

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HOLLYWOOD, FLORIDA, AMENDING THE CITY CODE OF ORDINANCES BY AMENDING TITLE V, PUBLIC WORKS, CHAPTER 55, RIGHTS OF WAY CONSTRUCTION, PART I: RIGHTS-OF-WAY CONSTRUCTION AND ADMINISTRATION, AND REPEALING IN ITS ENTIRETY CHAPTER 55, PART II, TELECOMMUNICATIONS AND OPEN VIDEO SYSTEM FACILITIES RIGHTS-OF-WAY USAGE FINDINGS AND DEFINITIONS; AND REPLACING IT WITH A NEW TITLE V, CHAPTER 55, ENTITLED "HOLLYWOOD COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE;" PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR BONDS; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR A SEVERABILITY CLAUSE AND A REPEALER PROVISION AND PROVIDING FOR CODIFICATION.

WHEREAS, City of Hollywood ("City") staff periodically reviews City Ordinances and makes recommendations to the City Commission to revise its Ordinances; and

WHEREAS, the City Commission has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the City by regulating the siting of communications facilities and utility poles for the collocation of communications facilities within the public rights-of-way; and

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

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

Coding: Underscored text are additions to existing text; words ~~stricken through~~ are deletions from existing text; any text that is both underscored and stricken through represents text that was newly presented on first reading but that is being deleted on second reading; and **shaded** text represents changes between first and second readings.

WHEREAS, F.S. § 337.401, addresses the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

WHEREAS, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

WHEREAS, on July 19, 2000, the City Commission adopted Ordinance No.O-2000-29, providing in Part I, Rights-of-Way Administration General Provisions, and providing in Part II, Telecommunications and Open Video System Facilities Rights-of-Way Usage Findings and Definitions, codified in Title V, Chapter 55 of the City Code of Ordinances; and

WHEREAS, F.S. Chapter 202, known as the “Communications Services Tax Simplification Law,” addresses the taxes and fees applicable to communications services in Florida; and

WHEREAS, F.S. Chapter 610, Chapter 2007-29, Public Laws of Florida, adopted in 2007, addresses the provision of cable and video service in Florida, and provides in F.S. § 610.102 that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality or county may not grant a franchise for the provision of cable or video service within its jurisdiction; and

WHEREAS, F.S. § 610.114(2) provides: “Notwithstanding any other provision of law, a municipality ... may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificate holder that is placing and maintaining facilities in or on a public right-of-way in the municipality or county. In accordance with s. 337.402, the permit may require the permit holder to be responsible, at the permit holder’s expense, for any damage resulting from the issuance of such permit and for restoring the public right-of-way to its original condition before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public right-of-way.”; and

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

WHEREAS, in 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, F.S. § 337.401(7) (“Small Cell Statute”); and

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

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

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

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

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

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

WHEREAS, 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 ensure public safety, maximize efficiency, minimize costs to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, a duly noticed public hearing as required by law was held by the City Commission of the City of Hollywood, at which public hearing all residents and interested persons were given an opportunity to be heard; and

WHEREAS, the City Clerk submitted notice of the first hearing on this proposed Ordinance to the Florida Secretary of State, consistent with F.S. § 337.401(3)(d); and

WHEREAS, the City Commission has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the City's plans.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Ordinance.

Section 2: The City Commission hereby amends Title V, Chapter 55, Part I, Sections 55.01 – 55.24, entitled "Rights-of-Way Administration General Provisions," to read as follows:

Chapter 55: Part I.

§55.01 PURPOSE

(A) To protect and limit deterioration and obstruction of the rights-of-way, the Citycity hereby adopts uniform regulations for the construction, placement, and maintenance of equipment and facilities in the rights-of-way. This Chapter 55, Part I, applies to all utility infrastructure placed in the public rights-of-way with the exception of communications facilities which are addressed in Chapter 55, Part II, and utilities owned by the City.

(B) Such rights-of-way within the Citycity are a unique and physically limited resource that are critical to the travel and transport of persons and property and must be managed and controlled in the best interest of the citizens of the City of Hollywood, consistent with federal and state law.

§55.02 EXCEPTIONS.

