support Structures shall also apply to Repurposed Structures. To Repurpose an Existing Structure shall mean the act of renovating, reconfiguring or replacing an Existing Structure as described above. The provider attaching its Communications Facilities to the Repurposed Structure shall be responsible for registration and permitting requirements of this article.

Residential Block means the Lots that abut or are contiguous to a portion of a Public Right-of-way within all land zoned R-1, R-2, R-3, R-4, R-5, RA, MR-1, RP and MH as well as that zoned R, RC, UF, LP, LT, LTUF, and OR-1, OR-2, OR-3, and BOR when used only for residential purposes. Residential Block also includes Public Rights-of-way that are contiguous to the aforementioned zoning districts.

Shroud means a covering or enclosure of the otherwise exposed antenna and associated equipment collocated on an Existing Structure or Wireless Support Structure.

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Signage means 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 Communications Facility Provider, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the Communications Facility.

Small Wireless Communications Facility means a Wireless Communications Facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than six (6) 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 (6) cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (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.

State means, as indicated by the context used, either Florida, as a geographic location, or the state of Florida, as a legal entity.

Stealth Design means a method of camouflaging any tower, antenna or other Communications Facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth Design may include, without limitation, a Repurposed Structure, a Wrap, a Shroud, fencing, vegetation or a combination of these techniques or other techniques acceptable to the County.

Surrounding Neighborhood means the area within a five hundred (500) foot radius of a Communications Facility site or proposed Communications Facility site.

Surrounding Properties means those lots or parcels of land that either abut or are adjacent properties relative to the Communications Facility site.

Utility means any Person or entity that is a local exchange carrier or an electric, gas, water, steam or other public utility, and who owns or operates appurtenant facilities or equipment that are situated with the Public Rights-of-way for transmission of such Utility's goods, commodities or services.

Utility Pole means a pole or similar structure used in whole or in part to provide communications Services or electric distribution, lighting, traffic control, signage, or similar function. This term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices and does not include any pole or similar structure fifteen (15) feet in height or less.

Wireless Communications Facility means any Communications Facility 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 powers supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communication. This 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;
- (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;
- (d) Below-grade communications facilities; or
- (e) At-grade communications facilities.

Wireless Service means Communications Services provided using licensed or unlicensed spectrum using wireless facilities. The term does not include dispatch service in a more localized, non-cellular configuration; data only, one-way or stored-voice services on an interconnected basis; air-to-ground services; or public coast stations.

Wireless Service Provider means a Person duly authorized and licensed by the FCC to deliver Wireless Service. A Wireless Service Provider is a type of Communications Services Provider.

Wireless Support Structure means 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 Communications Facilities. This term shall not include: Repurposed Structures, Utility Poles, pedestrian signalized poles or signalized intersection poles, masts, or similar vertical structures that have a primary purpose or function independent of supporting a Wireless Communications Facility. A Wireless Support Structure would typically be used to support DAS or Small Cell Systems, when Collocation to an Existing Structure is not utilized.

Wrap means an aesthetic covering depicting scenic imagery such as vegetation, which blends with the surrounding area. Imagery in a wrap may not contain any advertising.

**Sec. 16-103. Registration.**

(a) Registration. A Communications Services Provider, Communications Facility Provider or a Pass-Through Provider that desires to place or maintain a Communications Facility in the Public Rights-of-way shall first, before being eligible to receive a permit to conduct work in the County rights-of-way, register with the County Public Works Department in accordance with this Article. For the purposes of this section, "Applicant" shall mean any Communications Services Provider, Communications Facility Provider or a Pass-Through Provider seeking an active Registration with the County.

(b) Content of Registration. Each Applicant shall submit the following information and documentation:

- (1) The name of the Applicant under which it will transact business in the county and, if different, in the State;
- (2) The name, address, electronic mail address, and telephone number of the Applicant's primary contact person and the person to contact in case of an emergency;
- (3) The type of Communications Services that the Applicant intends to provide within the county (if more than one, state all that apply), or, if none, state that the Applicant is a

- Communications Facility Provider or Pass-Through Provider, as the case may be;
- (4) A copy of the Applicant'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;
  - (5) For an applicant that is a Communications Facility Provider or Pass-Through Provider, in lieu of paragraph (4) above, the Applicant shall provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State; and
  - (6) Proof of the applicant's insurance coverage as required pursuant to section \*\*.
  - (7) A performance bond as required pursuant to section \*\*.
  - (8) A security fund as required pursuant to section \*\*.

Commented [J14]: Insurance section

Commented [J15]: Performance bond section

Commented [J16]: Security fund section

(c) *County Engineer review and approval.* Within thirty (30) days after receipt of the information submitted by the Applicant, the County Engineer shall determine whether the applicant for Registration contains all information and documentation required and shall advise the Applicant of any areas of deficiency in writing. The Applicant shall re-submit the required information and documentation within thirty (30) days of the date of the notice of deficiency, otherwise the application for Registration is considered withdrawn. A notice of deficiency and/or denial of Registration shall not preclude an Applicant from reapplying or filing subsequent applications for Registration under the provisions of this Section. A denial of Registration may be appealed in accordance with the procedures set forth in section \*\*.

Commented [J17]: Appeal Section

(d) *No property right arises from Registration.* A Registration shall not convey any title, equitable or legal, to the Registrant in the Public Rights-of-way. Registration under this Article governs only the Placement or Maintenance of Communications Facilities in the Public Rights-of-Way. Registration does not excuse a Communications Services Provider, Communications Facility Provider or Pass-Through Provider from obtaining necessary access or Pole Attachment agreements before locating its Communications Facilities in the Public Rights-of-way. Registration does not excuse a Communications Services Provider, Communications Facility Provider or Pass-Through Provider from complying with all applicable laws, including this Article and State and federal laws.

(e) *Registration is non-exclusive.* Registration does not in and of itself establish a right to Place or Maintain, or establish priority for the Placement or Maintenance of a Communications Facility in the Public Rights-of-way, but shall establish for the Registrant a right to apply for a Permit, if permitting is required by the county. Registrations are expressly subject to any further amendment to or replacement of this Article and further subject to any additional county ordinances or regulations, as well as any State or federal laws that may be enacted.

(f) *Cancellation.* A Registrant may cancel a Registration upon written notice to the county stating that it will no longer Place or Maintain any Communications Facilities in the Public Rights-of-way and will no longer need to obtain permits to perform work in the Public Rights-of-way. A Registrant cannot cancel a Registration if the Registrant continues to Place or Maintain any Communications Facilities in the Public Rights-of-way.

(g) *Registration updates.* Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (b), a Registrant shall provide updated information to the county.

(h) Registration renewal. Each Registrant shall renew its Registration by April 1 of years ending in “0” or “5” (such as 2020, 2025, 2030, etc.) in accordance with the registration requirements of this Article. Registration renewals shall include an inventory of the Registrant’s newly installed Communications Facilities or Abandoned Communications Facilities within the Public Rights-of-way placed since the most recent renewal or update. Failure to renew a Registration may result in the county restricting the issuance of additional Permits until the Communications Services Provider, Communications Facility Provider or the Pass-Through Provider has complied with the Registration requirements of this Article.

(i) Registration application fees. No Registration application fees shall be imposed for Registration under this Article.

(j) Permits required of Registrants. In accordance with applicable county ordinances, Codes or regulations, a Permit shall be required of a Communications Services Provider, Communications Facility Provider or a Pass-Through Provider that desires to place or maintain a Communications Facility in the Public Rights-of-way, unless otherwise specifically exempted under this Article. An effective Registration shall be a condition precedent to or of obtaining a Permit. Notwithstanding an effective Registration, Permitting requirements shall also apply. A Permit may be obtained by or on behalf of a Registrant having an effective Registration if all Permitting requirements are met. If a permit is submitted without proper Registration, the application review timeframes as provided in Section \*\* shall be held in abeyance until the Communications Services Provider, Communications Facility Provider or Pass-Through Provider is properly registered with the County.

Commented [JI8]: Permit requirements/ permit app section

(k) Compliance required. A Registrant shall at all times comply with and abide by all applicable provisions of State and federal law and county ordinances, codes and regulations in placing or maintaining a Communications Facility in the Public-Rights-of-way.

#### **Sec. 16-104. Notice of Transfer, Sale or Assignment of Assets in Public Rights-of-Way.**

(a) If a Registrant transfers or assigns its Registration incident to a sale or other transfer of the Registrant’s assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Article. Written notice of any transfer, sale or assignment shall be provided to the county within thirty (30) days of the effective date of the transfer, sale or assignment. Further, any such Person to whom such transfer has been made, must register with the county in accordance with this Article and shall provide proof of insurance coverage in accordance with section \*\*, a Performance Bond in accordance with Section \*\*, and a Security Fund in accordance with Section \*\*.

Commented [JI9]: Insurance section

Commented [JI10]: Performance Bond section

Commented [JI11]: Security fund section

(b) If Permit applications are pending in the Registrant's name, the transferee, buyer or assignee shall notify the County Engineer that the transferee, buyer or assignee is the new Registrant.

(c) A violation of the requirements of this Section shall constitute a Code violation and the Registrant who is alleged to have violated any of the provisions of this Section may be subject to the enforcement remedies set forth in Sections 1-9 and \*\*.

Commented [JI12]: Enforcement section

#### **Sec. 16-105. Involuntary Termination of Registration.**

(a) Involuntary Termination. The County Engineer may terminate a Registration 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 in the Public Rights-of-way 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 Abandonment by the Registrant of all of its Communications Facilities in the Public Rights-of-way and fails to comply with Section \*\* hereof; or
- (4) Substantive and material repetitive violations of any of the provisions of this Article.

Commented [JI13]: Abandonment section

(b) Notice of Intent to Terminate. Prior to termination, the Registrant shall be notified by the County Engineer, with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The Registrant shall have thirty (30) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the County Engineer to accomplish the same. If the plan is rejected by the County Engineer, the County Engineer shall provide written notice of such rejection within fifteen (15) days of receipt of the plan to the Registrant and shall make a final determination as to termination of the Registration and the terms and conditions relative thereto. A final determination to terminate a Registration may be appealed in accordance with the procedures set forth in Section \*\*.

