

CITY OF BONITA SPRINGS, FLORIDA
ORDINANCE NO. 18-01

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA, REGULATING THE PLACEMENT AND MAINTENANCE OF COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; AMENDING BONITA SPRINGS CODE §§34-40 – 34-43 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, DIVISION 2. - COMMERCIAL USES; CREATING BONITA SPRINGS CODE CHAPTER 38, RENAMED COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, REGISTRATION, SANCTIONS FOR UNREGISTERED PROVIDERS, NOTICE OF TRANSFER, SALE, OR ASSIGNMENT OF ASSETS; PROVIDING RULES, REGULATIONS, AND GENERAL CONDITIONS TO PLACEMENT OF COMMUNICATIONS SYSTEMS AND FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; REQUIRING DUTY TO NOTIFY CITY OF RESELLERS; CONDITIONAL USE OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR WIRELESS FACILITIES, REVOCATION OR SUSPENSION OF PERMITS AND INVOLUNTARY TERMINATION OF REGISTRATION; SETTING FORTH AN APPEALS PROCESS; REQUIRING FEES APPLICABLE TO THOSE NOT SUBJECT TO COMMUNICATIONS SERVICES TAX, EXISTING COMMUNICATIONS FACILITY, INSURANCE, INDEMNIFICATION, CONSTRUCTION BOND, PERFORMANCE BOND, SECURITY FUND AND ENFORCEMENT REMEDIES; ABANDONMENT OF A COMMUNICATIONS FACILITY; RESERVATION OF RIGHTS; AND, FORCE MAJEURE; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Bonita Springs has determined that the amendments set forth in this Ordinance promote the public health, safety, and general welfare of the residents of the City of Bonita Springs by regulating the siting of communications facilities within the public rights-of-way; and

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

WHEREAS, this Ordinance seeks to address new communications facilities technologies, while also protecting, preserving, and maintaining the aesthetic character of areas where such rights-of-way exist within the City; and

WHEREAS, Section 337.401, Florida Statutes, addresses the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way, and requires that rules and regulations imposed by a local government relating to

communications services providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and

WHEREAS, Section 337.401(7), Florida Statutes, addresses, *inter alia*, the authority of local governments to adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, and objective design standards requiring a new utility pole that replaces an existing facility to be of substantially similar design, material, and color, and prescribing reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, Section 337.401(7)(d)(12), Florida Statutes, provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties, provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, it is the City's intent to exercise its authority over communications services providers, communications facility providers, and pass-through providers' placement and maintenance of communications 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; and

WHEREAS, the City's rights-of-way are essential for the travel of persons and the transport of goods throughout the City and are a unique and physically-limited resource requiring proper management by the City in order to maximize efficiency, minimize costs to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety, and general welfare; and

WHEREAS, it is the City's intent to implement the Advanced Wireless Infrastructure Deployment Act as provided in Section 337.401(7), Florida Statutes; and

WHEREAS, it is the further intent of the City 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 City Council elected to increase the Communications Services Simplified Tax rate in lieu of collecting permit fees from providers of communications services; and

WHEREAS, the City has reviewed its Code of 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 City's Code of Ordinances and the City's Land Development 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 City's rights-of-way; and

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

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION 1. The City Council finds and declares that all statements in the preamble of this Ordinance are true and correct.

SECTION 2. Chapter 34 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, DIVISION 2. - COMMERCIAL USES, of the City Code, is amended as follows with underlined text as additions and strikethrough text as deletions.

Sec. 34-40. – Purpose, scope and intent.

It is the purpose of this division that, for the protection of the public safety, the City shall regulate the commercial use of the rights-of-way on all roads, streets, and highways within the City as set forth in Section 316.006(2), Florida Statutes, setting forth the original jurisdiction of the City. ~~street system. For purposes of this division, the term "City street system" shall be defined pursuant to F.S. § 334.03, as may be amended.~~

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Sec. 34-42. – Commercial use of rights-of-way.

It is unlawful to make any commercial use of the rights-of-way of any road, street, or highway within the City ~~street system~~. Prohibited commercial use shall include, but is not limited to:

- (1) The sale, or display for sale, of any merchandise, including vehicles;

- (2) The servicing or repair of any vehicle except for the rendering of emergency service;
- (3) The storage of vehicles being serviced or repaired on abutting property or elsewhere;
- (4) The solicitation for the sale of goods, property, or services for charitable, educational, religious or political purposes;
- (5) The solicitation of funds or donations for charitable, educational, religious or political purposes, except when performed by sworn law enforcement employed by the county sheriff's office or firefighters employed by the City fire control and rescue district within their jurisdiction, limited to no more than two weekends per year for each organization, and following the procedures set forth in the Section 316.2045, Florida Statutes; and
- (6) The display of any advertising other than that advertising in compliance with the chapter 6 of the Land Development Code, as may be amended.

Sec. 34-43. - Exceptions.

The commercial use of the right-of-way of any road, street or highway within the City ~~street system~~ is expressly prohibited, except that the commercial uses listed below may occur in the Public Rights-of-Way, but only in compliance with requirements and conditions set forth herein:

- (1) *City permitted or sponsored special events.* Any portion of a road, street, or highway, including the rights-of-way, within the City ~~street system~~ may be used for an art festival, parade, fair, or other special event which is properly permitted by the City. Notwithstanding section 34-42, during road closures for special events, said portion of the road may have solicitation for the sale of goods, property, or services, of funds or donations for charitable, educational, religious or political purposes by the entity holding the special events permit as a condition of the permit.
- (2) *Newspaper vending racks or machines.* Small, standard size newspaper vending racks or machines (as determined by industry standards) may be placed in Public Rights-of-Way only in compliance with division 3 of this article.
- (3) *Bus benches with signs.* Bus benches without signs shall be permitted at locations decided by the City council through placement. Bus benches with signs are not permitted.
- (4) *Utilities.* Placement of utilities in the rights-of-way of any road, street or highway within the City ~~street system~~ shall be made only when such placement is made pursuant to, and in compliance with, all applicable regulations (including franchises, when applicable and the rules and regulations of the applicable utility provider, or other written acknowledgement. The placement of communication and wireless facilities in the rights-of-way shall be subject to Chapter 38, Communications Facilities in Public Rights-of-Ways, of the City Code.

(5) *Commercial loading or unloading.* Temporary parking or stopping for the purpose of loading or unloading of merchandise, wares or passengers being received from or delivered to adjacent property is permissible only in the event a loading zone off the right-of-way is not available.

(6) *Visitor center designation signs.*

a. Business entities representing themselves to the public as a visitor center or welcome center may only obtain signage installed in the right-of-way as representing tourism interests if the entity meets the following criteria:

1. The entity is registered as an Internal Revenue Code (IRC) §501(c)(6) organization whose mission is to promote tourism and economic development for the City;

2. The entity has administrative offices at the visitor/information center or has employed dedicated staff on site trained in assisting tourists/visitors; and

3. The area designated for tourist/visitor information must be at least 350 square feet.

b. The signage may only be installed by the City or the state department of transportation after filing the applicable permit for such signage. All costs to fabricate and install the signage will be borne by the applicant.

SECTION 3. CHAPTER 38 – TELECOMMUNICATIONS, of the City Code, is hereby amended as follows with underlined text as additions and strikethrough text as deletions.

CHAPTER 38 – ~~TELECOMMUNICATIONS~~ COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 38-1. – Purpose and intent.

The City hereby makes and declares the following findings and declares its legislative intent as follows:

(1) The Public Rights-of-Way within the City are a unique and physically-limited resource and an important amenity that are critical to the travel and transport of Persons and property in the City.

(2) The demand for telecommunications services has grown exponentially in recent years, which may include the placement of telecommunications equipment and facilities in the Public Rights-of-Way.

(3) 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.

(4) In order to promote the public health, safety, and general welfare, the City finds that it is necessary to:

(a) provide for the Placement or Maintenance of Communications Facilities in the Public Rights-of-Way within the City limits;

(b) adopt and administer reasonable rules, regulations, and general conditions not inconsistent with applicable State and Federal law

(c) manage the Placement and Maintenance of Communications Facilities in the Public Rights-of-Way by all Communications Services Providers;

(d) minimize disruption to the Public Rights-of-Way; and

(e) require the restoration of the Public Rights-of-Way to the delineated specifications stipulated in the Permit.

Sec. 38-2. – Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Abandonment* means the cessation of all uses of a Communications Facility for a period of one hundred eighty (180) or more consecutive days; provided that, this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be “Abandonment” of a Facility in the Public Rights-of-Way. The terms Abandonment or Abandoned are not intended to include a Dropped Line from a potential or existing customer in the event the Communications Services Provider, Wireless Infrastructure Provider, or Pass-through Provider reasonably anticipates future use of the Dropped Line.

(2) *Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

(3) *Affiliate* means each Person, directly or indirectly, controlling, controlled by, or under common control with a Communications Services Provider that is Registered with the City; provided that Affiliate shall in no event mean any limited partner, member, or shareholder holding an interest of less than fifteen (15) percent in such Communications Services Provider.

(4) *Applicable Codes* means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this Chapter. The term includes objective design standards adopted by ordinance which may require that a new Utility Pole replacing an existing Utility Pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements. The term includes objective design standards adopted by ordinance which may require a Small Wireless Facility to meet reasonable location context, color, stealth, and concealment requirements.

(5) *Applicant* means any Person who submits an Application to the City for a permit to locate a Communications Facility or Utility Pole within the Public Rights-of-Way or to Collocate Small Wireless Facilities within the Public Rights-of-Way.

(6) *Application* means a request submitted by an Applicant to the City for a permit to locate a Communications Facility or Utility Pole within the Public Rights-of-Way or to Collocate Small Wireless Facilities within the Public Rights-of-Way.

(7) *As-built Plans* means a set of drawings in a format as specified by the Department Director submitted upon completion of a project and such drawings reflect all changes made during the construction process, and show the exact dimensions, depth, geometry, and location of all elements of the work completed under the permit.

(8) *Cable Service* means the one-way transmission to subscribers of Video Programming or any other programming service; and subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.

(9) *Cable Service Provider* means a Person that provides Cable Service over a Cable System.

(10) *Cable System* means a Facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service that includes Video Programming and that is provided to multiple subscribers within a community, but such term does not include: a Facility that serves only to retransmit the television signals of one or more television broadcast stations; a Facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such Facility uses any Public Rights-of-Way; a Facility that serves subscribers without using any Public Rights-of-Way; a Facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act of 1934 except such Facility shall be considered a Cable System other than for purposes of 47 U.S.C. § 541(c) to the extent such Facility is used in the transmission of Video Programming directly to subscribers, unless the extent of such use

is solely to provide interactive on-demand services; any Facilities of any electric utility used solely for operating its electric utility systems; or an open video system that complies with 47 U.S.C. § 573.

(11) City means the City of Bonita Springs, a municipal corporation organized and existing under the laws of the State of Florida. Under this section:

a. City Manager means the City Manager or designee.

b. Department Director means the Public Works Director, or person retained by the Public Works Director, qualified to take the specific actions as required for in this article.