~~(A) Utility franchises.~~ In addition to the general construction and administration requirements set forth in this chapter, all public utilities other than those providing telecommunication services and open video system services shall comply with the requirements set forth in Chapter 53 entitled "Utility Franchises" of the Code of Ordinances.

~~(B) Cable operators.~~ In addition to the general construction and administration requirements set forth in this chapter, all cable operators shall be subject to the City of Hollywood's Cable Communications Ordinance and franchise requirements relating to cable system operations within the city and shall enter into a franchise agreement with the city.

§55.03 DEFINITIONS.

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

Affiliate~~AFFILIATE~~. Each person, directly or indirectly, controlling, controlled by, or under common control with the provider, provided that the affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15% of such provider, or any creditor of such provider solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such provider.

~~ALTERNATE LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY (ALEC)~~. Any company certified by the Florida Public Service Commission to provide local exchange communication services, on or after July 1, 1995.

~~BASIC LOCAL TELECOMMUNICATIONS SERVICE~~. Voice-grade, flat-rate residential, and flat-rate single line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to those services set forth in F.S. 364.02(2), and as amended from time to time.

City Engineer~~CITY ENGINEER~~. The City of Hollywood City Engineer or his/her designee.

Collocation~~COLLOCATION~~. The share use of facilities, including but not limited to the placement of conduit owned by more than one provider in the same trench and the placement of fiber owned by more than one provider in the same conduit. Collocation does not include the interconnection of facilities or the sale or purchase of capacity (whether bundled or unbundled).

~~COMMUNICATIONS FACILITY~~. A telecommunication facility, a private communications system or an open video system (OVS).

Construct~~CONSTRUCT~~ or Construction~~CONSTRUCTION~~. To excavate, obstruct, install poles, install signs, install physical features, install conduits, or directly bury cable or other fiber optic equipment, other than landscaping on, above, or under any part of the rights-of-way.

Construction bond~~CONSTRUCTION BOND~~. A bond, cash, certified funds, or irrevocable letter of credit posted to ensure proper and complete major construction and/or restoration of the rights-of-way.

Construction, Operation or Repair~~CONSTRUCTION, OPERATION or REPAIR~~. Includes but is not limited to the installation, extension, maintenance, excavation, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and tree trimming.

Construction permit~~CONSTRUCTION PERMIT~~. The permit that must be obtained before a person, registrant, and/or provider begins major construction in City~~city~~ rights-of-way.

~~Deminimis~~**DEMINIMIS**. Facilities that occupy such an insignificant portion of rights-of-way that the ~~City's~~**city's** cost of reviewing an application, negotiating, or monitoring compliance with a Right-of-Way Use Agreement would foreseeably exceed the fees recoverable from a provider on account of such facilities.

~~Department~~**DEPARTMENT**. The Engineering Division of the Department of Utilities.

~~Department inspector~~**DEPARTMENT INSPECTOR**. Any ~~City~~**city** employee or agent of the ~~City~~**city** authorized by the City Engineer, the Director of Planning and Development Services, the Director of Public Utilities or the Director of Design and Construction Management to carry out inspections related to the provisions of this chapter.

~~Electric Utility~~**ELECTRIC UTILITY**. Such utility as defined pursuant to F.S. 366.02(2), as amended from time to time.

~~Emergency~~**EMERGENCY**. A condition that poses a clear and immediate danger or threat to life or health, or a significant loss of property, or interruption of 911 services.

EQUIPMENT. The tangible property located in the rights-of-way used to deliver utility services, such as electric and/or natural gas.

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

~~Facilities~~**FACILITIES**. Means but is not limited to, plant, works, systems, improvements and equipment owned, leased or otherwise used by a provider such as poles, wires, fixtures, equipment or underground conduits located in, along, over, upon, under, or through the rights-of-way and other property necessary or convenient for the transmission and distribution of a provider's services.

~~FCC~~. The Federal Communications Commission, or any successor thereto.

~~Gross receipts~~**GROSS RECEIPTS**. Such gross receipts as defined in F.S. § 203.012, as amended from time to time.