Commented [JI14]: Appeal Section

(c) Post Termination Action. In the event of termination, following any appeal period, the former Registrant shall: (1) in accordance with the provisions of this Article and as may otherwise be provided under state law, notify the county of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Communications Facilities in the Public Rights-of-way; or (2) provide the county with an acceptable plan for disposition of its Communications Facilities in the Public Rights-of-way. If a Registrant fails to comply with this subsection, which determination of noncompliance is subject to appeal as provided in Section \*\* hereof, the county may exercise any remedies or rights it has at law or in equity, including, but not limited to taking possession of the Communications Facilities where another Person has not assumed the ownership or physical control of the Communications Facilities or requiring the Registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the Registrant and the County Engineer, to remove some or all of the Communications Facilities from the Public Rights-of-way and restore the Public Rights-of-way to their original condition before the initial installation of the Facilities. In any event, a terminated Registrant shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-way.

Commented [JI15]: Appeal section

(d) When Removal Not Authorized or Required. In the event of termination of a Registration, this section does not authorize the county to cause the removal of Facilities used to provide another service for which the Registrant or another person who owns or exercises physical control over the Facilities holds a valid certification or license with the governing federal or State agency, if required for provision of such service, and is registered with the county, if required.

#### **Sec. 16-106. Unregistered Providers.**

To the extent that a Communications Services Provider, Communication Facilities Provider or Pass-

Through Provider is not registered consistent with Section \*\*, said Person shall register with the county pursuant to Section \*\* within ninety (90) days from the effective date of this Ordinance. A Communications Services Provider, Communications Facilities Provider or Pass-Through Provider with an existing Communications Facility in the Public Rights-of-way who fails to so comply may be subject to the enforcement remedies set forth in Sections 1-9 and \*\*.

Commented [JI16]: Registration Section

Commented [JI17]: Registration section

Commented [JI18]: Enforcement section

### **Sec. 16-107. General Permit Conditions.**

Before commencing any work in County controlled Rights-of-way (including at-grade, below-grade and wireless communication facilities), all Communication Service Providers, Communications Facility Providers, and Pass-Through Providers shall comply with the following conditions:

(a) *Permit does not create a property right; areas where overhead utilities are being placed underground.* A Permit from the county constitutes authorization to undertake only certain activities in the Public Rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-way, nor does it create a property right to maintain Collocated Wireless Communications Facilities hosting on Existing Structures when such hosting Existing Structures are within a program where overhead distribution utilities are being placed underground pursuant to a county program to underground such overhead distribution facilities or to maintain Wireless Support Structures should the county adopt undergrounding requirements that prohibit above-ground structures in the Public Rights-of-way.

(b) *Avoidance of interference, displacement, damage or destruction or destruction of other facilities, endangerment of life and property.* A Registrant shall not Place or Maintain its Communications Facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to sewers, gas or water mains, storm drains, storm drainage lines, pipes, cables or conduits of the county or any other Person's facilities lawfully occupying the Public Rights-of-way and shall not endanger the life or property of other persons.

(c) *Coordination with other work in Public Rights-of-way.* Upon request of the county, and as notified by the county of other work, construction, installation or repairs, a Registrant is encouraged to coordinate Placement or Maintenance activities under a Permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Public Right-of-way, and the Registrant may be required to reasonably alter its Placement or Maintenance schedule as necessary so as to minimize disruptions and disturbance in the Public Rights-of-way.

(d) *Restoration of Public Rights-of-way.* After the completion of any Placement or Maintenance work involving a Communications Facility in a Public Right-of-way or each phase thereof, a Registrant shall, at its own expense, restore the Public Right-of-way to its existing condition prior to such work. If the Registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such Placement or Maintenance work, the county may perform restoration and charge the costs of the restoration against the Registrant's Performance Bond, Security Fund, or, as applicable, in accordance with Section 337.402, F.S., as amended. For twelve (12) months following the original completion of the work, the Registrant shall guarantee its restoration work and shall correct, at their sole expense, any restoration

work that does not satisfy the requirements of this Article at its own expense.

(e) Maintenance in accordance with industry standards and applicable law. A Registrant shall maintain its Communications Facilities in good condition, order and repair in a manner consistent with accepted industry practice and applicable law.

(f) Maintenance of graffiti plan and facilities. Each Communications Facility within the Public Rights-of-way, including any appurtenant features incorporated therewith under this Article shall be maintained in a neat and clean condition at all times. Specifically, but not without limiting the generality of the foregoing, each Communications Facility in the Public Rights-of-way shall be regularly maintained so that it is free of Graffiti and is reasonably free of dirt and grease, rust and corrosion in visible metal areas, chipped, faded, peeling and cracked paint that is visible from the Public Rights-of-way or Surrounding Neighborhood at Grade. All Graffiti shall be removed or remedied within ~~thirty~~ (30) days from receipt of notice by the County that Graffiti exists on the Communications Facility or any portion thereof. A fine of \$50.00 per day shall be imposed for each and every day of non-compliance after receipt of notice by the County and failure to cure. New Permit(s) shall not be issued to a Communication Service Provider, Communications Facility Provider or Pass-Through Provider if any of their Communications Facilities are not in compliance with this Section.

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Commented [JI19]: Industry requested 30 days

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(g) Underground Facility Damage Prevention and Safety Act. 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 Chapter 556, F.S., as amended.

(h) Use of due caution. Registrants shall use and exercise due caution, care and skill in performing work in the Public Rights-of-way and shall take all reasonable steps to safeguard work site areas, including, but not limited to those safeguards set forth in Chapter 33 of the Florida Building Code.

(i) No warranties or representations regarding fitness, suitability or availability of Public Rights-of-way. The county makes no warranties or representations regarding the fitness, suitability, or availability of the Public Rights-of-way for the Registrant's Communications Facilities. Any performance of work, costs incurred or services provided by the Registrant shall be at the Registrant's sole risk. Nothing in this article shall affect the county's authority to add, vacate or abandon its Public Rights-of-way, and the county makes no warranties or representations regarding the availability of any added, vacated or abandoned Public Rights-of-way for Communications Facilities.

(j) Right of inspection. The county shall have the right to make such inspections of Communications Facilities Placed or Maintained in its Public Rights-of-way as it finds necessary and upon reasonable notice, to ensure compliance with this article.

(k) As-Built Plans and GPS coordinates. Upon completion of work authorized by a Permit for a Small Wireless Communications Facility or a Wireless Support Structure, in the event that field work resulted in changes from the Permit plans, the applicant shall furnish to the county the exact GPS coordinates of the Small Wireless Communications Facility or Wireless Support Structure, at no cost to the county, one complete set of signed and sealed As-built Plans. The As-built Plans shall be in an electronic format specified by the County Engineer.

(1) This requirement shall be in addition to, and not in lieu of, any filings the Registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, F.S., as amended. The fact that such As-built Plans or survey is on file with the county shall in no way abrogate the duty of any Person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the Public Rights-of-way.

(l) Florida Building Code; high velocity hurricane zone. In addition to the requirements of this Article, all Permitted Communications Facilities shall comply with the applicable provisions of the Florida Building Code. Wireless Communications Facilities shall be considered to be structures under Building Risk Category IV, Structures, Chapter 16 Section 1620 – 1621, High Velocity Hurricane Zone Area.

(m) Correction of harmful conditions. If, at any time, the County or other authority of competent jurisdiction reasonably determines that any Communications Facility is, or has caused a condition that is, harmful to the health, safety or general welfare of any Person, then the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider shall, at its own expense, promptly correct or eliminate all such Communications Facilities and conditions. In an emergency, as determined by the County Engineer, when the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider is not immediately available or is unable to provide the necessary immediate repairs to any Communications Facility that is damaged or malfunctioning, or is a threat to public safety, then the County, when apprised of such an emergency, shall have the right to remove, make repairs to or eliminate same with the total cost being charged to and paid for by the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider upon demand.

(n) Remedy of hazardous conditions. If, at any time, a condition exists that the County or other authority of competent jurisdiction reasonably determines is an emergency that is potentially hazardous or life threatening to any person or is a threat to the health or safety of the general public, and to remedy such condition the County or other authority of competent jurisdiction reasonably determines that a Communications Services Provider, Communications Facility Provider, or Pass-Through Provider must temporarily relocate or temporarily shut off service or transmissions through a specific Communications Facility, then the County, as an appropriate exercise of its police powers, may order the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider to immediately perform such temporary relocation or shut off until the condition has been remedied, and to do so at its own expense and without liability to or recourse against the County. In such an emergency, when the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific Communications Facility, then the County shall have the right to perform, or cause to be performed, such temporary relocation or shut off until the condition has been remedied with the total cost being charged to and paid for by the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider upon demand.

(o) Permit errors. The issuance of a Permit shall not prevent the County Engineer from thereafter requiring the correction of errors when in violation of this article.

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(p) Public records. Any proprietary confidential business information obtained from a Registrant in connection with a Permit application shall be held confidential by the county to the extent required by Section 202.195, F.S., as amended, provided the Registrant so notifies the County which information is confidential in accordance with Florida's Public Records Laws.

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(q) Historic preservation zoning regulations. All Permits shall comply with applicable historic preservation zoning regulations, including local, State and Federal rules and regulations.

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#### **Sec. 16-108. General Enforcement Remedies.**

(a) A Registrant's failure to comply with provisions of this Article shall constitute a violation of this Code and shall subject the Registrant to termination of Registration in accordance with the provisions of Section \*\*, suspension or revocation of a Permit under the provisions of Section \*\*, or restrict a Registrant from obtaining a new permit, and is subject to a civil penalty in accordance with the provisions of Section 1-9 or injunctive relief as otherwise provided by law.

Commented [JI20]: Registration termination section

Commented [JI21]: Suspension/revocation of permit section

(b) Failure of the county to enforce any requirements of this Article shall not constitute a waiver of the county's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

#### **Sec. 16-109. Enforcement of Permit Obligations; Suspension and Revocation of Permits.**

(a) The County Engineer may order the suspension of Placement and Maintenance work under a Permit and ultimately may revoke any Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or regulation or any condition of the Permit. A substantial breach by the Permittee may include, but are not limited to:

- (1) The violation of any material provision of the Permit;
- (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 county or its citizens;
- (3) Any material misrepresentation of fact in the process of Permittee's request for a Permit or Registration;
- (4) The failure to maintain the required performance bond or insurance;
- (5) The failure to properly restore the Public Rights-of-way;
- (6) The failure to correct within the specified time an order issued by the County Engineer;
- (7) The failure to Register, Re-Register, or provide notice of any transfer in accordance with this Article;
- (8) The failure to relocate or remove Facilities pursuant to this Article and Sections 337.402, 337.403 and 337.404, F.S., as amended.