(12) City Utility Pole means a Utility Pole owned by the City in the Public Rights-of-Way.

(13) Collocate or Collocation means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to a Wireless Support Structure or Utility Pole. The term does not include the installation of a new Utility Pole or Wireless Support Structure in the Public Rights-of-Way.

(14) Communications Facility, Facility, or Facilities means any portion of a Communications System located in the Public Rights-of-Way.

(15) Communications Services means the definition ascribed thereto in Section 202.11(1), Florida Statutes, as may be amended, and also includes, but is not limited to, Wireless Services as defined herein.

(16) Communications Services Provider means: (a) any Person, municipality, or county providing Communications Services through the use and operation of a Communications System or Communications Facilities installed, placed, and maintained in the Public Rights-of-Way, regardless of whether such System or Facilities are owned or leased by such Person, municipality, or county and regardless of whether such Person, municipality, or county has registered with the Florida Department of Revenue as a provider of Communications Services in Florida pursuant to Chapter 202, Florida Statutes; and (b) any Person, municipality, or county who constructs, installs, places, maintains, or operates Communications Facilities in the Public Rights-of-Way but who does not provide Communications Services, including, for example, a company that places “dark fiber” or conduit in the Public Rights-of-Way and leases or otherwise provides those Facilities to another company that does provide Communications Services.

(17) Communications System or System means any permanent or temporary plant, equipment, and property placed or maintained in the Public Rights-of-Way that is

occupied or used, or is capable of being occupied or used, by a Communications Services Provider for the purpose of producing, conveying, routing, transmitting, receiving, amplifying, distributing, providing, or offering Communications Services, including, but not limited to, cables, wires, lines, conduits, fiber optics, antennae, radios, and any associated poles, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, and other plant, equipment, and pathway.

(18) Construct or Construction means to construct, install, place, or excavate Utility Poles, utility facilities, Communications Facilities, or other physical features on, above, within, or under any part of the Public Rights-of-Way.

(19) Dealer means any Person, municipality, or county providing Communications Services to an end user within the City through the use and operation of Communications Facilities installed, Placed, and Maintained in the Public Rights-of-Way, whether owned or leased, and who has registered with the Florida Department of Revenue as a provider of Communications Services pursuant to Chapter 202, Florida Statutes.

(20) Department means the Public Works Division of the City of Bonita Springs.

(21) Dropped Line means a Wireline Facility leading from a Utility Pole to a building and terminating in said building at a height of 13'6".

(22) Emergency means a condition that poses clear and immediate danger to the life, safety, or health of one or more persons, or poses clear and immediate danger of significant damage to property.

(23) Excavation or other similar formulation of that term means the cutting, trenching, or other disturbance to the Public Rights-of-Way intended to change the grade or level of land or which causes any cavity, gap, depression, penetration, or hole in the surface of the Public Rights-of-Way.

(24) Existing Structure means a structure within the Public Rights-of-Way that exists at the time an Application to place a Communications Facility on the preexisting structure is filed with the City.

(25) FCC means the Federal Communications Commission.

(26) Government means the United States of America, the State of Florida, counties, municipalities, and any of their respective agencies, departments, or bureaus.

(27) In the Public Rights-of-Way means in, along, on, over, under, across, or through the Public Rights-of-Way.

(28) *Micro Wireless Facility* means a Small Wireless Facility having dimensions no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and an exterior antenna, if any, no longer than eleven (11) inches.

(29) *Pass-through Facilities* means the Facilities for a Communications System that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

(30) *Pass-through Provider* means any Person, municipality, or county that places or maintains a Communications System or Communications Facilities in the Public Rights-of-Way but who does not provide Communications Services to an end user within the corporate limits of the City.

(31) *Person* means any individual, firm, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, association, corporation, company, organization, or legal entity of any kind, including any Affiliate, successor, assignee, transferee, or personal representative thereof, and all other groups or combinations, and shall include the City to the extent that the City acts as a Communications Services Provider.

(32) *Placement or Maintenance* shall be broadly construed to include, among other things, Construction, erection, extension, expansion, grading, inspection, installation, location, maintenance, occupation, operation, placement, reconstruction, reconfiguration, relocation, removal, repair, replacement, undergrounding, trenching, or Excavation. Any Communications Services Provider that owns, leases, or otherwise controls the use of a Communications System or Facility in the Public Rights-of-Way, including the physical control to maintain and repair, is “placing or maintaining” a Communications System or Facility. A Person providing service only through buying wholesale and then reselling is not “placing or maintaining” the Communications Facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-Way does not constitute “placing or maintaining” Facilities in the Public Rights-of-Way.

(33) *Public Rights-of-Way* means a road, street, highway, bridge, tunnel, or alley that is owned by the City, publicly held by the City, or dedicated to the City for public use and over which the City has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the space above, at, or below the surface of such right-of-way. “Public Rights-of-Way” shall not include: (a) county, State, or Federal rights-of-way; (b) property owned by any Person other than the City; (c) platted utility easements that are not part of dedicated Public Rights-of-Way; (d) service entrances or driveways leading from the road or street onto adjoining property; or (e) except as described above, any real or personal property of the City, such as, but not limited to, City parks, buildings, fixtures,

conduits, sewer lines, facilities, or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

(34) Public Service Commission or PSC means the agency for the State of Florida charged with the powers and duties conferred upon it by Chapter 364, Florida Statutes.

(35) Record Drawings means a final and complete drawing accurately depicting the improvements as constructed. Record Drawings are not required to be signed and sealed by a Professional Surveyor and Mapper.

(36) Registration or Register means the process described in Section 38-3 herein whereby a Communications Services Provider provides certain information to the City. A Registrant is the Communications Services Provider filing for Registration with the City.

(37) Reseller means a Person who has entered into an agreement with a Registrant to utilize the Registrant's Communications Facility to provide Communications Services.

(38) Shroud means a covering or enclosure of a Utility Pole, Small Wireless Facility, and/or equipment associated with a Communications Facility other than the Antenna.

(39) 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 Communications Services Provider, or identification of wires, cables, etc., necessary to aid in safety or hazard work or maintenance or repair work of the Communications Facility.

(40) Small Wireless Facility means a wireless facility that meets the following qualifications: (a) each Antenna associated with the Facility is located inside an enclosure of no more than six (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.

(41) *Stealth Design* means a method of camouflaging any tower, Antenna, or other Communications Facility, including, but not limited to, supporting electrical or mechanical equipment, or Utility Pole which is designed to enhance compatibility with the surrounding neighborhood and to be as visually unobtrusive as possible.

(42) *Utility Pole* means a pole or similar structure used in whole or in part to provide Communications Services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include 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 unless the City grants a waiver for the pole.

(43) *Video Programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. § 522(20).

(44) *Video Service* means Video Programming services, including cable services, provided through Wireline Facilities located at least in part in the Public Rights-of-Way without regard to delivery technology, including Internet protocol technology. This definition does not include any Video Programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d), or Video Programming provided as part of and via a service that enables end users to access content, information, electronic mail, or other services offered over the public Internet.

(45) *Video Service Provider* means an entity providing Video Service.

(46) *Wireless Facilities* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, Antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes Small Wireless Facilities. The term does not include: (a) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; or (b) wireline backhaul facilities; or (c) coaxial or fiber-optic cable that is between wireless structures or Utility Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.

(47) *Wireless Infrastructure Provider* means a Person who has been certificated to provide telecommunications service in the State of Florida, and who builds or installs wireless communication transmission equipment, Wireless Facilities, or Wireless Support Structures, but is not a Wireless Services Provider.

(48) *Wireless Provider* means a Wireless Infrastructure Provider or a Wireless Services Provider.

(49) *Wireless Services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.

(50) *Wireless Services Provider* means a Person who provides Wireless Services.

(51) *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 Facilities. The term does not include a Utility Pole.

(52) *Wireline Facilities* means an aerial facility used to provide Communications Services.

(53) *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. 38-3. – Registration. A Communications Services Provider, Wireless Infrastructure 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 Public Rights-of-Way or perform any work exempt from the permitting requirements pursuant to this Chapter, Register with the City in accordance with this Section. Subject to the provisions prescribed in this Chapter, a Communications Services Provider that has properly Registered may apply for a permit to Place or Maintain a Communications System or Facilities in the Public Rights-of-Way.

(a) Every Communications Services Provider that desires to Place or Maintain Communications Facilities in the Public Rights-of-Way, including any Pass-through Provider, shall register with the City’s Public Works Office and shall submit the following information and documentation:

(1) The name of the Applicant under which it will transact business in the City and, if different, in the State of Florida;

(2) The address and telephone number of the Applicant’s principal place of business in the State of Florida and any branch office located in the City or, if none, the name, address, and telephone number of the Applicant’s national headquarters and its Registered Agent in Florida;

(3) The name, address, and telephone number of the Applicant's primary contact Person and the Person to contact in case of an Emergency;

(4) The type of Communications Services that the Applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the Applicant is a Pass-through Provider or is intending only to place and maintain Pass-through Facilities, as the case may be;

(5) For Registrations submitted on or after January 1, 2018, a copy of both the Applicant's resale certificate and certificate of registration issued by the Florida Department of Revenue to engage in the business of providing Communications Services in the State of Florida;

(6) A copy of the Applicant's certificate of authorization, public convenience and necessity, or other similar certification issued by the PSC;

(7) The number of the Applicant's certificate of authorization or license to provide Communications Services issued by the PSC, the Florida Department of Revenue, the FCC, or other Federal authority, if any;

(8) For an Applicant that is a Pass-through Provider, in lieu of paragraphs (5), (6), and (7) 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 of Florida; and

(9) Evidence of the Applicant's insurance coverage as required under this Chapter.

(b) The City shall review the information submitted by the Applicant. Such review shall be by the City Manager or his or her designee. If it is found that the Applicant complied with the requirements in subsection (a) above, the Registration shall be effective and the City shall notify the Applicant of the effectiveness of Registration in writing. If the City determines that the Applicant is not in compliance, the City shall notify the Applicant in writing of the non-effectiveness and denial of Registration and the reasons therefor. The City shall so reply to an Applicant within thirty (30) days after receipt of the Registration and all required information from the Applicant. Non-effectiveness and denial of Registration shall not preclude an Applicant from reapplying or filing subsequent applications for Registration under the provisions of this section.

(c) An effective Registration does not, and shall not be construed to, convey equitable or legal title in the Public Rights-of-Way to any Communications Services Provider. Registration under this Chapter governs only the Placement or Maintenance of

a Communications System or Communications Facilities in the Public Rights-of-Way. Other ordinances, codes, or regulations may apply to the Placement or Maintenance in the Public Rights-of-Way of facilities that are not part of a Communications System. Registration does not excuse a Communications Services Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on those facilities or property belonging to the City or another Person. Registration does not excuse a Communications Services Provider from complying with all other applicable City ordinances, codes, or regulations, including the rules, regulations, and general conditions set forth in this Chapter.

(d) A Communications Services Provider may cancel a Registration upon written notice to the City stating that it will no longer Place or Maintain a Communications System or any Communications Facilities in the Public Rights-of-Way and will no longer have a need to apply for a permit to perform Construction or other work in the Public Rights-of-Way. A Communications Services Provider cannot cancel a Registration if it intends to continue Placing or Maintaining a Communications System or any Communications Facilities in the Public Rights-of-Way.

(e) Registration, in and of itself, does not establish a right to Place or Maintain or a priority for the Placement or Maintenance of a Communications System or any Facility in the Public Rights-of-Way, but shall establish for the Communications Services Provider a right to apply for a permit from the City. Registrations are expressly subject to any future amendment to or replacement of this Chapter and further subject to any additional City ordinances, as well as any State or Federal laws that may be enacted.

(f) In January of each year, each Communications Services Provider that has previously complied with the Registration requirements of this Chapter shall submit an annual registration renewal to the City on a form provided by the City. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (a) above, a Communications Services Provider shall provide updated information to the City. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the City restricting the issuance of additional permits until the Communications Services Provider has complied with the Registration requirements of this section.

(g) In accordance with applicable City ordinances, codes, or regulations, a permit is required for a Communications Services Provider to Place or Maintain a Communications Facility in the Public Rights-of-Way. An effective Registration shall be a condition of obtaining such a permit. Notwithstanding an effective Registration, all permitting requirements shall apply, including the requirement to pay for any such permits, unless otherwise provided by resolution or ordinance of the City. A permit may be obtained

by or on behalf of the Communications Services Provider having an effective Registration if all permitting requirements of the City and other provisions of this Chapter are met.

Sec. 38-4. – Unregistered Providers.

To the extent that a Communications Services Provider, Wireless Infrastructure Provider, or Pass-through Provider is not Registered consistent with Section 38-3, said Person shall register with the City within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered Persons with Communications Facilities within the Public Rights-of-Way and such Persons may be subject to the enforcement remedies set forth in this Chapter.

Sec. 38-5. – Notice of Transfer, Sale, or Assignment of Assets.

If a Communications Services Provider transfers, sells, or assigns its System or any Facilities located in the Public Rights-of-Way incident to a transfer, sale, or assignment of the Communications Services Provider's assets, the transferee, buyer, or assignee shall be obligated to comply with the provisions set forth in this Chapter. Written notice of any such transfer, sale, or assignment shall be provided by the Communications Services Provider to the City Manager within thirty (30) days after the effective date of such transfer, sale, or assignment. If the transferee, buyer, or assignee is not currently Registered with the City, then the transferee, buyer, or assignee must Register as provided in Section 38-3 within sixty (60) days of the effective date of such transfer, sale, or assignment. If any Applications for a permit are pending under the Communications Services Provider's name as of the date the City receives written notice of the transfer, sale, or assignment, then the City shall consider the transferee, buyer, or assignee as the new Applicant unless otherwise notified by the Communications Services Provider.

Sec. 38-6. – Rules, Regulations, and General Conditions to Placement of Communications Systems and Facilities in the Public Rights-of-Way.

As a condition of allowing the Placement or Maintenance of a Communications System or any Communications Facility in the Public Rights-of-Way, and under additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations, and general conditions. Unless otherwise provided in this section, these rules, regulations, and general conditions shall apply to all Communications Services Providers, including those that are Pass-through Providers, irrespective of whether they place and maintain only conduit, dark fiber, or Pass-through Facilities.

(a) Rules on Utilization of the Public Rights-of-Way.

(1) Compliance with Laws. A Communications Services Provider shall at all times be in full compliance with and abide by all applicable Federal, State,

and local laws, codes, and regulations in Placing or Maintaining a Communications System or Communications Facilities in the Public Rights-of-Way.

(2) Due Care. A Communications Services Provider 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.

(3) Permits. A Communications Services Provider shall not commence to Place or Maintain a Communications Facility in Public Rights-of-Way until all applicable permits have been issued by the City and other appropriate authority, with the exception of the activities specifically listed below that do not cause any obstruction or redirection of normal traffic flow in excess of four (4) hours:

(a) Emergency actions, with the City reserving authority to require an after-the-fact permit based upon plans and Record Drawings and As-built Plans, if required by the Department Director, showing the placement or relocation of a Communications Facility undertaken in connection with the Emergency;

(b) Routine maintenance and/or repair of Communications Facilities and/or Utility Poles authorized to be located within the Public Rights-of-Way;

(c) Replacement of existing Wireless Facilities with Wireless Facilities that are substantially similar in design, material, and color, and of the same or smaller size; or

(d) Installation, Placement, Maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Services Provider authorized to occupy the Public Rights-of-Way and who is remitting taxes pursuant to Section 202.19, Florida Statutes.

(e) A Person shall be allowed to Place or Maintain a Dropped Line within the Public Rights-of-Way without first obtaining a permit if such proposed work does not involve Excavation, or the closure of a sidewalk or vehicle lane.

(f) Notwithstanding this section, the City may require a right-of-way permit for work that involves Excavation, or closure of a sidewalk and/or vehicular lane(s).

(4) Emergency action. Any Person who performs work in the Public Rights-of-Way in connection with an emergency action without a permit shall immediately notify the City of the emergency action. The Person shall cease all work immediately upon completion of the emergency action. The Person shall also cease all work immediately upon receipt of a City stop work order determining the situation does not involve an Emergency or that the emergency action is no longer warranted.

(5) Unlawful continuance. Any Person who actively continues any work after having been served with a stop work order, except such work as that Person is directed by the City to perform to remove a violation or unsafe condition, shall be subject to penalties as provided by the City Code. The City retains all available legal remedies to abate the work.

(6) Application for a Permit. Prior to the issuance of a Permit to allow the Placement or Maintenance of a Communications System or Facility in the Public Rights-of-Way, the City has the right to first review and consider, and the Communications Services Provider shall provide, all of the following:

(a) The expected dates and times when the Communications Facility will be installed and the estimated time needed for Construction and Placement of the proposed Communications Facility;

(b) The location of the proposed Communications Facility, the Public Rights-of-Way affected, and a description of the Communications Facility, including the type of Communications Facility (e.g., conduit, fiber, twisted pair, etc.), the number of fibers or other cable being installed, the depth, and the approximate size of the Communications Facility (e.g., length, height, width, depth, and diameter); and

(c) Plans, drawings, photographs, and schematics (including cross section layout) prepared by a qualified engineer or technician showing where the Communications Facility is proposed to be located in the Public Rights-of-Way and showing any known Communications Facilities or utility facilities in such Public Rights-of-Way.

(d) Temporary sidewalk closure plan. The Applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate Placement or Maintenance of the Communications Facility.

(e) Temporary maintenance of traffic plan. The Applicant shall provide a temporary traffic lane closure and maintenance of traffic plan, if

appropriate, to accommodate Placement or Maintenance of the Communications Facility.

(f) Restoration plan and cost of restoration of the Public Rights-of-Way. A restoration plan and a good faith estimate of the cost of restoration of the Public Rights-of-Way to accommodate Placement and Maintenance of the Communications Facility shall be provided. Such good faith estimate shall be accepted by the City unless the City determines such estimated costs are not representative of the actual costs of the restoration of the Public Rights-of-Way.

(g) Timetable for construction or installation and intended areas of service. A timetable for Placement or Maintenance of the proposed Communications Facility, or each phase of the proposed Placement or Maintenance such Communications Facility, shall be provided, together with a description of the intended areas of service.

(h) Registrant agrees to indemnification. A statement shall be included within the Application that, by execution of the Application and by applying for the permit, the Registrant agrees to be bound to the City with respect to the indemnification provisions set forth in Section 38-15 as though such indemnification provisions are set forth verbatim in the Application.

(i) Airport Airspace Protection. The Applicant shall comply with Chapter 333, Florida Statutes, and all Federal regulations pertaining to airport airspace protections.

(j) Information regarding height limitations. For a Wireless Support Structure, the Applicant shall provide information regarding the heights of other Utility Poles located in the same Public Rights-of-Way, measured from grade in place within five hundred (500) feet of the proposed location of the Wireless Support Structure. If there is no Utility Pole within five hundred (500) feet of the proposed location of the Wireless Support Structure, the Applicant shall certify the same. Upon such certification by the Applicant, approval of the proposed location shall be in the discretion of the Department. The maximum height of wireless support structures shall be fifty (50) feet measured from grade.

(k) Additional information as reasonably required for review of an Application. Such additional information as the Department Director finds reasonably necessary to demonstrate the Applicant's compliance with

Applicable Codes, local laws, and regulations, and State and Federal law with respect to the Placement or Maintenance of the Communications Facility that is the subject of the Application may be required to be submitted for the City to complete a review of such Application.

(7) Waiver of Standards for At-grade Communications Facilities, Below-grade Communications Facilities, Wireline Facilities, Utility Poles, and Wireless Support Structures.

(a) The waiver provisions listed in this subsection apply in those circumstances where a Communications Services Provider or Pass-through Provider's use of the Public Rights-of-Way is impaired by strict application of the requirements of this Chapter.

(b) A request for a waiver shall be filed contemporaneously with the Application. The request for a waiver shall contain each section or subsection of this Chapter for which a waiver is being 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 Chapter is required, including a detailed explanation addressing the relevant criteria to be considered by the City Council as provided in subsection (d) below;

(2) Distances of the proposed Communications Facility from the edge of pavement, sidewalks, and/or multi-purpose trails;

(3) Design of the proposed Communications Facility with particular reference to achieving compatibility with the surrounding neighborhood and eliminating adverse visual impacts on the surrounding neighborhood; and

(4) Any other information the City Manager may reasonably require to process the request for a waiver.

(c) The City Manager shall review the request for a waiver and shall prepare a recommendation for the City Council on the request for the waiver.

(d) The City Council shall grant or deny a request for a waiver within forty-five (45) days after the date of the request unless the Applicant

consents to a later date. The City Council shall consider the following criteria when determining whether to grant or deny a 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 Communications Facility for which the waiver is sought with adjacent properties and the surrounding neighborhood;

(3) Whether there are excessive expenses associated with compliance with the section or subsection for which a waiver is being sought; and

(4) Whether the proposed waiver preserves to the City flexibility in its management of its Public Rights-of-Way.

(e) In granting any waiver, the City Council may impose conditions to the extent the City Council concludes such conditions are necessary to minimize any adverse effects of the proposed Communications Facility on the surrounding neighborhood, or to protect the health, safety, and welfare of the public.

(8) Revised Plans. If the plans or drawings submitted showing the proposed location for installation of the Facility in the Public Rights-of-Way require revision for any reason prior to commencing Construction, the Communications Services Provider shall promptly submit revised plans and drawings to the Department Director.

(9) Power to Restrict Area. To the extent not otherwise prohibited by State or Federal law, the City shall have the power to prohibit or limit the Placement of new or additional Communications Facilities within a particular area of the Public Rights-of-Way and deny the issuance of a permit.