(b) If the County Engineer determines that the Permittee has committed a substantial breach of a term or condition of the Permit, the County Engineer 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 County Engineer, at his or her discretion, may place additional or revised permit conditions on the Permit following a substantial breach.

(c) Within thirty (30) days of receiving notification of the breach, the Permittee shall contact the

County Engineer with a plan, acceptable to the County Engineer, for its correction. The county shall provide additional time as reasonably necessary for a Permittee to establish a plan acceptable to the County Engineer taking into account the nature and scope of the alleged breach. The Permittee's failure to so contact the County Engineer, 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 of the Permit. Further, the Permittee's failure to contact the County Engineer, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to implement the approved plan, shall be cause for suspension or revocation of the permit. A final determination to suspend or revoke a Permit may be appealed in accordance with the procedures set forth in Section \*\*.

**Commented [J122]:** Appeals section

(d) If a Permit is revoked, the Permittee shall reimburse the county for the county's reasonable costs, including restoration costs, administrative costs, and the cost of collection and reasonable attorney's fees incurred in connection with such revocation.

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

#### **Sec. 16-110. Appeals.**

**Commented [J123]:** Being reviewed by County Admin

**Commented [MK24]:** The City's appeal process will be different; still evaluating that process.

(a) Final determinations by the County Engineer denying an initial Registration; denying an application for renewal of a Registration; involuntarily terminating of a Registration; determining non-compliance after termination of Registration; denying a request for waiver with a subsequent denial of the associated Permit; or denying, revoking or suspending any Permit are subject to appeal. A notice of appeal of such decision may be filed with the County Administrator within thirty (30) days of the date of the final, written decision to be appealed. The County Administrator shall have thirty (30) days from the date the appeal is filed to review the matter and render a written decision to uphold or reverse the final decision made by the County Engineer. If the County Administrator upholds the final decision of the County Engineer, the appellant may file a notice of appeal with the County Clerk within thirty (30) days of the date of the written decision of the County Administrator. The County Clerk shall set the matter for hearing before the Board of County Commissioner at any regular Commission meeting scheduled within forty-five (45) days of the date that the notice of appeal is filed with the County Clerk or at the next regularly scheduled Board meeting, whichever is later, unless waived by the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider. A ruling may be made at the hearing or at the next regularly scheduled Board meeting and the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider shall be notified of the decision in writing within thirty (30) days thereof. Where a notice of appeal to the County Administrator or the County Clerk is not timely filed as provided herein, such right to appeal shall be waived. Appeal from a final decision by the Board shall be to the Circuit Court by filing a petition for writ of certiorari within thirty (30) days of the decision.

#### **Sec. 16-111. Waiver of the Requirements of this Article.**

(a) Nothing in this Article shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of Public Rights-of-way by Communications Service Providers, Communications Facility Providers or Pass-Through Providers, in violation of federal or

State law.

(b) The waiver provisions listed in this subsection apply in those circumstances where a Communications Service Provider, Communications Facility Provider or Pass-Through Provider's competitively neutral use of the Public Rights-of-way is impaired by strict application of the requirements of this Article.

(c) A request for a waiver shall be filed with contemporaneously with the Permit application. The request for waiver shall contain each Section or Subsection for which a waiver is sought. A request for a waiver shall include the following information:

- (1) A detailed explanation, with supporting engineering or other data, as to why a waiver from the requirements of this Article is required in order to allow the Applicant to have nondiscriminatory and competitively neutral use of the Public Rights-of-way, including a detailed explanation addressing the relevant criteria to be considered by the County Engineer as provided in subsection (d);
- (2) Availability of Collocation opportunities;
- (3) Separation distances of the proposed Communications Facility or proposed Wireless Support Structure from the edge of pavement, sidewalks, and/or multi-purpose trails;
- (4) Nature and characteristics of the Surrounding Neighborhood;
- (5) Topography, tree coverage and foliage in the immediate surrounding area of the proposed Communications Facility or proposed Wireless Support Structure and within the Surrounding Neighborhood;
- (6) Design of the proposed Communications Facility or proposed Wireless Support Structure with particular reference to achieving compatibility with the Surrounding Neighborhood and eliminating adverse visual impacts on the Surrounding Neighborhood; and
- (7) Any other information the County Engineer may reasonably require to process the request for waiver.

**Commented [J125]:** Factors to be considered by County Engineer subsection

(d) The County Engineer shall grant or deny a request for a waiver within thirty (30) days after receiving the Permit application and request for waiver. Applications for waiver shall only be approved if the following criteria are met:

**Deleted:** The County Engineer shall consider the following factors in determining whether to grant or deny a request for waiver

- (1) Any special conditions and circumstances affecting the proposed site which prevent compliance with the Section or subsection for which a waiver is being sought;
- (2) The compatibility of the proposed waiver with Adjacent Properties and the Surrounding Neighborhood;

(3) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. Sec. 12101, et seq., as amended, and regulations promulgated thereunder;

(4) If the proposed waiver is compliant with FCC regulations;

(5) If the proposed waiver preserves to the County optimum flexibility in its management of its Public Rights-of-way; and

(6) The applicant's demonstration that the Section or Subsection for which the waiver is being sought would unreasonably discriminate against the applicant in favor of another Communications Service Provider.

(e) In granting any waiver, the County Engineer may impose conditions to the extent the County Engineer concludes such conditions are necessary to minimize any adverse effects of the proposed Communications Facility or proposed Wireless Support Structure on the Surrounding Neighborhood or to protect the health, safety and welfare of the public.

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(f) Waivers may be granted by the County Engineer to the following provisions of this Article:

(1) Section \*\*, Stealth Design;

(2) Section \*\*, Maximum height restrictions for newly installed Wireless Support Structures;

(3) Section \*\*, Prohibition against placement where the County has plans for sidewalks; Preference for Arterial or Collector Roadways;

(4) Section \*\*, Minimum distance separation from existing sidewalk;

(6) Section \*\*, Placement within the Canopy Roads Protection Zone;

(7) Section \*\*, Placement within a Gateway;

(8) Section \*\*, Distance separation between ground-mounted equipment;

(9) Section \*\*, Prohibition against placement in Front Yard within Residential Blocks;

(10) Section \*\*, Limitation on placement in Corner Yards within Residential Blocks.

(11) Sight lines or clear zone standards and specifications for Small Wireless Facilities and newly installed Wireless Support Structures may be reduced to no less than ten (10) feet, if the County Engineer, on a case-by-case basis, finds that the proposed reduction complies with all County Engineering standards and the County Engineer shall take into consideration neighborhood characteristics, such as the location of schools, parks and other community facilities, pedestrian facilities, the curvature of the street, speed limits, and other similar elements.

Deleted: (5) Section \*\*, Installation at outermost boundary of Public Rights-of-way;

(12) Any other provision of this Article that unreasonably discriminates against the applicant in favor of another Communications Service Provider.

Commented [JI26]: Catch-all provision requested by Industry

(g) Should a request for waiver, and ultimately a Permit, be denied by the County Engineer, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with Section \*\*.

Commented [JI27]: Appeal section

## Sec. 16-112. Insurance.

(a) General. A Registrant shall provide, pay for and maintain satisfactory to the county the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having an A.M. Best A-VII or better rating. All liability policies shall provide that the county is an additional insured as to the activities under this Article. 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 County annually. Thirty (30) days advance written notice by registered, certified or regular mail or electronic mail as determined by the county must be given to the County's Risk Manager of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the county.

(b) Insurance Coverage and Limits of Insurance Coverage. The insurance coverage and limits of coverage of insurance required shall be not less than the following:

- (1) Worker's compensation and employer's liability insurance. Florida statutory requirements.
- (2) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits of no less than one million dollars (\$1,000,000) per occurrence, combined single limit and two million dollars (\$2,000,000) in the aggregate.
- (3) Commercial Automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this article for limits of no less than one million dollars (\$1,000,000) per occurrence combined single limit each accident.
- (4) Commercial excess or umbrella liability. Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

(c) Proof of Insurance. Upon the effective date of the Registration, the Registrant shall submit to the county proof that it has obtained the insurance required under this section, including a certificate of insurance signed by the insurance agent.

(d) Authority to Increase or Decrease Policy Limits. The county shall have the authority to increase or decrease the policy limits set forth above and shall provide each Registrant with at least thirty (30) days advance written notice of such change. Within thirty (30) days from receipt of a notice to increase its policy limits, the Registrant shall submit to the county proof of such increased coverage.

(e) Duration. The coverage provided herein shall be maintained at all times during the use or occupancy of the Public Rights-of-way, including any time during placement or maintenance of Communications Facilities.

(f) Failure to Maintain Required Coverage. Failure to maintain all the required insurance coverage

shall be deemed an Abandonment of all of the Communications Facilities of the Registrant.

**Sec. 16-113. Indemnification.**

(a) By reason of the acceptance of a Registration under this article or the grant of a Permit under this article, the county does not assume any liability:

- (1) For injuries to persons, damage to property, or loss of service claims by parties other than the Registrant or the county; or
- (2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Registrants or activities of Registrants.

(b) By registering with the County Engineer a Registrant agrees, or by applying for and accepting a Permit under this article, a Permittee is required, to defend, indemnify, and hold the county whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Communications Facilities, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit, inspection of plans or work by the county. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Registrant or to the county; and the Registrant, in defending any action on behalf of the county, shall be entitled to assert in any action every defense or immunity that the county could assert in its own behalf. Nothing herein shall be construed as a waiver of the protections, limitations and immunities provided in Section 768.28, Florida Statutes, as amended. The provisions of this section include, but are not limited to, the county's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding(s).

(c) The county agrees to notify the Registrant, in writing, within a reasonable time of the county receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the county from participating in the defense of any litigation by its own counsel and at its own cost, if in the county's reasonable belief, there exists or may exist a conflict, potential conflict or appearance of a conflict. The county shall not settle or compromise any matter for which a Registrant is obligated to indemnify without the prior written consent of the Registrant, such consent shall not be unreasonably withheld.

(d) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the registrant under workers' compensation, disability or other employee benefit acts, or the acceptance of insurance certificates required under this article, or the terms, applicability or limitations of any insurance held by the Registrant.