(10) Limited Purpose of Permit. A permit issued by the City constitutes authorization to undertake only certain activities in Public Rights-of-Way in accordance with this Chapter, and does not create any property right or other vested interest, or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way. A permit shall be granted only for specific routes or locations in the Public Rights-of-Way and for such term as described in the permit. The City's issuance of a permit shall not be construed as a warranty

that the Placement of any Communications Facility is in compliance with Applicable Codes, regulations, or laws.

(11) Responsibility for Contractors. Every Communications Services Provider that is Registered with the City shall be liable for the actions of contractor(s) hired by them to perform the Placement or Maintenance of Facilities in the Public Rights-of-Way and shall be responsible for making sure that such contractor meets and complies fully with the rules, regulations, and general conditions set forth in this Chapter.

(b) Regulations on the Placement or Maintenance of Communications Facilities.

(1) Provision and Form of Record Drawings and As-built Plans. Within forty-five (45) days after completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way, the Communications Services Provider shall provide the City with Record Drawings showing the final location of such Facility in the Public Rights-of-Way, including exact GPS coordinates. Upon request by the Department Director, the Communications Services Provider shall also provide the City with As-built Plans within forty-five (45) days after completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way. The Record Drawings and As-built Plans shall be provided to the City at no cost.

(2) Production and Filing of As-builts Plans. Every Communications Services Provider that is Registered with the City shall produce and keep on file at its principal place of business an accurate and complete set of As-built Plans of all Facilities Placed and Maintained in the Public Rights-of-Way. The location and identification of Facilities and the production of As-built Plans shall be at the sole expense of the Communications Services Provider. Within forty-five (45) days of any request by the Department Director, the Communications Services Provider must provide to the City, at no cost, copies of complete sets of As-built Plans for the indicated Public Rights-of-Way. The failure of the Communications Services Provider to produce, keep on file, or provide to the City As-built Plans as required under this Chapter is sufficient grounds for the City to deny the issuance of a permit in the future.

(3) Removal of Facilities Placed Without Permit. Any Communications Facilities placed in the Public Rights-of-Way by the Communications Services Provider without first having obtained the required permit shall be removed by the Communications Services Provider within thirty (30) days of written notice from the City to remove the same and, in default of

compliance with such notice, such Facilities may be removed by order of the Department Director and the cost of removal shall be borne and paid by the Communications Services Provider upon demand.

(4) Underground. The Placement or Maintenance of all Communications Facilities shall be underground unless otherwise approved in writing by the Department Director. Communications Facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the Department Director. All Communications Facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for and shall have two (2) feet of horizontal clearance from other underground utilities and their appurtenances. Where approved by the Department Director, Communications Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the Department Director.

(5) Above-Ground Approval. The Placement or Maintenance of Communications Facilities above-ground, including new poles and aerial wires, is subject to written approval by the Department Director. Attachment to any pole or other above-ground structure must be pursuant to a separate valid and effective pole attachment agreement or similar instrument. Location on any pole or other above-ground structure shall not be considered a vested interest of the Communications Services Provider, and such poles or structures, if owned by the Communications Services Provider, shall be removed or modified by the Communications Services Provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The lowest placement of any Communications Facility on any pole or other above-ground structure in the Public Rights-of-Way shall not be less than eighteen (18) feet from the ground. The Communications Services Provider shall, at such time as the electric utility facilities or other Communications Facilities are placed underground or are required by the City to be placed underground, concurrently place its Communications Facilities underground without cost to the City.

(a) New Utility Poles, where permitted, shall be placed between the property line and the curb line of all streets and shall not be within the roadway recovery area. The lowest wire on any of such poles, placed in any Public Rights-of-Way open to vehicular, bicycle, and/or pedestrian traffic shall not be less than eighteen (18) feet from the ground and, whenever telephone and electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code,

the National Electrical Safety Code and the “Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines” established by the Department of Commerce, Bureau of Standards of the United States, as may be amended.

(b) New Utility Poles, where permitted, shall be made of the similar design, material, and color as other Utility Poles within the same Public Rights-of-Way; however, black enamel/paint-clad metal or concrete poles, are preferred.

(c) New Utility Poles, where permitted, shall be located at least twenty (20) feet from the edge of the drip line of existing shade, conifer, or large ornamental species trees located in the Public Rights-of-Way or on private property.

(d) Replacement Utility Poles shall be of similar design, material, and color of the existing Utility Pole being replaced; however, black enamel/paint-clad metal or concrete poles, are preferred. The replacement Utility Pole shall be located in approximately the same location as the existing pole. The replacement Utility Pole shall continue to serve its primary function. If the City has a planned future project to replace Utility Poles in the subject Public Rights-of-Way, the replacement Utility Poles proposed in the Application shall conform to the City’s updated design, material, and color.

(6) General Stealth Design requirements for Communications Facilities within Public Rights-of-Way.

(a) Antennae(s) shall be slim design and shall not exceed the diameter of the pole at the point of attachment to which it/they are attached;

(b) Electric meters and disconnect switches may be mounted on the exterior of the pole and shall be concealed with use of Shrouds that are similar to the pole color and texture;

(c) To the maximum extent possible, exposed wires, cables, conduits, and other electronic or mechanical attachments shall be placed internal to the pole or concealed with use of a Shroud or Wrap that is similar to the color and texture of the pole;

(d) Other components, such as back-haul or cooling equipment, where housed above-ground, shall be placed within a cabinet, box, or other container that is concealed with a Wrap or Shroud that is similar to the pole

color or includes other imagery in context with the location of equipment (i.e., imagery of vegetation, architectural/geometrical patterns, or equivalent);

(e) Aerial electrical power and fiber connections for new Communications Facilities are not permitted where the majority of utilities have been under-grounded; and

(f) The use of wooden poles for Placement or Maintenance of new Communications Facilities is prohibited.

(7) Placement in relation to adjacent uses of property and building facades. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e., front façade and front property line, side street façade and side street property line), or such spaces do not exist in those locations on existing properties, new Communications Facilities and new Utility Poles shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building, as defined in this Code.

(8) Location context. A proposed Communications Facility shall utilize the following location context requirements:

(a) Installation at outermost boundary of Public Rights-of-Way. At-grade Communications Facilities, Utility Poles, and Wireless Support Structures shall be placed at the farthest distance practicable from the edge of pavement unless the proposed type of Facility has a designated corridor within the Public Rights-of-Way.

(b) Equidistant requirement. Utility Poles and Wireless Support Structures shall be placed equidistant between existing Utility Poles or Wireless Support Structures, if any, within the Public Rights-of-Way; provided that, this requirement shall not limit the placement of Small Wireless Facilities by imposing minimum separation distances.

(c) Common property line. For Placement within residential blocks, Utility Poles shall be placed at the common property line of the parcels that abut the Public Rights-of-Way.

(d) Prohibition against Placement that significantly impairs view from principal structures within residential blocks. At-grade Communications Facilities, Utility Poles, and Wireless Support Structures

shall be located such that views from principal structures within residential blocks are not significantly impaired.

(e) Prohibition against Placement within a location subject to homeowners' association restrictions. Wireless Support Structures shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association.

(f) Prohibition against Placement in location where Facilities are placed underground. At-grade Communications Facilities, Wireline Facilities, and Utility Poles in the Public Rights-of-Way shall comply with nondiscriminatory undergrounding requirements of the City that prohibit aboveground structures in the Public Rights-of-Way.

(9) Grounding rods and pull boxes. The grounding rod may not extend above the top of sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with FDOT Standard specification 635, and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.

(10) Other associated ground-mounted facilities and equipment. Ground-mounted equipment for Small Wireless Facilities shall be located within a ten (10) foot radius of the Utility Pole supporting such Facility and, if possible, in areas with existing foliage or other aesthetic features to obscure the view of the ground-mounted equipment. The ground-mounted equipment shall use Wrap that is similar to the pole color. If the City has a planned future project to replace Facilities or equipment in the subject Public Rights-of-Way, the replacement Facilities or equipment proposed in the Application shall conform to the City's updated design, material, and color.

(11) Signs. No signs shall be permitted on or attached to Communications Facilities or Utility Poles in Public Rights-of-Way, unless otherwise required by Federal or State law. Any Existing Structure or Facility that lawfully supports signs on the effective date of this Ordinance may continue to support such signs, as otherwise permitted by City code or State or Federal law, as may be amended.

(12) Separation from driveways and hydrants. Communications Facilities and Utility Poles shall be located at least ten (10) feet from a driveway apron and at least thirty (30) feet from a fire hydrant.

(13) Additional Placement and Maintenance Standards. The Placement or Maintenance of Communications Facilities in the Public Rights-of-Way shall be performed in accordance with the standards and requirements of the following, as is applicable and as each is in force at the time of the respective Placement or Maintenance of a Communications System or Facility:

(a) the Florida Department of Transportation Utilities Accommodation Guide;

(b) the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways;

(c) the Trench Safety Act (Chapter 553, Florida Statutes);

(d) the Underground Facility Damage Prevention and Safety Act (Chapter 556, Florida Statutes);

(e) the National Electrical Code or the ANSI National Electrical Safety Code; and

(f) the “Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines” established by the Department of Commerce, Bureau of Standards of the United States.

(14) Sunshine State One-Call. Every Communications Services Provider shall utilize and, if permissible, maintain membership in the utility notification one-call system administered by Sunshine State One-Call of Florida, Inc.

(15) Sufficiency of space. An Application for a permit for Placement of Communications Facilities is also subject to the City’s consideration of the following standards and minimum requirements regarding present and future use of the Public Rights-of-Way:

(a) 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;

(b) Sufficiency of space to accommodate the need for projected public improvements. The sufficiency of space to accommodate City plans for public improvements or projects adopted as part of the City's schedule of capital improvements or other approved capital improvements lists as part of the Comprehensive Plan; and

(c) Impact on traffic and traffic and pedestrian safety. The impact on traffic and traffic and pedestrian safety will be evaluated by the City. 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, and interference with sight lines or clear zones for transportation, pedestrians or public safety purposes.

(16) Safety and Minimal Interference. All Placement and Maintenance of Communications Facilities in the Public Rights-of-Way shall be subject to this Code and other regulations of the City pertaining thereto, and shall be performed with the least possible interference with the use and appearance of the Public Rights-of-Way and the rights and reasonable convenience of the property owners who abut or adjoin the Public Rights-of-Way and in compliance with the rules and regulations of the Florida Department of Transportation. The Communications Services Provider shall at all times employ reasonable care and use commonly-accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury or be a nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. All Placement and Maintenance shall be done in such a manner as to minimize to the greatest extent any interference with the usual travel on such Public Rights-of-Way. The use of trenchless technology (i.e., microtunneling and horizontal directional drilling techniques) for the installation of Communications Facilities in the Public Rights-of-Way, as well as joint trenching or the co-location of Facilities in existing conduit, is strongly encouraged, and should be employed wherever and whenever feasible.

(17) Correction of Harmful Conditions. If, at any time, the City or other authority of competent jurisdiction reasonably determines that any Communications Facility is causing, or has caused, a condition that is harmful to the health, safety, or general welfare of any Person, then the Communications Services Provider shall, at its own expense, promptly correct or eliminate all such Facilities and conditions. In an Emergency, as determined by the Department Director, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate repairs to any Communications

Facility that is damaged or malfunctioning, or has caused a sunken area or other condition which, in the Department Director's sole discretion, is deemed a threat to public safety, then the Department Director, 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 upon demand.

(18) Remedy of Hazardous Conditions. If, at any time, a condition exists that the City 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 City or other authority of competent jurisdiction reasonably determines that a Communications Services Provider must temporarily relocate or temporarily shut off service or transmissions through a specific Facility, then the City, as an appropriate exercise of its police powers, may order the Communications Services 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 City. In such an Emergency, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific Communications Facility, then the Department Director 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 upon demand.

(19) Interference with Other Facilities. A Communications Services Provider shall not, in violation of any applicable laws or regulatory standards, design, Place, or Maintain its Communications Facilities in a manner that will interfere with the signals or facilities of any municipal or county police, fire, or rescue department, the facilities of any public utility, or the Communications Facilities of another Communications Services Provider, including any cable service provider.

(20) Relocation or Removal of Facilities. Except in cases of an Emergency, a Communications Services Provider, at its own expense, shall:

(a) Upon thirty (30) days written notice, relocate or remove, as specified in said notice, its Communications Facility in the event the City finds that the particular Facility is unreasonably interfering in some way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of any Public Rights-of-Way. The

City shall provide the Communications Services Provider with a notice and order as provided for in Section 337.404, Florida Statutes, or any subsequently enacted law of the State of Florida, in the event it charges the Communications Services Provider for the cost and expense of relocating or removing such Facility pursuant to this paragraph.

(b) Within a reasonable period of time from the date of written notice from the City, but not more than 120 days thereafter, relocate or remove, as specified in said notice, its Communications Facility in the event the Department Director determines it necessary for the construction, completion, repair, relocation, or maintenance of a City project, because the particular Communications Facility is interfering with or adversely affecting the proper operation of street light poles, traffic signals, or any communications system belonging to the City or an agency thereof or because the particular Communications Facility is interfering with the signals or facilities of the City police department, City fire rescue, or any municipal public utility. In the event the City issues any such written notice to the Communications Services Provider pursuant to this paragraph, and the Communications Services Provider fails to cause the aforementioned relocation or removal as required herein, the City shall be entitled to relocate or remove such Facilities without further notice to the Communications Services Provider and the total cost and expense shall be charged to the Communications Services Provider.

(21) Temporary Raising or Lowering of Facilities. A Communications Services Provider, upon request of any Person holding a validly-issued building or moving permit from the City to temporarily encroach on or perform moving operations in or across the Public Rights-of-Way, shall temporarily raise or lower its Communications Facilities to accommodate such temporary encroachment or move. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Communications Services Provider shall have the authority to require such payment in advance. The Communications Services Provider shall be given not less than twenty (20) days advance written notice from such Person to arrange for the temporary relocation, which notice must detail the time and location of the permitted activity, and not less than twenty-four (24) hours advance notice from the permit holder advising of the actual operation. The City is not subject to, nor shall it be liable for, any such expense or notice requirement for the moving of houses or structures performed by the City or its contractors.

(22) Coordination. In an effort to minimize the adverse impact on the Public Rights-of-Way and other municipal improvements, a Communications Services Provider may be required by the Department Director to coordinate the Placement or Maintenance of its Facilities with any work, Construction, installation in or repairs of the subject Public Rights-of-Way or other Communications Facilities therein that is occurring or is scheduled to occur within a reasonable time from Application for a permit as determined by the Department Director. Every Communications Services Providers shall make space in its trench and/or conduit within the Public Rights-of-Way available to other providers consistent with the Federal requirements of 47 U.S.C. § 224. Every Communications Services Provider shall utilize existing conduits, pathways, and other Communications Facilities whenever possible, and shall not Place or Maintain any new, different, or additional poles, conduits, pathways, or other Communications Facilities, whether in the Public Rights-of-Way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(23) Co-location and Joint Use. A Communications Services Provider, in an effort to minimize the adverse impact on the useful life of the Public Rights-of-Way, shall, whenever possible, enter into joint use agreements with the City and other parties who have Registered with, or who are expressly authorized by, the City to use its Public Rights-of-Way; provided that, the terms of such agreements are satisfactory to the Communications Services Provider. Nothing herein contained shall mandate that the Communications Services Provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional conduit or fiber in the Public Rights-of-Way, a Communications Services Provider is required to certify in writing to the Department Director that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the Public Rights-of-Way as to the availability of existing or planned conduit or fiber that the particular Communications Services Provider could reasonably utilize to meet its needs, and that no such conduit or fiber is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The Communications Services Provider shall not be permitted to perform any Placement or Maintenance of Communications Facilities in those segments of the Public Rights-of-Way where there exists vacant or available conduit, dark fiber, or surplus fiber owned by the City, an agency of the City, or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the Communications Services Provider's System or network. Under such circumstances the Communications Services Provider shall have the opportunity to

enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a permit from the City.

(24) Maintenance of Traffic. In the event that Placement or Maintenance of Communications Facilities conducted by the Communications Services Provider requires streets, traffic lanes, or bicycle lanes, sidewalks, or multimodal paths to be closed or obstructed, the Communications Services Provider must, pursuant to the requirements of existing or subsequently-enacted City ordinances, obtain all necessary permits from the City, and shall obtain approval of its maintenance-of-traffic plan from the Department Director.

(25) Restoration of the Public Rights-of-Way. After completion of any Placement or Maintenance of a Communications Facility in the Public Rights-of-Way or each phase thereof, the Communications Services Provider shall, at its own expense and in a manner reasonably acceptable to the City, restore without delay the Public Rights-of-Way so disturbed in accordance with the delineated specifications stipulated in the Permit. If the Communications Services Provider fails to make such restoration within thirty (30) days following the completion of such Placement or Maintenance, the City may perform such restoration and charge the costs of the restoration to the Communications Services Provider in accordance with Section 337.402, Florida Statutes, as it may be amended. The Communications Services Provider shall, to the satisfaction of the Department Director, maintain and correct any restorations made pursuant hereto for a period of twelve (12) months following the date of its completion. Failure to comply with this subsection shall be deemed sufficient grounds for denial of any future permit for the Placement or Maintenance of Communications Facilities.

(26) Disruption or Destruction of Other Facilities or Property. A Communications Services Provider shall not knowingly Place or Maintain any Communications Facility in a manner that shall in any way disrupt, displace, damage, or destroy any sewer line, gas line, water main, pipe, conduit, wires, fiber-optics or other Facilities, or property belonging to the City or any other Person lawfully occupying the Public Rights-of-Way, without first obtaining the consent of the City. The Communications Services Provider shall bear all responsibility and costs for any such conduct where City consent has not been obtained and shall pay such costs upon demand.

(27) Placement within a Scenic or Gateway Corridor. Unless otherwise authorized by a franchise agreement or for public safety purposes, no new Utility Poles or above-ground Communications Facilities shall be placed within a designated Scenic or Gateway Corridor, as described in the Comprehensive Plan.

(c) General Conditions on the Utilization of the Public Rights-of-Way and the Placement or Maintenance of Communications Facilities.

(1) City Not Liable. Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law, neither the City nor its officials, boards, commissions, consultants, agents, employees, or independent contractors shall have any liability to the Communications Services Provider for any claims for any damages, costs, expenses, or losses resulting from the City's breakage, removal, alteration, or relocation of any Facilities of any Communications Services Provider which arose out of, or in connection with, any Emergency or disaster situation or was, in the sole discretion of the Department Director, deemed necessary to facilitate any public works project, public improvement, alteration of a City structure, change in the grade or line of any Public Rights-of-Way, or the elimination, abandonment, or closure of any Public Rights-of-Way, or was found by the City Council to be in the best interest of the health, safety, or general welfare of the public; nor shall any charge be made by the Communications Services Provider against the City for any damages, costs, expenses, or losses related thereto.

(2) No Exemption from Permits. Nothing in this Chapter shall exempt any Communications Services Provider from obtaining a permit for work done within the Public Rights-of-Way.

(3) Subject to Police Powers. The rights of the Communications Services Provider shall be subject to all lawful exercise of police powers by the City, and to such other reasonable regulation of the Public Rights-of-Way as the City shall hereafter by resolution or ordinance provide in the interest of the health, safety, and general welfare of the public. Any inconsistency or ambiguity between the provisions of this Chapter and any lawful exercise of the City's police powers shall be resolved in favor of the latter.

(4) City Inspection. The City shall have the right to make such inspections of a Communications System or Facilities Placed or Maintained in the Public Rights-of-Way as it finds necessary to ensure compliance with this Chapter. This Chapter shall not be construed to create or hold the City responsible or liable for any damage to Persons or property by reason of any inspection by the City of

the Placement or Maintenance of a Communications System or Facility as authorized herein or the failure by the City to so inspect.

(5) Access to Manholes. The City, in the proper exercise of its municipal powers and duties with respect to the Public Rights-of-Way, shall have access at any time to all hand holes and manholes in the City belonging to a Communications Services Provider. Before accessing any hand hole or manhole, the City will make a reasonable good faith effort to provide the Communications Services Provider prior notice to afford an opportunity to have trained personnel present, unless determined by the City to be an emergency situation.

(6) Compatibility, Capacity, and Interference Issues. To properly manage and control the use of the Public Rights-of-Way, and to protect the health, safety, and general welfare of the public, the City, in its legislative and regulatory role, shall be the final authority on permitting a Communications System or Facility to be placed in the Public Rights-of-Way and shall exercise such authority in a nondiscriminatory manner. It shall be in the sole discretion of the City Attorney whether an easement is compatible with or allows for its use by a Communications System or Facility. It shall be in the sole discretion of the Department Director, based on the nature, design, size, configuration, or proposed location of any Communications System or Facility, whether there is sufficient capacity in a particular section of the Public Rights-of-Way or whether such Communications System or Facility will interfere with the Facilities or equipment of any municipality, county, public utility, cable operator, or other Communications Service Provider.

(7) No Warranty of Fitness or Suitability. The City makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the Public Rights-of-Way for any Communications System or Facility or its right to authorize the Placement or Maintenance of any Communications System or Facility in the Public Rights-of-Way. Any performance of work, costs incurred, or services rendered by a Communications Services Provider shall be at such Provider's sole risk. Nothing in this Chapter shall affect the City's authority to acquire or add Public Rights-of-Way, or to vacate or abandon Public Rights-of-Way as provided for in this Code or applicable law. The City makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated, or abandoned Public Rights-of-Way for a Communications System or Facility.

(8) Annexations. Upon the annexation of any territory to the City, the provisions of this Chapter and the rules, regulations, and general conditions

contained herein shall extend to the territories so annexed; and all Facilities Placed, Maintained, owned, or operated by any Communications Services Provider extending into or already located in the Public Rights-of-Way of the territory so annexed shall thereafter be subject to all terms hereof, as the same may be amended from time to time.