(e) The Registrant shall investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and shall bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the county, the Registrant shall assume and defend not only itself but also the county in connection with any such claims and any such defenses shall be at no cost or expense whatsoever to the county provided that the county, shall retain the right to select counsel of its own choosing.

(f) The county does not and shall not waive any rights against the Registrant which it may have by reason of this indemnification, or because of the acceptance by, or the Registrant's deposit with the county of any of the insurance policies required by this article for Registration.

(g) This indemnification by the Registrant shall apply to all damages and claims for damages of any kind suffered regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(h) Nothing contained in this Section shall be construed or interpreted as denying to either party any remedy or defense available to such party under the laws of the State of Florida or as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as amended.

(i) The indemnification requirements under this section and this article shall survive and be in full force and effect after the termination or cancellation of a Registration.

#### **Sec. 16-114. Performance Bond.**

(a) At the time of Registration under this article, the Registrant shall be required to obtain, pay for, and file with the County a performance bond. The performance bond shall serve to guarantee proper performance under the requirements of any Permits, timeliness and quality of the construction and restoration of the County's Public Rights-of-way after the initial build and after any routine or emergency maintenance, proper maintenance of the Communications Facility, and all requirements, duties and obligations imposed upon the Registrant by the provisions of this Article, including but not limited to guaranteeing the actions required upon the abandonment of Communication Facilities. The performance bond must name the County as Obligee and be in the face amount of Two Hundred Fifty Thousand (\$250,000) Dollars conditioned upon the full and faithful compliance by the Registrant with all requirements, duties, and obligations imposed by the provisions of this Article during and through completion of the placement or maintenance project. The performance bond shall be in a form acceptable to the County Attorney and must be issued by a surety having an A.M. Best A-VII rating or better and duly authorized to do business in the State of Florida.

**Deleted:** Prior to issuance of any Permit where the type of work allowed under the permit involves the placement or maintenance of an initial build, any substantial rebuild, upgrade or extension of a Communications Facility, or when construction plans show that there would be at least one thousand (1,000) feet of open trenching in the Public Rights-of-Way at any given time, the Communications Services Provider, Communications Facility Provider or a Pass-Through Provider is

(b) The performance bond shall be maintained until the later of (a) the effective date of transfer, sale or assignment by the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider of all its Communications Facilities in the Public Rights-of-Way; (b) twelve (12) months after the removal or abandonment by the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider of all of its Communications Facilities in the Public Rights-of-Way; or (c) six (6) months after the termination of Registration, including any appeals undertaken, pursuant to Section \*\*.

**Deleted:** (b) The performance bond must be issued as non-cancelable and be for a term consistent with the reasonably expected duration of the particular placement or maintenance project (including restoration and county inspection), but in no event less than eighteen (18) months. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to the completion of such placement or maintenance project, including restoration and county inspection, the Communications Services Provider, Communications Facility Provider or Pass-Through Provider shall immediately obtain, pay for, and file with the county a replacement bond. ¶

(c) The county's requirement of a performance bond is not in lieu of any additional bonds that may be required under this Article or through the permitting process. The County's right to recover under the performance bond shall be in addition to all other rights of the County, whether reserved in this Article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect or preclude any other right the County may have. Any proceeds recovered under the performance bond may be used to reimburse the County for such additional expenses as may

**Commented [J128]:** Termination of registration section

be incurred by the County as a result of the failure of the Registrant to comply with the responsibilities imposed by this Article, including, but not limited to, attorney's fees and costs of any action or proceeding, and the cost of removal or abandonment of any property.

**Sec. 16-115. Security Fund.**

(a) At the time of Registration under this Article, the Registrant shall be required to file with the County a security fund in the form of cash deposit or irrevocable letter of credit in the sum of Twenty-Five Thousand (\$25,000) Dollars conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon the Registrant by the provisions of this Article. The letter of credit shall be in a form and issued by an institution acceptable to the County Administrator.

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(b) Should the County draw upon the security fund, it shall promptly notify the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider, and the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider shall promptly restore the cash deposit or letter of credit to the full amount. The Security Fund shall be maintained until the later of (a) the effective date of transfer, sale or assignment by the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider of all its Communications Facilities in the Public Rights-of-Way; (b) twelve (12) months after the removal or abandonment by the Communications Services Provider of all of its Facilities in the Public Rights-of-Way; or (c) six (6) months after the termination of Registration, including any appeals undertaken, pursuant to Section \*\*. Upon the later of these events the cash deposit will be returned without interest or the letter of credit may be cancelled.

Commented [JI29]: termination section

(c) In the event a Communications Services Provider, Communications Facility Provider, or Pass-Through Provider fails to perform any requirement, duty or obligation imposed upon it by the provisions of this Article, there shall be recoverable, jointly and severally from the security fund, any damages or loss suffered by the county as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any Communications Facilities in Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund.

**Sec. 16-116. Liquidated Damages.**

(a) In addition to any other rights or remedies available at law or equity or as otherwise provided in this article, the county shall have the power to impose the following monetary liquidated damages in the event the Communications Services Provider, Communications Facility Provider, or Pass-through Provider violates any provision of this article. The Communications Service Provider, Communications Facility Provider, or Pass-through Provider is required to pay the county the monetary liquidated damages within ten (10) days from the date of written notification for payment thereof in accordance with the schedule set forth below. Any such liquidated damages shall be recoverable from the Security Fund at the option of the county.

- (1) Failure to obtain a Permit or a violation of any permit condition—One Hundred Dollars (\$100) per occurrence.

- (2) Failure to complete construction within one (1) year of the issuance by the county of the applicable Permit, unless a longer period of time has been granted by the county—One Hundred Dollars (\$100) per day.
- (3) Failure to properly restore the Public Rights-of-Way to their original condition following completion of the placement or maintenance of a Communications Facility in the Public Rights-of-Way—One Hundred Dollars (\$100) per day.
- (4) Failure to adhere to the permitting, inspection and installation standards and requirements—One Hundred Dollars (\$100) per occurrence.
- (5) Failure to properly maintain the Communications Facility in the Public Rights-of-way—One Hundred Dollars (\$100) per day.
- (6) Failure to remove or relocate, either temporarily or permanently, Communications Facilities as required pursuant to this Article—One Hundred Dollars (\$100) per day.
- (7) Failure, in an emergency, to repair, relocate, shut off or eliminate Communications Facilities or harmful conditions as required under Section \*\*—Five Hundred Dollars (\$500) per occurrence.
- (8) Failure to move above-ground Facilities or equipment to new poles or other above-ground structures as required pursuant to this article—One Hundred Dollars (\$100) per day.
- (9) Failure to pay for, keep or maintain on file the required insurance or to provide evidence thereof to the county—Five Hundred Dollars (\$500) per occurrence.
- (10) Failure to remove or remedy Graffiti within thirty (30) days from receipt of notice by the county that Graffiti exists on the Communications Facility or any portion thereof—Fifty Dollars (\$50) per day.
- (11) Failure to supply As-Built Plans or GPS coordinates in accordance with this article in connection with placement or maintenance of Communications Facilities in the Public Rights-of-Way—One Hundred Dollars (\$100) per day.
- (12) Failure to comply with any other material requirements contained in this article— One Hundred Dollars (\$100) per day.

**Commented [MK30]:** The City will probably revise this to \$500/day. It is very important the providers move their facilities during road/construction projects

**Commented [JI31]:** General Permit Conditions Subsection (m) & (n)

**Commented [MK32]:** See comment above – City will probably revise to \$500/day

**Sec. 16-117. Abandonment of a Communications Facility.**

(a) Upon determination by a Registrant that one or more of its Communications Facilities in the Public Right-of-way is to be abandoned, the Registrant shall notify the county no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner.

(b) Abandonment of the Communications Facility requires removal of the Communications Facility. If the Communications Facility is attached to an Existing Structure that has an independent function, such as a light pole, traffic signal, pedestrian signal, or the like, said Abandonment of the Communications Facility requires removal of the Communications Facility only and does not require the removal of the Existing Structure.

(c) If the Registrant fails to remove all or any portion of an Abandoned Communications Facility as directed by the county within a reasonable time period as may be required by the county, the county may perform such removal and charge the cost of the removal against the Registrant.

(d) In the event the Abandoned Communications Facility is subject to a pole attachment agreement, then the obligation to remove the Abandoned Communications Facility shall be in compliance with the Pole Attachment Act, 47 U.S.C. Section 224, as amended.

**Sec. 16-118. Force Majeure.**

In the event a Registrant's performance of or compliance with any of the provisions of this article 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 Registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For the purposes of this section, cause or events not within a Registrant's control shall include, but not be limited to, 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 a 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.

**Sec. 16-119. Reservation of Rights and Remedies.**

(a) The provisions of this Article shall be applicable to all Communications

(a) The provisions of this Article shall be applicable to all Communications Facilities placed in the Public Rights-of-way on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities placed in the Public Rights-of-way prior to the effective date of this Ordinance to the full extent permitted by federal and State law, except that any provision of this Article regarding the size, composition, or location of Communications Facilities shall not apply to Communications Facilities lawfully Placed within the Public Right-of-way prior to the effective date of this Ordinance.

(b) Nothing in this Article shall affect the remedies the County or the Communications Services Provider, Communications Facility Provider, or Pass-Through Provider has available under applicable law.

**Sec. 16-120. No liability or warranty.**

Nothing contained in this Article shall be construed to make or hold the county responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the Registrant's Communications Facilities by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any Permit or the approval or disapproval of any Placement or Maintenance of the Registrant's Communications Facilities as authorized herein constitute any representation, guarantee or warranty of any kind by, or create any liability upon the county or any official, agent or employee thereof.

**Secs. 16-121 – 16-199. Reserved.**

Division 2. At-grade and Below-grade Communications Facilities Standards

### **Sec. 16-200. Applicability**

This division shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a Below-grade communications facility or an At-grade communications facility in the Public Rights-of-Way, unless otherwise exempt by operation of applicable state law. This division shall not apply to below-grade communications facilities or at-grade communications facilities owned by a public entity, including the county, or electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis by said public entity or electric cooperative. This division shall not apply to ground equipment associated with Wireless Communications Facilities, as defined in Section \*\* of this chapter.

Commented [JI33]: Definitions section

### **Sec. 16-201. Permit Requirements.**

(a) *Permit Required.* A Registrant shall not commence to Place or Maintain a Below-grade or At-grade Communications Facility in the Public Right-of-way until all applicable Permits have been issued by the County, except for Limited Work as provided in subsection (b). The Registrant acknowledges that as a condition of granting Permits, the County may impose reasonable conditions governing the Placement or Maintenance of an At-grade or Below-grade Communications Facility in the Public Rights-of-way as set forth in Section 337.401, F.S., as amended. Permits shall apply only to the areas of the Public Rights-of-way specifically identified in the Permit.

(b) *Permit Not Required.* A Registrant shall be allowed to perform Limited Work within the Public Rights-of-way without first obtaining a permit if such proposed Limited Work does not involve excavation, or the closure of a sidewalk or vehicle lane.

(1) As used in this section, the term *Limited Work* shall mean:

- a. Routine maintenance;
- b. Emergency Maintenance; or
- c. Replacement of an existing At-grade or Below-grade Communications Facility with an At-grade or Below-grade Communications Facility that is substantially similar or of the same or smaller size.

(2) In the case of routine maintenance, a Registrant shall provide at least three (3) days' advance written notice to the county identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. In the case of emergency maintenance, a Registrant shall provide prompt notice to the county of the emergency repair. As used in this Section, the term *Emergency Maintenance* means the repair or replacement of an At-grade or Below-grade Communications Facility as a result of a condition that affects the public health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.

(c) *Permit Application.* As part of any permit application to Place or Maintain an At-grade or Below-grade Communications Facility in the Public Rights-of-way, the Registrant shall provide a

Permit application that sets forth, at a minimum, the following:

- (1) Engineering plan. An engineering plan signed and sealed by a Florida licensed professional engineer, that includes:
  - a. The type of proposed At-grade or Below-grade Communications Facility, location of the proposed At-grade or Below-grade Communications Facility or At-grade or Below-grade Support Structure, including the dimensions, volume, height, and stealth features of the proposed At-grade or Below-grade Communications Facility that will be located in the Public Rights-of-way;
  - b. The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a 6 decimal point precision;
  - c. Sufficient specificity demonstrating compliance with the Florida Building Code, specifically in terms of compliance with ASCE-7-10, or latest edition for requirements of wind load (or say: in compliance with the High Velocity Zone Criteria specified in the Florida Building Code, Chapter 16); and
  - d. For any excavation work, a geotechnical report for the existing soil conditions, or a soil signed and sealed statement by a Florida licensed professional engineer, to the soil conditions.
- (2) Full color photo-simulation. For a new At-grade or Below-grade Communication Facility, the applicant shall provide a full color photo-simulation showing the proposed new facility installed in accordance with the application from the point of view of properties Adjacent to the proposed site.
- (3) Description of installation or construction. The applicant shall provide a description of the manner in which the At-grade or Below-grade Communications Facility will be installed and/or modified (i.e. anticipated construction methods or techniques)
- (4) Stealth Design. The applicant shall provide a description of Stealth Design to be utilized to minimize the visual impacts on the Surrounding Neighborhood pursuant to Section\*\*. Alternatively, a signed and sealed statement by a Florida licensed professional engineer, that Stealth Design cannot be utilized and providing documentation demonstrating to the satisfaction of the County Engineer that the proposed At-grade or Below-grade Communications Facility cannot employ Stealth Design and the proposed exterior location and configuration of equipment proposed are the minimum equipment necessary to achieve the needed function.
- (5) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate given the At-grade or Below-grade Communications Facility proposed, to accommodate Placement or Maintenance of the Communications Facility.

- (6) Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and maintenance of traffic (MOT) plan, if appropriate given the At-grade or Below-grade Communications Facility proposed, to accommodate installation and/or modification of the Communications Facility.
- (7) Restoration plan and cost of restoration of the Public Right-of-way. Given the Communications Facility proposed, a restoration plan and an estimate of the cost of restoration of the Public Rights-of-way.
- (8) Timetable for construction or installation and intended areas of service. The timetable for Placement or Maintenance of the proposed At-grade or Below-grade Communications Facility or each phase of the Placement or Maintenance thereof.
- (9) Information regarding Public Right-of-way resources. The applicant shall provide information on the ability of the Public Rights-of-way to accommodate the proposed At-grade or Below-grade Communications Facility, if available.
- (10) Registrant agrees to indemnification. A statement shall be included within the Permit application that by execution of the application and by applying for the Permit, the Registrant agrees to be bound to the county with respect to the indemnification provisions set forth in Section \*\* as though such indemnification provisions are set forth verbatim in the Permit application.
- (11) Airport Airspace Protection. Applicant shall comply with Florida Statutes Chapter 333 and all Federal regulations pertaining to airport airspace protections.
- (12) Comply with Land Development Code. Applicant shall comply with all applicable Land Development Code, including without limitation, City Land Development Code Section 5-83, Tree Protection and Removal Standards.
- (13) Additional information as reasonably required for review of Permit application. Such additional information as the County Engineer finds reasonably necessary with respect to the Placement or Maintenance of the At-grade or Below-grade Communications Facility that is the subject of the Permit application to review such Permit application, which information may include, but is not necessarily limited to: (i) evidence satisfactory to the County Engineer that the proposed At-grade or Below-grade Communications Facility will not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive or other dangerous chemicals; and (ii) a written statement from a qualified radio frequency engineer that the construction and placement of the proposed At-grade or Below-grade Communications Facility complies with applicable laws.

Commented [JI34]: Indemnification Section

**Sec. 16-202. At-grade or Below-Grade Communication Facility Permit Conditions.**

- (a) Newly installed At-grade and Below-grade Communications Facilities may be Placed and

Maintained within the Public Rights-of-way subject to the County's consideration of the following standards and minimum requirements:

- (1) Sufficiency of space to accommodate present and pending applications for use of the Public Rights-of-way. The sufficiency of space to accommodate all of the present and pending applications to place Wireless Support Structures, Utility Poles, and other At-grade and Below-grade structures within the subject area of the Public Rights-of-way;
  - (2) Sufficiency of space to accommodate the need for projected public improvements. The sufficiency of space to accommodate county plans for public improvements or projects adopted as part of its Capital Improvements Plan or other approved capital improvements lists as part of the Tallahassee-Leon County Comprehensive Plan;
  - (3) Impact on traffic and traffic and pedestrian safety. The impact on traffic and traffic and pedestrian safety will be evaluated by the County. The evaluation will include, without limitation, potential traffic interference on the safe and efficient movement of people and property that will endanger the health, safety and general welfare of the public, interference with sight lines or clear zones for transportation, pedestrians or public safety purposes;
  - (4) Impact on Existing Communications Facilities and Utilities. The impact upon existing Communications Facilities and utilities in the Public Rights-of-way;
  - (5) Applicable Laws. Applicable laws, County Ordinances, codes, and regulations governing placement or maintenance of Communications Facilities within the Public Rights-of-way, including the general permit conditions in Section \*\*, the Small Wireless Communications Facilities Collocation permit conditions in Section \*\*, and the neighborhood compatibility standards in Section \*\*.
- (b) A permit for a proposed newly installed At-grade or Below-grade Communications Facility shall remain effective for one (1) year. The County Engineer may extend the expiration date of the permit for good cause.

Commented [JI35]: General permit condition section  
Commented [JI36]: Small wireless CF permit conditions section  
Commented [JI37]: Neighborhood compatibility section.

**Sec. 16-203. Objective Design Standards for Compatibility with Surrounding Neighborhood**

- (a) In General. At-grade or Below-grade Communications Facilities shall be designed in such a manner that the Facilities are compatible with the Surrounding Neighborhood and to minimize any negative visual impact on the Surrounding Neighborhood. In order to achieve compatibility with the Surrounding Neighborhood and to minimize the negative visual impact on the Surrounding Neighborhood, the following design standards shall apply, unless waived pursuant to Section \*\*.
- (b) Stealth Design. Stealth Design for At-grade and Below-grade Communications Facilities shall be utilized in order to minimize the visual impact of the Facilities, and to preserve compatibility with Surrounding Neighborhoods. Stealth Design features may include the following, without limitation:
- (i) the use of foliage and vegetation based on conditions of the specific area where the Facility is to be

Commented [JI38]: Waiver section

located. Any proposed landscaping shall be approved by the Environmental Division of the Department of Development Support and Environmental Management; and (ii) equipment Wraps or Shrouds.

(c) *No Signage.* Registrants shall not place or maintain signage on At-grade or Below-grade Communications Facilities in Public Rights-of-way, unless otherwise required by federal or State law, provided; however, that Existing Structures that lawfully supported signage before being Repurposed may continue to support signage as otherwise permitted by law or County Code, as amended.

(d) *Lighting.* An At-grade or Below-grade Communications Facility shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, State, or local rule, regulation, the FAA or law; provided, however, the County may require an LED street light on an Existing Structure functioning as a light pole.

(e) *Prohibition against Placement where the County has plans for sidewalks; preference for Arterial or Collector Roadways.* No newly installed At-grade Communications Facility shall be Placed or Maintained where the County has plans to install a sidewalk or multi-purpose trail or within two (2) feet of the planned sidewalk, nor shall such At-grade Communications Facility be located in such a manner that would preclude a pathway for the planned sidewalk or multi-purpose trail.

**Deleted:** in the swale area on the side of an Arterial Roadway, Collector Roadway or Local Roadway

(f) *Minimum distance separation from existing sidewalk and/or multi-purpose trail.* No newly installed At-grade or Below-grade Communication Facility shall be Placed or Maintained in the Public Rights-of-way within two (2) feet of an existing sidewalk or multi-purpose trail. The Registrant may include a proposed re-routing of the sidewalk or multi-purpose trail at the Registrant's own expense to meet the requirements of this subsection.

(i) *Installation at outermost boundary of Public Rights-of-way.* At-grade Communications Facilities are encouraged to be placed at the farthest distance practicable from the edge of pavement

**Deleted:** Where a superior site design results from placement of an At-grade or Below-grade Communication Facility at or near the outermost boundary of the Public Right-of-way.