Sec. 38-7. – Duty to Notify City of Resellers; Conditional Use of Public Rights-of-Way.

Within thirty (30) days of any Registered Communications Services Provider using its Communications Facilities to carry the Communication Services of any Reseller, such Communications Services Provider shall notify the City of the name and address of such Reseller. A Reseller’s lease, interconnection, or other use of Communications Facilities belonging to a Communications Services Provider duly Registered in accordance with Section 38-3 and properly permitted to Place or Maintain its Facilities in the Public Rights-of-Way does not, and shall not, afford such Reseller any right, claim, or cause of action to impede the lawful exercise of the City’s rights or police powers, including, but not limited to, requiring the Registered Communications Services Provider to remove such Communications Facilities from the Public Rights-of-Way.

Sec. 38-8. – Wireless Facilities.

(a) Generally. The Placement of telecommunication towers and Antennae anywhere in the corporate limits of the City located outside of the Public Rights-of-Way shall in all cases be subject to the City’s zoning and land use regulations, including those set forth in Chapter 4 of the City’s Land Development Code. Where Placement of Wireless Facilities in the Public Rights-of-Way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, Wireless Facilities attached to a permitted and legally-maintained vertical structure in the Public Rights-of-Way, such as a light pole or Utility Pole, shall, unless otherwise agreed to by the City in writing:

- (1) not extend more than ten (10) feet above the highest point of the vertical structure;
- (2) not have any type of lighted signal, lights, or illuminations unless required by an applicable Federal, State, or local rule, regulation, or law;
- (3) comply with any applicable FCC Emissions Standards;
- (4) comply with any applicable local building codes in terms of design, construction, and installation; and
- (5) not contain any commercial advertising thereon.

(b) Small Wireless Facilities in the Public Rights-of-Way. The City hereby adopts the following rules that will apply to the Collocation of Small Wireless Facilities in the Public Rights-of-Way for all Applications filed on or after July 1, 2017:

(1) General Conditions. Applicants seeking permission to Collocate or install Small Wireless Facilities within Public Rights-of-Way shall comply with the Registration, permitting, rules and regulations, insurance coverage, indemnification, performance bonds, security funds, force majeure, Abandonment, City liability, and City warranties provisions contained in this Chapter; provided, however, that the Application process, review timeframes, and denial criteria of this subsection shall control when otherwise in conflict.

(2) Filing, Review, and Processing of Applications. The City shall accept Applications for permits and shall process and issue permits for the Collocation of Small Wireless Facilities in Public Rights-of-Way subject to the following requirements:

(a) The Applicant shall as a part of its Application provide information necessary to demonstrate the Applicant's compliance with the applicable provisions of this Chapter for the Placement of Small Wireless Facilities in the locations identified in the Application, and shall bear the burden of demonstrating compliance with this Chapter.

(b) Within fourteen (14) days after the date of filing the Application, the City may request that the proposed location of a Small Wireless Facility be moved to another location in the Public Rights-of-Way and Placed on an alternative City Utility Pole or support structure or may place a new Utility Pole. The City and the Applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for thirty (30) days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the Applicant, the Applicant must notify the City of such acceptance and the Application shall be deemed granted for any new location for which there is agreement. If an agreement is not reached, the Applicant must notify the City of such non-agreement and the City must grant or deny the original Application within ninety (90) days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

(c) The City hereby limits the height of a Small Wireless Facility to ten (10) feet above the Utility Pole or structure upon which the

Small Wireless Facility is to be collocated. Unless waived by the City, the height for a new Utility Pole is limited to the tallest existing Utility Pole as of July 1, 2017, located in the same Public Right-of-Way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the City shall limit the height of the new Utility Pole to fifty (50) feet.

(d) Within fourteen (14) days after receiving an Application, the City must determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the City must specifically identify the missing information. An Application is deemed complete if the City fails to provide notification to the Applicant within fourteen (14) days.

(e) The City shall process all Applications on a nondiscriminatory basis. If the City fails to approve or deny a complete Application within sixty (60) days after receipt of the Application, the Application is deemed approved. If the City does not use the 30-day negotiation period provided herein, the parties may mutually agree to extend the 60-day Application review period. The City shall grant or deny the Application at the end of the extended period.

(f) A permit issued pursuant to an approved Application shall remain effective for one (1) year unless extended by the City.

(g) The City shall notify the Applicant of approval or denial by electronic mail. The City shall approve a complete Application unless it does not meet the applicable provisions of this Chapter.

(h) If the Application is denied, the City shall specify in writing the basis for denial, including the specific Code provisions on which the denial is based, and shall send the documentation to the Applicant by electronic mail on the day the City denies the Application.

(i) The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days after notice of the denial is sent to the Applicant. Failure by the Applicant to timely resubmit the Application shall result in a final denial of the Application. The City shall approve or deny a timely filed revised Application within thirty (30) days after receipt or the Application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(j) An Applicant seeking to Collocate Small Wireless Facilities within the City's boundaries may, at the Applicant's discretion, file a consolidated Application with the City and receive a single permit for the Collocation of up to thirty (30) Small Wireless Facilities. If the Application includes multiple Small Wireless Facilities, the City may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

(k) The City may deny a proposed Collocation of a Small Wireless 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 zones for transportation, pedestrians, or public safety purposes.

(3) Materially interferes with compliance with the Americans with Disabilities Act 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.

(5) Fails to comply with Applicable Codes and the applicable provisions of this Chapter.

(l) Notwithstanding anything to the contrary contained herein, the City may reserve space on City Utility Poles for future public safety uses. If replacement of a City Utility Pole is necessary to accommodate the Collocation of the Small Wireless Facility and the future public safety use, the Utility Pole replacement is subject to the make-ready provisions of this Chapter and the replaced Utility Pole shall accommodate the future public safety use.

(m) A structure granted a permit and installed pursuant to this Chapter shall comply with Chapter 333, Florida Statutes, and Federal regulations pertaining to airport airspace protections.

(n) The City does not require approval or fees for: (i) routine maintenance; (ii) replacement of existing Wireless Facilities with substantially similar Wireless Facilities; or (iii) installation, Placement,

Maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Services Provider authorized to occupy the Public Rights-of-Way and who is remitting taxes under Chapter 202, Florida Statutes.

(3) Collocation of Small Wireless Facilities on City Utility Poles. The Collocation of Small Wireless Facilities on City Utility Poles is subject to the following requirements:

(a) The City shall not enter into an exclusive arrangement with any Person for the right to attach equipment to City Utility Poles.

(b) The rates and fees for Collocations on City Utility Poles must be nondiscriminatory, regardless of the services provided by the collocating person.

(c) The City hereby levies, establishes, and sets an annual rate that shall be paid by all those Applicants who file an Application to Collocate Small Wireless Facilities on City Utility Poles in the amount of \$150 per pole per year. The initial payment shall be made as a condition of the granting of the permit, with remaining annual payments to be made in all subsequent years on the same date.

(d) Agreements between the City and Wireless Providers that are in effect on July 1, 2017, and that relate to the Collocation of Small Wireless Facilities in the Public Rights-of-Way, including the Collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to applicable termination provisions. The Wireless Provider may accept the rates, fees, and terms established under this Chapter for Small Wireless Facilities and Utility Poles that are the subject of an Application submitted after the rates, fees, and terms become effective.

(e) For a City Utility Pole that supports an aerial facility used to provide Communications Services or electric service by another, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and its implementing regulations. The good faith estimate of the Person owning or controlling the Utility Pole for any make-ready work necessary to enable the Utility Pole to support the requested Collocation must include Utility Pole replacement if necessary.

(f) For a City Utility Pole that does not support an aerial facility used to provide Communications Services or electric service by another, the City shall provide a good faith estimate for any make-ready work necessary to enable the Utility Pole to support the requested Collocation, including necessary Utility Pole replacement, within sixty (60) days after receipt of a complete Application. Make-ready work, including any Utility Pole replacement, must be completed within sixty (60) days after written acceptance of the good faith estimate by the Applicant. Alternatively, the City may require the Applicant seeking to Collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense for the work necessary to support the Small Wireless Facility, including Utility Pole replacement, and perform the make-ready work. If Utility Pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The City may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the Public Rights-of-Way. The replaced or altered Utility Pole shall remain the property of the City.

(g) The City may not require more make-ready work than is required to meet Applicable Codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any Utility Pole replacement, may not exceed actual costs or the amount charged to Communications Services Providers other than Wireless Services Providers for similar work and may not include any consultant fee or expense.

(4) Placement of Utility Poles in the Public Rights-of-Way in Support of Collocation of Small Wireless Facilities. A Wireless Infrastructure Provider may apply to the City to place Utility Poles in the Public Rights-of-Way to support the Collocation of Small Wireless Facilities. The Application must include an attestation that Small Wireless Facilities will be Collocated on the Utility Pole or structure and will be used by a Wireless Services Provider to provide service within nine (9) months after the date the Application is approved by the City. The City shall accept and process the Application in accordance with this Chapter and any Applicable Codes and other local codes governing the placement of Utility Poles in the Public Rights-of-Way.

(5) Application and Enforcement of Historic Preservation Zoning Regulations. Consistent with preservation of local zoning authority under 47

U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), and the National Historic Preservation Act of 1966, as amended, this Chapter is subject to the provisions of City codes and ordinances regarding historic preservation.

(6) Prohibited Collocations, Attachments, Installations, and Services Not Authorized by this section. This section does not authorize, and the City hereby prohibits, the following:

(a) This section does not authorize a Person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately-owned Utility Pole, a Utility Pole owned by an electric cooperative or a municipal electric utility, a privately-owned Wireless Support Structure, or other private property without the consent of the property owner.

(b) The approval of the installation, Placement, Maintenance, or operation of a Small Wireless Facility pursuant to this section does not authorize the provision of any voice, data, or Video Services or the installation, Placement, Maintenance, or operation of any Communications Facilities other than Small Wireless Facilities in the Public Rights-of-Way.

(c) This section does not affect provisions relating to Pass-through Providers contained in this Chapter and contained in Section 337.401(6), Florida Statutes.

(d) This section does not apply to the installation, Placement, Maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by this Chapter.

(e) This section does not authorize a Person to Collocate Small Wireless Facilities or Micro Wireless Facilities on a City Utility Pole or erect a Wireless Support Structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, Placement, Maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities.

Sec. 38-9. – Revocation or Suspension of Permits.

Subject to Section 38-11, the City Manager may revoke any permit currently issued to a Communications Services Provider for work in the Public Rights-of-Way or suspend the issuance of a permit in the future to a Communications Services Provider for, in addition to any other circumstances provided for in this Chapter, one or more of the following reasons:

(a) a violation of permit conditions, including conditions set forth in the permit, or a violation of the requirements of this Chapter or other Applicable Codes or regulations governing the Placement or Maintenance of Communications Facilities in the Public Rights-of-Way;

(b) a misrepresentation or fraud made or committed on the part of the Communications Services Provider in the Registration process or in the Application for a permit;

(c) the failure to properly renew the Registration or the ineffectiveness of Registration; or

(d) the failure to relocate or remove Communications Facilities as may be required by the City Manager pursuant to this Chapter.