**Deleted:** centerline of the Public Right-of-way and

(j) *Placement within the Canopy Roads Overlay District.* No new At-grade shall be placed within the Canopy Roads Protection Zone, as defined in Section 10-6.707. Collocations to an Existing Structure that require the removal of tree(s) in excess of two (2) inches in diameter or the removal of a tree limb greater than twelve (12) inches in diameter, shall be required to mitigate for such removals as provided in Section \*\*. Any mitigate plan shall be approved by the Environmental Division of the Department of Development Support and Environmental Management.

**Deleted:** is encouraged. To the extent that the location of the sidewalk within the Public Right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this Article, then the County Engineer or Registrant may propose, and the Registrant may include in the Permit application, a proposed re-routing of the sidewalk at the Registrant's own expense, in order to achieve such superior site design or otherwise meet other requirements of this Article.

**Deleted:** or Below-grade

(k) *Placement within a Gateway.* No new At-grade or Below-grade Communication Facility shall be placed within a Gateway Road Overlay District. The purpose and intent of the Gateway Road Overlay District is to protect gateway roads into the City from visual clutter, visual obstructions, and the proliferation of poles on the following roads, and any other roads designated in the Gateway Road Overlay District:

- (1) Thomasville Road;
- (2) Kerry Forest Extension;
- (3) Welaunee Boulevard;
- (4) North Monroe Street;
- (5) Mahan Drive from Buck Lake Road generally eastward to the Jefferson County

boundary, except for the segment between Thornton Road and I-10.

**Deleted:** (1) . Prohibition against placement in location where facilities are placed underground: A Wireless Service Provider shall, in relation to a Small Wireless Facility, Utility Pole or Wireless Support Structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the City that prohibit aboveground structures in the public rights-of-way.¶

### Division 3. Wireless Communications Facilities Standards

#### **Sec. 16-300. Applicability.**

This division shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a wireless communication facility in the Public Rights-of-Way, unless otherwise exempt by operation of applicable state or Federal law. This division shall not apply to wireless communications facilities owned by a public entity, including the county, or electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis by said public entity or electric cooperative.

#### **Sec. 16-301. Wireless Communications Facilities Permitted in the Public Rights-of-way.**

Subject to the requirements of this Article, the following Wireless Communications Facilities may be placed within the Public Rights-of-way:

(1) Small Wireless Communications Facilities may be Collocated on Existing Structures;

(2) Micro Wireless Facilities may be is suspended on cable strung between Existing Structures in compliance with Applicable Laws by or for a Communications Services Provider authorized to occupy the Public Rights-of-way and who is remitting taxes under Chapter 202, F.S., as amended; and

(3) Newly installed Wireless Support Structures and accompanying Small Wireless Communications Facilities.

#### **Sec. 16-302. Permit Requirements; Application; Review Timeframe.**

(a) Permit Required. A Registrant shall not commence to Place or Maintain a Wireless Communications Facility in the Public Right-of-way until all applicable Permits have been issued by the county, except for Limited Work as provided in subsection (b). A Registrant may submit a Consolidated Permit Application and receive a single Permit for the Collocation of up to thirty (30) Small Wireless Facilities. The Registrant acknowledges that as a condition of granting Permits, the county may impose reasonable conditions governing the Placement or Maintenance of a Wireless Communications Facility in the Public Rights-of-way as set forth in Section 337.401, F.S., as amended. Permits shall apply only to the areas of the Public Rights-of-way specifically identified in the Permit.

**Commented [JI39]:** Permit not required for Section

(b) Permit Not Required. A Registrant shall be allowed to perform Limited Work within the Public

Rights-of-way without first obtaining a permit if such proposed Limited Work does not involve excavation, or the closure of a sidewalk or vehicle lane.

(1) As used in this section, the term *Limited Work* shall mean:

- a. Routine maintenance;
- b. Emergency Maintenance;
- c. Replacement of an existing Wireless Communications Facility with a Wireless Communications Facility that is substantially similar or of the same or smaller size; or
- d. Installation, placement, maintenance, or replacement of a Micro Wireless Facility that is suspended on cable strung between Existing Structures in compliance with Applicable Laws by or for a Communications Services Provider authorized to occupy the Public Rights-of-way and who is remitting taxes under Chapter 202, F.S., as amended.

(2) In the case of routine maintenance, a Registrant shall provide at least three (3) days' advance written notice to the county identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. In the case of emergency maintenance, a Registrant shall provide prompt notice to the county of the emergency repair. As used in this Section, the term *Emergency Maintenance* means the repair or replacement of a Wireless Communications Facility or Wireless Support Structure as a result of a condition that affects the public health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.

(c) Permit Application. As part of any permit application to Place or Maintain a Wireless Communications Facility or a Wireless Support Structure (with accompanying Small Wireless Communications Facility) in the Public Rights-of-way, the Registrant shall provide a Permit application or Consolidated Permit Application that sets forth, at a minimum, the following:

(1) Engineering plan. An engineering plan signed and sealed by a Florida licensed professional engineer, that includes:

- a. The type of proposed Wireless Communications Facility including the dimensions, volume, height, and stealth features of the proposed Wireless Communications Facility or Wireless Support Structure, and location of the proposed Wireless Communications Facility or Wireless Support Structure, including whether the proposed Wireless Communications Facility is located within a Canopy Roads Overlay District as defined in Section 10-6.707, a Gateway Overlay District, or a location subject to restrictions pursuant to Section \*\*;
- b. The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a 6 decimal

**Deleted:** ,

**Deleted:** dimensions, volume, height, and stealth features of the

**Commented [JI40]:** Objective Design Standards Section, Prohibition against placement within a location subject to restrictions subsection

**Deleted:** or Wireless Support Structure that will be located in the Public Rights-of-way

- point precision;
- c. Sufficient specificity demonstrating compliance with the Florida Building Code, specifically in terms of compliance with ASCE-7-10, or latest edition for requirements of wind load (or say: in compliance with the High Velocity Zone Criteria specified in the Florida Building Code, Chapter 16); and
- d. For new Wireless Support Structures over fifty (50) feet in height, or for any excavation work, a geotechnical report for the existing soil conditions, or a soil signed and sealed statement by a Florida licensed professional engineer, to the soil conditions.

Commented [JI41]: Industry proposes 50 feet here

- (2) Full color photo-simulation. For a new Wireless Support Structure, the applicant shall provide a full color photo-simulation showing the proposed new Wireless Support Structure installed in accordance with the application from the point of view of properties Adjacent to the proposed site.
- (3) Description of installation or construction. The applicant shall provide a description of the manner in which the Communications Facility will be installed and/or modified (i.e. anticipated construction methods or techniques)
- (4) Attestation. For new Wireless Support Structures, the applicant shall provide an attestation that a Small Wireless Communications Facility will be collocated on the wireless support structure and will be used by a Wireless Service Provider to provide service within nine (9) months after the date the application is approved.
- (5) Pole Attachment Agreement. For collocations on Private Utility Poles, the applicant shall provide a copy of a valid pole attachment agreement for the collocation of the proposed Wireless Communications Facility. In lieu of providing the complete pole attachment agreement between the owner of the Private Utility Pole and applicant, the applicant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the Private Utility Pole, so long as adequate identifying information, acceptable to the County, is provided to indicate that the applicant is authorized to collocate on the specific Private Utility Pole.
- (6) Stealth Design. The applicant shall provide a description of Stealth Design to be utilized to minimize the visual impacts on the Surrounding Neighborhood pursuant to Section\*\*. Alternatively, a signed and sealed statement by a Florida licensed professional engineer, that Stealth Design cannot be utilized and providing documentation demonstrating to the satisfaction of the County Engineer that the proposed Communications Facility cannot employ Stealth Design and the proposed exterior location and configuration of equipment proposed are the minimum equipment necessary to achieve the needed function.
- (7) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate given the Communications Facility proposed, to accommodate Placement or Maintenance of the Communications Facility.

- (8) Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and maintenance of traffic (MOT) plan, if appropriate given the Wireless Communications Facility proposed, to accommodate installation and/or modification of the Communications Facility.
- (9) Restoration plan and cost of restoration of the Public Right-of-way. Given the Communications Facility proposed, a restoration plan and an estimate of the cost of restoration of the Public Rights-of-way.
- (10) Timetable for construction or installation and intended areas of service. The timetable for Placement or Maintenance of the proposed Wireless Communications Facility or each phase of the Placement or Maintenance thereof.
- (11) Consolidated Permit Applications. For Consolidated Permit Applications, the applicant shall only be required to provide a structural certification by a Florida licensed professional engineer as to each type of Small Wireless Communications Facility, not for each Small Wireless Communications Facility proposed as part of the overall Project. ~~No such certification is required with respect to wireline Pole Attachment installations made in the communications space of Utility Poles.~~
- (12) Information regarding Public Right-of-way resources. The applicant shall provide information on the ability of the Public Rights-of-way to accommodate the proposed Wireless Communications Facility, if available. Further, in order to assess the impacts on the Public Rights-of-way resources and for purposes of negotiating an alternative location and ensuring that height restrictions are met, the applicant shall identify all Existing Structures, Wireless Support Structures, and other above-grade facilities in the Public Rights-of-way within a three hundred (300) foot radius of the proposed new Wireless Communications Facility (such information may be produced without certification as to correctness to the extent such information is obtained from other Registrants with Facilities in the Public Rights-of-way). ~~No such identification is required with respect to wireline Pole Attachment installations made in the communications space of Utility Poles.~~
- (13) Registrant agrees to indemnification. A statement shall be included within the Permit application that by execution of the application and by applying for the Permit, the Registrant agrees to be bound to the county with respect to the indemnification provisions set forth in Section \*\* as though such indemnification provisions are set forth verbatim in the Permit application.
- (14) Airport Airspace Protection. Applicant shall comply with Florida Statutes Chapter 333 and all Federal regulations pertaining to airport airspace protections.
- (15) Comply with Land Development Code. Applicant shall comply with all applicable Land Development Code, including without limitation, City Land Development Code Section

**Commented [MK42]:** Industry requested change in radius from 500 to 250-300 feet.

**Commented [JI43]:** Indemnification Section

**Deleted:** (14) Public notice of new Wireless Support Structures. ¶

¶ a. Simultaneous with the filing of an application for a Permit for the installation of a new Wireless Support Structure, the Registrant shall submit an affidavit of mailing, attesting that Notice of Pending Application has been mailed to the current address (based upon the most recent ad valorem tax records of the Leon County Property Appraiser's Office) of each property owner within three hundred (300) feet of the project and to registered neighborhood and business associations of property located within a three hundred (300) foot radius of the proposed site of the new Wireless Support Structure. ¶

¶ b. The Notice of Pending Application shall notify such persons that an Application for a new Wireless Support Structure has been filed with the County Engineer and shall invite such persons to provide comments, inquiries or objections to the County Engineer and Registrant within fifteen (15) days of the date the Notice was posted to the U.S. Mail. The Notice of Pending Application shall provide the name, mailing address, electronic mail address and phone number of the County Engineer to whom such persons should direct their comments, inquiries or objections. The contact information for the County Engineer shall be in 14 point bold faced print. ¶

¶ c. The Notice of Pending Application shall contain the following: ¶

¶ 1. A description of the location of the proposed new Wireless Support Structure by reference to the property street addresses abutting the proposed site. ¶

¶ 2. A description of the new Wireless Support Structure to be installed, including the size, dimensions and height of the proposed new Wireless Support Structure. ¶

¶ 3. A full color photo-simulation showing the proposed new Wireless Support Structure installed in accordance with the application from the point of view the properties adjacent to the proposed site, together with depictions of any Stealth Design features to be utilized; and. ¶

¶ 4. The location where such persons may go to examine any other materials relative to the pending Permit Application.

**Deleted:** 5

**Deleted:** 6

5-83, Tree Protection and Removal Standards.

- (16) Additional information as reasonably required for review of Permit application. Such additional information as the County Engineer finds reasonably necessary with respect to the Placement or Maintenance of the Wireless Communications Facility that is the subject of the Permit application to review such Permit application, which information may include, but is not necessarily limited to: (i) evidence satisfactory to the County Engineer that the proposed Wireless Communications Facility will not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive or other dangerous chemicals; and (ii) a written statement from a qualified radio frequency engineer that the construction and placement of the proposed Wireless Communications Facility complies with applicable laws.

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(c) Application Review Timeframes. An application for a permit within the Public Rights-of-way shall be reviewed by the county as follows:

- (1) Notice of Application Deficiency. Within fourteen (14) days after the date of filing an application for the collocation of a Small Wireless Communications Facility or for the placement of a new Wireless Support Structure, the County Engineer shall determine whether the application is complete. If an application is deemed incomplete, the County Engineer shall notify the Applicant by electronic mail and specifically identify the missing information. An application shall be deemed complete if the County Engineer fails to notify the Applicant otherwise within fourteen (14) days after the date of filing the application.
- (2) Request for Alternative Location. Within fourteen (14) days after the date of filing the application for collocation of a small wireless facility, the County Engineer may request that the proposed location of the Small Wireless Communications Facility be moved to another location and be placed on another Existing Structure or by placing a new Wireless Support Structure. The County and Applicant may negotiate the alternative location, including alternative design standards and reasonable spacing requirements for ground-mounted equipment for thirty (30) days after the County submits the request. The Applicant shall notify the County of its acceptance or rejection within this thirty (30) day negotiating period. If the Applicant accepts the alternative location, the application shall be deemed granted for the agreed-upon alternative location and all other locations in the application. If the requested alternative location is rejected by the applicant, the County Engineer shall approve or deny the original application within ninety (90) days after the date the application was filed.
- (3) Application Review Period. Within sixty (60) days after the date of filing an application for the collocation of a Small Wireless Communications Facility or for the placement of a new Wireless Support Structure, the County Engineer shall approve or deny the application. If the County Engineer does not submit a request for an alternate location as provided in subsection (2), the County Engineer and the Applicant may mutually agree to extend the sixty (60) application review period.

Commented [JI45]: Request for alternative location subsection

- (4) Notice of Denial; Resubmission. Should the Application be denied, the County Engineer shall notify the Applicant by electronic mail on the day the Application is denied and specify in writing the basis for denial, including the specific code provisions on which the denial is based. The Applicant may cure the deficiencies identified by the County Engineer and resubmit the application within thirty (30) days after the notice of denial is sent. The County Engineer shall approve or deny the revised application within thirty (30) days after the date of filing the application. Any subsequent review shall be limited to the deficiencies cited in the notice of denial.
- (5) Consolidated Permit Applications. The county may separately address each proposed collocated Small Wireless Facility for which incomplete information has been received or which are denied.

**Sec. 16-303. Small Wireless Communications Facility Collocation Permit Conditions.**

(a) The County Engineer may deny a proposed Collocation of a Small Wireless Communications Facility in the Public Rights-of-way if the proposed Collocation:

- (1) Materially interferes with the safe operation of traffic control equipment;
- (2) Materially interferes with sight lines or clear zone standards and specifications for transportation, pedestrians, or public safety purposes as provided in the Florida Department of Transportation Plans Preparation Manual, Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the Florida Greenbook), and/or the Florida Department of Transportation Design Standards, as such may be amended;
- (3) Materially interferes with compliance with the Americans with Disabilities Act, 42 U.S.C. Sec. 12101, et seq, or similar federal or State standards regarding pedestrian access or movement;
- (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
- (5) Fails to comply with Applicable Laws and County Ordinances, codes, and regulations governing placement or maintenance of Small Wireless Communications Facilities within the Public Rights-of-way, including the general permit condition in Section \*\* and the neighborhood compatibility standards in Section \*\*.

**Commented [JI46]:** General permit conditions section  
**Commented [JI47]:** Neighborhood compatibility section.

(b) A permit for the collocation of a Small Wireless Communications Facility shall remain effective for one (1) year. The County Engineer may extend the expiration date of the permit for good cause.

**Sec. 16-304. Wireless Support Structure Permit Conditions.**

(a) Newly installed Wireless Support Structures and accompanying Small Wireless Communications Facilities may be Placed and Maintained within the Public Rights-of-way subject to

the County's consideration of the following standards and minimum requirements:

- (1) Sufficiency of space to accommodate present and pending applications for use of the Public Rights-of-way. The sufficiency of space to accommodate all of the present and pending applications to place Wireless Support Structures, Utility Poles, and other above-ground structures within the subject area of the Public Rights-of-way;
- (2) Sufficiency of space to accommodate the need for projected public improvements. The sufficiency of space to accommodate county plans for public improvements or projects adopted as part of its Capital Improvements Plan or other approved capital improvements lists as part of the Tallahassee-Leon County Comprehensive Plan;
- (3) Impact on traffic and traffic and pedestrian safety. The impact on traffic and traffic and pedestrian safety will be evaluated by the County. The evaluation will include, without limitation, potential traffic interference on the safe and efficient movement of people and property that will endanger the health, safety and general welfare of the public, interference with sight lines or clear zones for transportation, pedestrians or public safety purposes;
- (4) Impact on Existing Communications Facilities and Utilities. The impact upon existing Communications Facilities and utilities in the Public Rights-of-way;
- (5) Applicable Laws. Applicable laws, County Ordinances, codes, and regulations governing placement or maintenance of Communications Facilities within the Public Rights-of-way, including the general permit conditions in Section \*\*, the Small Wireless Communications Facilities Collocation permit conditions in Section \*\*, and the neighborhood compatibility standards in Section \*\*.

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Commented [JI48]: General permit condition section

Commented [JI49]: Small wireless CF permit conditions section

Commented [JI50]: Neighborhood compatibility section.

(b) A permit for a proposed newly installed Wireless Support Structure and accompanying Small Wireless Communications Facility shall remain effective for one (1) year. The County Engineer may extend the expiration date of the permit for good cause.

**Sec. 16-305. Objective Design Standards for Compatibility with Surrounding Neighborhood**

(a) In General. Small Wireless Communications Facilities and Wireless Support Structures shall be designed in such a manner that the Facilities and Structures are compatible with the Surrounding Neighborhood and to minimize any negative visual impact on the Surrounding Neighborhood. In order to achieve compatibility with the Surrounding Neighborhood and to minimize the negative visual impact on the Surrounding Neighborhood, the following design standards shall apply, unless waived pursuant to Section \*\*.

Commented [JI51]: Waiver section

(b) Stealth Design. Stealth Design for Small Wireless Communications Facilities and Wireless Support Structures shall be utilized in order to minimize the visual impact of Small Wireless Communications Facilities and Wireless Support Structures, and to preserve compatibility with Surrounding Neighborhoods. Stealth Design is not required with respect to wireline pole attachment

installations made in the communication space of Utility Poles. Stealth Design features shall include the following:

- (1) For new Wireless Support Structures, as well as Existing Structures in the Public Rights-of-way, top mounted antennas within enclosures shall not extend the diameter of the supporting Wireless Support Structure, Existing Structure or other support structure at the level of antenna attachment. Side mounted enclosures with antennas within shall not extend more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment. For purposes of calculating the above, the dimensions of the supporting Wireless Support Structure, Existing Structure or other support structure do not include any platform, rack, mount or other hardware used to attach an antenna or antenna enclosure to the supporting structure.
- (2) A Repurposed Structure shall be of substantially similar design, material, and color of the Existing Structure being replaced by the Repurposed Structure. The diameter of a Repurposed Structure shall not be greater than 50% greater than the Existing Structure being replaced by the Repurposed Structure. If the County has a plan to replace Utility Poles in the subject Public Right-of-way, the Repurposed Structure shall conform to the County's updated design, material, and color. A new Wireless Support Structure shall be of substantially similar design, material and color of other Utility Poles in the Surrounding Neighborhood. If the County has a plan to replace Utility Poles in the subject Public Right-of-way, the Wireless Support Structure shall conform to the County's updated design, material, and color.

**Deleted:** other poles located within five hundred (500) feet

(c) Other Stealth Design. Stealth design features proposed by an applicant and approved by the County based on unique circumstances applicable to the Small Wireless Communications Facility or the Wireless Support Structure may be utilized. Additional stealth design features may include, without limitation, the following:

- (1) Shrouds;
- (2) The use of foliage and vegetation based on conditions of the specific area where the Facility is to be located. Any proposed landscaping shall be approved by the Environmental Division of the Department of Development Support and Environmental Management;
- (3) Flag poles;
- (4) Street light fixtures;
- (5) Equipment Wraps; and
- (6) Fencing.

(d) No Signage. Registrants shall not place or maintain signage on Communications Facilities in Public Rights-of-way, unless otherwise required by federal or State law, provided; however, that

Existing Structures that lawfully supported signage before being Repurposed may continue to support signage as otherwise permitted by law or County Code, as amended.