The City Manager shall provide notice and an opportunity to cure to the Communications Services Provider of any violation of paragraphs (a) through (d) above, each of which shall be reasonable under the circumstances.

Sec. 38-10. – Involuntary Termination of Registration.

(a) The City may terminate a Registration if:

(1) a Federal or State authority suspends, denies, or revokes a Communications Services Provider's certification or license to provide Communications Services;

(2) the Communications Services Provider'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 Communications Services Provider fails to remedy the danger promptly after receipt of written notice;

(3) the Communications Services Provider ceases to use all of its Communications Facilities in the Public Rights-of-Way and has not complied with Section 38-20; or

(4) the Communications Services Provider fails to comply with any of the rules, regulations, or general conditions set forth in this Chapter.

(b) Prior to termination of a Registration, the Communications Services Provider shall be notified by the City Manager with a written notice setting forth all matters pertinent to the proposed termination, including which of paragraphs (1) through (4) above is applicable as the reason therefore. The Communications Services Provider shall have thirty (30) days after receipt of such notice within which to eliminate the reason or within which to present a plan, satisfactory to the City Manager, to accomplish the same. If not eliminated or if the plan presented is rejected, the City Manager shall provide written notice of such rejection to the Communications Services Provider and a final determination to terminate Registration. A final determination to terminate Registration may be appealed in accordance with the procedures set forth in Section 38-11.

(c) In the event of termination, following any appeal period, the Communications Services Provider formerly Registered shall: (i) notify the City of the assumption or anticipated assumption by another Registrant of ownership of the Communications Services Provider's Facilities in the Public Rights-of-Way; or (ii) provide the City with an acceptable plan for disposition of its Communications Facilities in the Public Rights-of-Way. If a Communications Services Provider fails to comply with this subsection (c), which determination of non-compliance is subject to appeal as provided in Section 38-11, the City 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 Facilities or requiring the Communications Services Provider within ninety (90) days of the termination, or such longer period as may be mutually agreed to between the City and the Communications Services Provider, 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 prior to such removal.

(d) In any event, a Communications Services Provider whose Registration has been terminated shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way.

(e) In the event of termination of a Registration, this section does not authorize the City to cause the removal of Communications Facilities used to provide another service for which the Communications Services Provider or another Person who owns or exercises physical control over the Communications Facilities holds a valid certification or license with the governing Federal or State agency, if required for provision of such service, and who is Registered with the City, if required.

(f) The City's right to terminate a Registration shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding, or exercise of the right to terminate Registration will affect or preclude any other right the City may have.

Sec. 38-11. – Appeals.

Final determinations by appropriate City staff denying an initial Registration; denying an application for renewal of a Registration; terminating a Registration; or denying, revoking, or suspending any permit are subject to appeal to the City Council. A notice of appeal of such decision may be filed with the City Manager within thirty (30) days of the date of the final, written decision to be appealed. The City Manager 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 staff. If the City Manager upholds the final decision of staff, the appellant may file a notice of appeal with the City Clerk within thirty (30) days of the date of the written decision of the City Manager. The City Clerk shall set the matter for hearing before the City Council at any regular meeting of the City Council scheduled within forty-five (45) days of the date that the notice of appeal is filed with the City Clerk, unless waived by the Communications Services Provider. A ruling may be made at the hearing or at the next regularly scheduled City Council meeting and the Communications Services Provider shall be notified of the decision in writing within thirty (30) days thereof. Where a notice of appeal to the City Manager or the City Clerk is not timely filed as provided herein, such right to appeal shall be waived. Upon correction by the Communications Services Provider of the circumstances that gave rise to a suspension or denial of a permit, the suspension or denial shall be lifted (the same does not apply to the revocation of a permit).

Sec. 38-12. – Fees Applicable to Those Not Subject to Communications Services Tax.

While the Florida Legislature has prohibited municipalities from requiring providers of Communications Services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to Placing or Maintaining Communications Facilities in the Public Rights-of-Way, the City expressly reserves the right to require the payment of consideration or regulatory fees by Persons using or occupying the Public Rights-of-Way in other capacities. The City reserves the right to require such payments based on the type of user and to the extent as follows:

(a) Dealer. Except as provided in paragraph (23) of Section 38-6, a Communications Services Provider who meets the definition of Dealer as set forth in this Chapter and who has Registered in accordance with Section 38-3 is not required to enter into a franchise agreement or license arrangement with the City as a condition to

Placing or Maintaining Communications Facilities in the Public Rights-of-Way, nor is a Dealer required to make payment of any franchise fees, license fees, or other user fees to the City as consideration for the use or occupancy of the Public Rights-of-Way for the provision of Communications Services.

(b) Pass-through Provider and Pass-through Facilities. A Communications Services Provider who meets the definition of Pass-through Provider as set forth in this Chapter and who is not subject to the City's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes, shall pay the City the maximum annual amount allowed under Section 337.401(6)(b), Florida Statutes, as amended. For purposes of calculating payments hereunder, each separate Utility Pole or tower installed or maintained by a Pass-through Provider for purposes of supporting Antennas for other over-the-air radio transmission or reception equipment in the Public Rights-of-Way shall comprise a separate Communications Facility subject to assessment of a separate permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under Section 337.401(6)(b), Florida Statutes, whichever is higher. The annual amount referred to above shall be due and payable on October 1 of every year beginning on October 1, 2018. 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 City shall not be construed as an acknowledgment 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 City may have for additional sums due and payable or authorization to install any Facilities in the Public Rights-of-Way.

(c) Other Persons. All other Persons, except a Government, are required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way for the Placement or Maintenance of Communications Facilities, an amount based on and in accordance with Section 38-12(b).

(d) Government. A Government is not required to pay the City consideration for the use or occupancy of the Public Rights-of-Way for the Placement or Maintenance of Communications Facilities, unless such Facilities are being used by such Government or a Communications Services Provider, including Resellers, to offer or provide Communication Services other than for such Government's internal non-commercial use, in which event the Government, where not subject to the City's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes, is required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way by or through its Communications Facilities placed therein after October 1, 2017, an amount based on and in accordance with Section 38-12(b), or such other amount or rate of compensation as mutually agreed to in writing by the Government and the City.

Sec. 38-13. – Existing Communications Facility.

The provisions of this Chapter 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 Chapter regarding the size, Stealth Design, concealment, or location of Communications Facilities shall not apply to existing Communications Facilities lawfully placed within the Public Rights-of-Way prior to the effective date of this Ordinance, to the extent that such Communications Facilities may be Maintained, repaired, and replaced with a Communications Facility substantially similar in size and for the same purpose.

Sec. 38-14. – Insurance.

(a) At all times during the use or occupancy of the Public Rights-of-Way, including any time during Placement or Maintenance of Communications Facilities, the Communications Services Provider shall obtain, pay all premiums for, and maintain satisfactory to the City the types of insurance policies and coverage limits described in this Chapter. Nothing contained in this section shall limit a Communications Services Provider’s liability to the City to the limits of insurance certified or carried.

(1) Commercial general liability insurance valid in the State of Florida, including contractual liability and products-completed operations liability coverage on an occurrence basis, which policy limit shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) per occurrence, combined single limit, for bodily injury, personal injury or death, or property damage and in an amount not less than Two Million and No/00 Dollars (\$2,000,000.00) policy aggregate for each personal injury liability, broad form property damage (without exclusions related to explosion, collapse and underground (“XCU”) exclusions), contractual liability and products-completed operations liability.

(2) Business automobile liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) combined single limit, including bodily injury and property damage covering owned, leased, hired, and non-owner vehicles.

(3) Workers’ Compensation valid in the State of Florida which policy limit shall be in an amount not less than the statutory limit for Workers’ Compensation.

(4) Employer's liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million and No/00 Dollars (\$1,000,000.00) each accident for employer's liability.

(b) All insurance providers used shall be admitted and duly authorized to do business in the State of Florida and shall have assigned by A. M. Best Company a minimum Financial Strength Rating of "A" and a minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000.00 to \$500,000,000.00 based on capital, surplus, and conditional reserve funds). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable. All liability policies shall name the City, its council members, officers, and employees as additional insureds with respect to any covered liability arising out of the Placement or Maintenance of Communications Facilities in the Public Rights-of-Way or other activities under this Chapter. Each Communications Services Provider shall furnish annually to the City certificates showing proof of all required insurance coverage. All liability coverage must be in occurrence form and in accordance with the limits specified. Claims made policies are not acceptable. No insurance policy shall be canceled, nor shall the occurrence or aggregate limits set forth herein be reduced, until the City has received at least thirty (30) days' advance written notice by registered, certified, or regular mail or facsimile of any cancellation, intent not to renew, or reduction in policy coverage. Each Communications Services Provider shall be responsible for notifying the City of such cancellation, intent not to renew, or reduction in coverage. All Certificate(s) of Insurance, including all endorsements and riders, evidencing insurance coverage shall be submitted to the City within thirty (30) days after the date of Registration with the City in order for a Communications Services Provider to obtain a permit required for Construction in the Public Rights-of-Way. Each Communications Services Provider shall, in the event of any such notice described above, obtain, pay all premiums for, and file with the City written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Communications Services Provider of such notice.

(c) The Certificate(s) of Insurance forms must be properly executed by the authorized representative of the insurance provider and must include all endorsements, riders and notices. Each Communications Services Provider shall file and maintain with the City on an annual basis the required Certificate(s) of Insurance. The Certificate(s) of Insurance must indicate the following:

(1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; that the policy coverage "pertains to the requirements of Section 38014"; policy expiration date; and specific coverage amounts;

(2) any applicable deductibles or self-insured retentions;

(3) that the City, its council members, officers, and employees are additional insureds;

(4) that the City shall receive thirty (30) days' advance written notice of cancellation, intent not to renew, or reduction in coverage; and

(5) that the commercial general liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

(d) Under extraordinary circumstances a Communications Services Provider may satisfy the insurance requirements of this section by providing documentation of self-insurance that, in the sole discretion of the City's Director of Human Resources and Risk Management, demonstrates incontrovertibly the adequacy to defend and cover claims of any nature that might arise from the Placement and Maintenance of Facilities in the Public Rights-of-Way. The Communications Services Provider must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

Sec. 38-15. – Indemnification.

(a) Except with respect to the willful misconduct, negligence, or gross negligence of the City, a Communications Services Provider, by act of Registering with the City as such, shall be obligated, at its sole cost and expense, to defend, indemnify and hold harmless the City, its Council members, officials, commissioners, agents, and employees, from and against any and all claims, suits, causes of action, proceedings, liabilities, and judgments for damages or equitable relief, and costs and expenses, arising out of or in connection with the Placement or Maintenance of its Communications Facilities in the Public Rights-of-Way by the Communications Services Provider or its agent or hired contractor. This indemnification provision shall include, but not be limited to, such damages and penalties arising out of claims: (1) by any Person whatsoever on account of: (i) bodily injury to a Person or Persons; (ii) death of a Person or Persons; or (iii) property damage, where any of the foregoing is occasioned by the operations of the Communications Services Provider, or alleged to have been so caused or occurred; or (2) involving the Communications Services Provider's violation of any easement or private property rights.