(e) *Lighting.* A Small Wireless Communications Facility and Wireless Support Structure shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, State, or local rule, regulation, the FAA or law; provided, however, the County may require an LED street light on a Repurposed Structure or a Wireless Support Structure.

**Deleted:** on an Existing Structure functioning as a light pole

(f) *Maximum Height Restrictions.* A Small Wireless Communications Facility, including any attached antennas, shall not exceed Ten (10) feet above the Existing Structure upon which the Small Wireless Facility is to be Collocated. Unless waived pursuant to Section \*\*, a newly installed Wireless Support Structure is limited to the tallest existing Utility Pole as of July 1, 2017, located in the County Public Right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within five hundred (500) feet of the proposed location of the new Wireless Support Structure. If there is no Utility Pole within five hundred (500) feet, the new Wireless Support Structure, not including the accompanying Small Wireless Communications Facility, shall be limited to fifty (50) feet. The Small Wireless Communications Facility, including any attached antennas, shall not exceed ten (10) feet above the new Wireless Support Structure.

**Commented [J152]:** waiver/variance section. Waivers can only be granted for height of new poles, not collocations.

**Deleted:** same.

(g) *Prohibition against Placement where the County has plans for sidewalks; preference for Arterial or Collector Roadways.* No newly installed Wireless Support Structure shall be Placed or Maintained where the County has plans to install a sidewalk or multi-purpose trail or within two (2) feet of the planned sidewalk, nor shall such Wireless Support Structure be located in such a manner that would preclude a pathway for the planned sidewalk or multi-purpose trail. Collocations to an Existing Structure are exempt from this requirement but shall be subject to any future relocation of the Existing Structure to accommodate sidewalks. Wireless Support Structure are encouraged to be placed in Arterial or Collector Roadways whenever possible.

**Deleted:** in the swale area on the side of an Arterial Roadway, Collector Roadway or Local Roadway.

**Deleted:** New.

(h) *Minimum distance separation from existing sidewalk and/or multi-purpose trail.* No newly installed Wireless Support Structure shall be Placed or Maintained in the Public Rights-of-way within two (2) feet of an existing sidewalk or multi-purpose trail. Collocations to an Existing Structure are exempt from this requirement. The Registrant may include a proposed re-routing of the sidewalk or multi-purpose trail at the Registrant's own expense to meet the requirements of this subsection.

(i) *Installation at outermost boundary of Public Rights-of-way.* Wireless Support Structures are encouraged to be placed at the farthest distance practicable from the edge of pavement.

**Deleted:** Where a superior site design results from placement of a Wireless Support Structure at or near the outermost boundary of the Public Right-of-way.

**Deleted:** the centerline of the Public Right-of-way and

(j) *Placement within the Canopy Roads Overlay District.* No new Wireless Support Structures shall be placed within the Canopy Roads Protection Zone, as defined in Section 10-6.707. Collocations to an Existing Structure that require the removal of tree(s) in excess of two (2) inches in diameter or the removal of a tree limb greater than twelve (12) inches in diameter, shall be required to mitigate for such removals as provided in Section \*\*. Any mitigate plan shall be approved by the Environmental Division of the Department of Development Support and Environmental Management.

**Deleted:** is encouraged. To the extent that the location of the sidewalk within the Public Right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this Article, then the County Engineer or Registrant may propose and the Registrant may include in the Permit application a proposed re-routing of the sidewalk at the Registrant's own expense, in order to achieve such superior site design or otherwise meet other requirements of this Article. Collocations to an Existing Structure are exempt from this requirement but shall be subject to any future relocation of the Existing Structure to accommodate sidewalks or multi-purpose trails.

(k) *Placement within a Gateway.* No new Wireless Support Structures shall be placed within a Gateway Road Overlay District. The purpose and intent of the Gateway Road Overlay District is to

protect gateway roads into the City from visual clutter, visual obstructions, and the proliferation of poles on the following roads, and any other roads designated in the Gateway Road Overlay District:

- (1) Thomasville Road;
- (2) Kerry Forest Extension;
- (3) Welaunee Boulevard;
- (4) North Monroe Street;
- (5) Mahan Drive from Buck Lake Road generally eastward to the Jefferson County boundary, except for the segment between Thornton Road and I-10.

(l) Distance separation between ground-mounted equipment associated with a Small Wireless Communications Facility. Ground-mounted equipment associated with a Small Wireless Facility in the Public Rights-of-way must be spaced a minimum of three hundred fifty (350) linear feet apart from ground-mounted equipment associated with another Small Wireless Communications Facility, along the line of general vehicular travel.

**Commented [J153]:** The industry would like this to be 100 linear feet or less.

(m) Prohibition against Placement within a location subject to homeowner association restrictions. No Wireless Support Structures or Collocation of Small Wireless Facilities shall be placed within a location directly adjacent to an area subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association.

(n) Prohibition against Placement in a Front Yard within Residential Blocks. No Wireless Support Structure or Collocation of Small Wireless Facilities shall be placed within a Public Right-of-way that Abuts any Front Yard in Residential Blocks.

(o) Limitation on Placement in Corner Yards within Residential Blocks. A Wireless Support Structure within the Public Rights-of-way abutting a Corner Yard of a Corner Lot within a Residential Block shall not be placed any closer than ten (10) feet from the side property line of the Lot abutting and adjacent to the Corner Lot. Collocations to an Existing Structure are exempt from this requirement.

(p) Prohibition against placement that significantly impairs view from principal structures within Residential Blocks. All Wireless Support Structures shall be located such that views from principal structures within Residential Blocks are not significantly impaired. Where possible, newly installed Wireless Support Structures should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the Wireless Support Structure within Residential Blocks. Collocations to an Existing Structure are exempt from this requirement.

(q) Prohibition against placement in location where facilities are placed underground. A Wireless Service Provider shall, in relation to a Small Wireless Facility, Utility Pole or Wireless Support Structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the County that prohibit aboveground structures in the public rights-of-way.

#### **Sec. 16-306. Make-Ready Work**

(a) For an Authority 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, as amended, and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

(b) For an Authority Utility Pole that does not support an aerial facility used to provide Communications Services or electric service, the authority 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 sixty (60) days after receipt of a complete application. Make-ready work, including pole replacement, must be completed within sixty (60) days after the written acceptance of the good faith estimate by the Applicant. Alternatively, the County 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.

**Sec. 16-307. Removal or Relocation; Conversion of Overhead Distribution Facilities to Underground Distribution Facilities**

(a) *Removal or relocation.* Removal or relocation at the direction of the county of a Registrant's Communications Facilities in a Public Right-of-way shall be governed by the provisions of Sections 337.402, 337.403 and 337.404, F.S. as amended.

(b) *Conversion of overhead distribution facilities to underground distribution facilities.* Subject to Sections 337.402, 337.403 and 337.404, F.S., as amended, and other provisions of law, whenever existing overhead Utility distribution facilities are converted to underground distribution facilities, any Registrant having Communications Facilities, including Small Wireless Communication Facilities located on a Wireless Support Structure or Utility Pole which is to be removed as a result of said underground conversion, shall arrange at their sole expense for the conversion to underground facilities (for wired facilities) or above ground relocation (for wireless facilities) on the same terms and conditions as the other Utility distribution facilities that are being converted to underground distribution Facilities.

(c) *Temporary raising and lowering of Communications Facilities as accommodation.* A Registrant shall, on the request of any Person holding a Permit issued by the County, temporarily raise or lower its Wireline Communications Facilities to permit the work authorized by the Permit within the Public Rights-of-way. With the exception of the County, the expense of such temporary raising or lowering of Wireline Communications 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 not require the County to submit any payment for temporarily raising or lowering Communications Facilities. The Registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation.

**Commented [MK54]:** 337.402 – restore damage to public road  
337.403 – interference by utility  
337.404 – notice of removal or relocation

**Deleted:** (d) . *Pole Attachment rearrangement or replacement.* An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity, including the owner of such pole, duct, conduit, or right-of-way. ¶

**Sec. 16-308. Permit Fees.**

A Registrant that places or maintains Communications Facilities in the Public Rights-of-way and that pays Communications Services Taxes shall not be required to pay a permit fee since the County has elected to collect the Communications Services Tax pursuant to Ch. 202, F.S., as amended. Pass-Through Providers shall pay a fee pursuant to Section 337.401 (5), F.S., as amended, and Section \*\*

Commented [J155]: Pass-through fee section.

**Sec. 16-309. Pass-through provider fees and charges.**

(a) Pass-Through Providers shall pay to the County on an annual basis an amount equal to Five Hundred Dollars (\$500.00) per linear mile or portion thereof of Communications Facilities placed and/or maintained in the Public Rights-of-way.

(b) The amounts charged pursuant to this Section shall be based on the linear miles of Public Rights-of-way where Communications Facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.

(c) Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the Pass-Through Provider remits taxes imposed by the County pursuant to Chapter 202, F.S., as amended.

(d) Annual payments shall be due and payable on March 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the County shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the County may have for additional sums due and payable. All fee payments shall be subject to audit by the County, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the County, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

(e) If the payments required by this Section are not made within ninety (90) days after the due date, the County Engineer may withhold the issuance of any Permits to the Registrant until the amount past due is paid in full.

**Section 16-310. Collocation Fees.**

The rate to Collocate a Small Wireless Facility on an Authority Utility Pole shall be \$150 per pole annually. Annual payments shall be due and payable on March 1 of each year. If the payments required by this Section are not made within ninety (90) days after the due date, the County Engineer may withhold the issuance of any Permits to the Registrant until the amount past due is paid in full.

**SECTION 4. Severability.** If any provisions or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

**SECTION 5. Conflicts.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2030 Comprehensive Plan as amended, which provisions shall prevail over any parts of this ordinance which are inconsistent, either in whole or in part, with the said Comprehensive Plan.

**SECTION 6. Effective Date.** This ordinance shall be effective according to law.

DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon County, Florida this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

LEON COUNTY, FLORIDA

By: \_\_\_\_\_  
John E. Dailey, Chairman  
Board of County Commissioners

ATTESTED BY:  
Gwendolyn Marshall, Clerk of Court  
& Comptroller  
Leon County, Florida

By: \_\_\_\_\_

APPROVED AS TO FORM:  
Leon County Attorney's Office

By: \_\_\_\_\_  
Herbert W. A. Thiele, Esq.  
County Attorney