(b) Nothing contained in this section shall prohibit the City from participating in the defense of any litigation by its own counsel if in the City's reasonable belief there exists or may exist a conflict, potential conflict, or appearance of a conflict.

(c) Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket expenses and reasonable attorneys' fees in defending against any such claim, suit, or proceeding, and shall also include the reasonable value of any services rendered by the City Attorney and his/her assistants, or any consultants, agents, and employees of the City. The City will attempt to notify the Communications Services Provider, in writing, within a reasonable time of the City's receiving notice of any issue it determines may require indemnification.

(d) Nothing contained in this section shall be construed or interpreted: (1) as denying the City, the Communications Services Provider, or any Person any remedy or defense available to them under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

(e) The indemnification requirements shall survive and be in effect after the termination or cancellation of a Registration.

Sec. 38-16. – Construction Bond.

(a) Prior to issuance of any permit where the type of work allowed under the permit will require restoration of the Public Rights-of-Way, the Communications Services Provider or the contractor performing such work on its behalf shall obtain, pay for, and file with the City a construction bond. The construction bond shall serve to guarantee the timeliness and quality of the Construction and restoration work and to secure, and enable the City to recover, all costs related to the restoration of the Public Rights-of-Way in the event the Communications Services Provider or its contractor fails to make such restoration to the City's satisfaction or causes damage to the Public Rights-of-Way during Construction. The construction bond must name the City as Obligee and be in the face amount of either Fifteen Thousand and No/00 Dollars (\$15,000.00) or 110% of the estimated cost of the project, whichever is greater, conditioned upon the full and faithful completion of Construction and restoration of the Public Rights-of-Way to the delineated specifications stipulated in the Permit. Six (6) months following completion and inspection of the restoration of the Public Rights-of-Way satisfactory to the City Manager, the Communications Services Provider or its contractor, as the case may be, may reduce the face amount of the construction bond to Five Thousand and No/00 Dollars (\$5,000.00) and, thereafter, may allow the bond to lapse in accordance with its terms. However, for any subsequent work in the Public Rights-of-Way, the Communications Services Provider or its contractor will be required to replenish any existing construction bond or provide a new

construction bond in the face amount of Fifteen Thousand and No/00 Dollars (\$15,000.00). The construction bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Manager and authorized by the Florida Department of Insurance to issue surety bonds in this State.

(b) The construction bond must be issued as non-cancelable and be for a term of not less than twelve (12) months. In the event the term of any construction bond expires, or is reasonably expected to expire, prior to the completion of Construction, restoration, and City inspection, the Communications Services Provider, or the contractor acting on its behalf, shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a construction bond is not in lieu of any additional bonds that may be required under this Chapter or through the permitting process. The City's right to recover under the construction bond shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding, or exercise of a right with respect to the construction bond will affect or preclude any other right the City may have.

Sec. 38-17. – Performance Bond.

(a) Before any Communications Services Provider is permitted to begin the Placement or Maintenance of an initial build, any substantial rebuild, upgrade, or extension of its Communications System, or when construction plans show that there would be at least 1,000 feet of open trenching in the Public Rights-of-Way at any given time, the Communications Services Provider is required to obtain, pay for, and file with the City a performance bond. The performance bond must name the City as Obligee and be in the face amount of Two Hundred Fifty Thousand and No/00 Dollars (\$250,000.00) conditioned upon the full and faithful compliance by the Communications Services Provider with all requirements, duties, and obligations imposed by the provisions of this section during, and through completion of, the Placement or Maintenance project. The performance bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City Manager and authorized by the Florida Department of Insurance to issue performance bonds in this State.

(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 City 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 City inspection, the Communications Services Provider shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a performance bond is not in lieu of any additional bonds that may be required under this Chapter or through the permitting process. The City's right to recover under the performance bond shall be in addition to all other rights of the City, whether reserved in this Chapter, 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 City may have. Any proceeds recovered under the performance bond may be used to reimburse the City for such additional expenses as may be incurred by the City as a result of the Communications Services Provider's failure to comply with the responsibilities imposed by this Chapter, 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. 38-18. – Security Fund.

Every Communications Services Provider shall make a Twenty-Five Thousand and No/00 Dollar (\$25,000.00) cash deposit, or shall file with the City an irrevocable letter of credit or acceptable equivalent in the same amount, which shall serve, and be referred to, as the “Security Fund.” The Security Fund shall be conditioned upon the full and faithful compliance with and performance by the Communications Services Provider of all requirements, duties, and obligations imposed by the provisions of this Chapter at all times. The letter of credit shall be in a form and issued by an institution acceptable to the City Manager. Should the City draw upon the Security Fund, it shall promptly notify the Communications Services Provider, and the Communications Services 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 of all its 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 38-11. Upon the later of these events, the cash deposit will be returned without interest or the letter of credit may be cancelled. In the event a Communications Services Provider fails to perform any requirement, duty, or obligation imposed upon it by the provisions of this Chapter, there shall be recoverable, jointly and severally from the Security Fund, any damages or losses suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal, relocation, or Abandonment of any Facilities in Public Rights-of-Way, plus a reasonable allowance for attorneys’ fees, up to the full amount of the Security Fund.

Sec. 38-19. – Enforcement Remedies.

(a) No provision of this Chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this Chapter, the Registration provisions, or any rule, regulation or general condition provided for hereunder, whether administratively, judicially, or both. Neither the existence of other remedies identified in this Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties, or monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Communications Services Provider. The remedies available to the City shall be cumulative and in addition to any other remedies provided by law or equity. The laws of the State of Florida shall govern with respect to any proceeding in law or equity pertaining to the enforcement of this Chapter or any cause of action arising out of or in connection herewith.

(b) A Communications Services Provider's failure to comply with provisions of this Chapter shall constitute a City Code violation and shall subject the Communications Service Provider to the code enforcement provisions and procedures as provided in Chapter 2, Article V, City Code, and may be punishable as provided in Section 162.22, Florida Statutes, as it may be amended.

(c) In any proceeding before the City Council where there exists an issue with respect to a Communications Services Provider's performance of its obligations pursuant to this Chapter, the Communications Services Provider shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Chapter. The City may find a Communications Services Provider who does not demonstrate compliance with the terms and conditions of this Chapter in default and apply any appropriate remedy or remedies as authorized by this Chapter. In determining which remedy is appropriate, the City Council shall take into consideration the nature of the violation, the Person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City Council determines are appropriate to the public interest.

(d) The City Manager, or his/her designee, shall be responsible for administration and enforcement of this Chapter, and is authorized to give any notice required herein or by law.

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

Sec. 38-20. – Abandonment of a Communications Facility.

(a) Upon Abandonment of any Facility owned by a Communications Services Provider in the Public Rights-of-Way, the Communications Services Provider shall notify the City within sixty (60) days.

(b) The City may direct the Communications Services Provider, by written notice, to remove all or any portion of such Abandoned Communications Facility at the Communications Services Provider's sole expense if the City determines that the Abandoned Communications Facility's presence interferes with the public health, safety, or welfare, which shall include, but shall not be limited to, a determination that such Communications Facility: (1) compromises safety at any time for any Public Rights-of-Way user; (2) compromises the safety of other Persons performing Placement or Maintenance of Communications Facilities in the Public Rights-of-Way; (3) prevents another Person from locating other facilities in the area of the Public Rights-of-Way where the Abandoned Communications Facility is located when other alternative locations are

not reasonably available; or (4) creates a maintenance condition that is disruptive to the use of the Public Rights-of-Way. In the event condition (2) is present, the City may require the third Person to coordinate with the Communications Services Provider who owns the existing Communications Facility for joint removal and Placement, where agreed to by the Communications Services Provider.

(c) If the Communications Services Provider fails to remove all or any portion of an Abandoned Communications Facility as directed by the City within the time period specified in the written notice, which time period must be reasonable under the circumstances, the City may perform such removal and charge the cost of the removal against the Communications Services Provider.

(d) In the event that the City does not direct the removal of the Abandoned Communications Facility, the Communications Services Provider, by its notice of Abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of such abandoned Facility by the City or other Person, provided that the cost of the alteration or removal is not borne by the Communications Services Provider.

Sec. 38-21. – Reservation of Rights.

The City hereby expressly reserves all of the following rights:

(a) To exercise its municipal home rule powers, now or hereafter, to the fullest extent allowed by law with regard to the access, use, and regulation of the Public Rights-of-Way.

(b) To amend this Chapter as it shall find necessary in the lawful exercise of its municipal authority.

(c) To adopt or enact by resolution or ordinance, in addition to the provisions contained herein and in any existing applicable ordinances, such additional reasonable regulations as the City Council finds necessary in the exercise of the City's police powers.

(d) To exercise the power of eminent domain, consistent with applicable Federal and State law, to acquire property that may include that property owned or leased by a Communications Services Provider.

(e) As and when deemed necessary by the City Council to be in the interest of the City or its residents, to abandon or vacate portions of the Public Rights-of-Way within the proper exercise of its municipal authority and without notice to or the consent of any Communications Services Provider. The City shall not be responsible for any costs, damages, loss, or other expense to the Communications Services Provider as a result of the City's abandonment or vacation of any Public Rights-of-Way.

(f) To place and maintain, and franchise or permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables, or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in the Public Rights-of-Way occupied by any Communications Services Provider.

(g) Without limitation, the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of any Public Rights-of-Way within the City limits and within said limits as the same may from time to time be altered.

(h) To require a Reseller to Register in accordance with Section 38-3 to the extent such Reseller wants the right to place or maintain Facilities in the Public Rights-of-Way. Any Person using or leasing Facilities owned by a Registered Communications Services Provider is not, therefore, entitled to any rights to Place or Maintain Communications Facilities in the Public Rights-of-Way, unless such Person individually Registers with the City.

Sec. 38-22. – Force Majeure.

In the event the City's or Registrant's performance of or compliance with any of the provisions of this Chapter is prevented by a cause or event not within the City's or 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 the City's or 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.

SECTION 4. CONFLICTS OF LAWS

Whenever the requirements or provisions of this amending ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statutes, the most restrictive requirements shall apply.

SECTION 5: SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion of the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision application.

SECTION 6: CODIFICATION, INCLUSION IN CODE AND SCRIVENER’S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this Ordinance shall become and be made part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the work “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not effect the intent may be authorized by the City Manager, or the City Manager’s designee, without need or public hearing, by filing a corrected or recodified copy of same with the City Clerk.

SECTION 7: EFFECTIVE DATE

The effective date of this Ordinance shall be thirty (30) days from its adoption date, pursuant to Section 29(c) of the City Charter which requires thirty (30) days after its adoption.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 3rd day of January, 2018.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Aye	Slachta	Aye
O’Flinn	Aye		

Date filed with City Clerk: _____