~~GROSS REVENUES~~. All revenues derived directly or indirectly by an OVS provider or its affiliates including subscriber revenue, advertising revenue and revenue to the OVS operator, its affiliates or third party programmer and which is derived from Open Video Services offered within the city, to the extent authorized by FCC.

~~In/A~~. Over, above, in, within, on or under a right-of-way.

~~LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY (LEC)~~. Any company certified by the Florida Public Service Commission to provide local exchange telecommunications service in this state on or before June 30, 1995, and if applicable, certification by the FCC pursuant to 47 U.S.C.A. 214.

~~LOCAL SERVICES~~. Local services provided within the corporate limits of the city, as defined in F.S. 203.012, as amended from time to time.

~~Major construction~~**MAJOR CONSTRUCTION**. The excavation, installation, removal, or maintenance of facilities in the rights-of-way, provided, however, that major construction shall not mean installation, repair, rehabilitation or maintenance of facilities that do not

involve excavation or other physical disruption of the rights-of-way, or other work in the rights-of-way that the City considers, in its sole discretion, to be minor construction.

Minor construction~~MINOR CONSTRUCTION~~. The excavation, installation, obstruction, removal, or maintenance of facilities that the City determines does not impact the physical integrity of the use of the traveling public.

~~OPEN VIDEO SERVICES~~. Any video programming services provided to any person by a provider certified by the FCC to operate an Open Video System pursuant to Sections 651 et seq. of the Telecommunications Act, 47 U.S.C.A. Title VI, Part V, as amended from time to time, regardless of the facilities used.

~~OPEN VIDEO SYSTEM (OVS)~~. The cables, wires, lines, towers, wave guides, optic fiber, antennae, and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from locations within the city.

~~OPEN VIDEO SYSTEM OPERATOR~~. Any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in such open video system, or otherwise controls or is responsible for the management and operation of such an open video system.

Permittee~~PERMITTEE~~. Any person to whom a construction permit has been granted.

Person~~PERSON~~. Any natural person or corporation, business association or other business entity, including, but not limited to a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity that has or seeks to have facilities located in the rights-of-way.

~~PRIVATE COMMUNICATION SYSTEM~~. The facility or system placed in whole or in part on public property or rights-of-way which includes but is not limited to the cable wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, or facilities for the provision of communications in connection with a person's business, but not for the provision of telecommunication services.

Probation~~PROBATION~~. The status of a person that has not complied with the requirements of this chapter.

Probationary period~~PROBATIONARY PERIOD~~. Shall be one year from the date that a person has been notified in writing that they have been put on probation.

Provider~~PROVIDER~~. Any person who owns, controls, or is the lessee of facilities in the rights-of-way, including ~~Private Communication Systems, ALEC's and LEC's~~, provided however, that *PROVIDER* shall not mean the lessee of facilities from a person who has registered with the City pursuant to Part I of this chapter and is in compliance with all requirements under Part I and ~~Part II~~ of this chapter.

Public utility~~PUBLIC UTILITY~~. A public utility as defined in F.S. 366.02(1), as amended from time to time.

~~RECURRING LOCAL SERVICE REVENUES~~. The revenue derived by a provider from local service provided within the corporate limits of the City of Hollywood. The calculation of such revenue shall be determined pursuant to F.S. 337.401(3), as amended from time to time.

Registrant~~REGISTRANT~~. Any person or entity who has a Registration Statement with the City or applies to have its facilities located in any rights-of-way, or in any way occupies or uses or seeks to occupy or use the rights-of-way.

Registration statement~~REGISTRATION STATEMENT~~. The statement a provider files with the City Engineer or his/her designee to register its facilities pursuant to Part I of this chapter.

~~RESELLER~~. Any person that provides communication services over a communications facility for which a separate charge is made, where the person does not own or lease the underlying communications facility used for the transmission.

Restore or Restoration~~RESTORE or RESTORATION~~. The process by which rights-of-way are returned to a condition as good or better than ~~that~~ as existed before the construction by the registrant.

Rights-of-way~~RIGHTS-OF-WAY~~. The surface and space above and below any real property in which the City~~city~~ has an interest in law or equity, including but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, or real property other than real property owned in fee by the City~~city~~. Rights-of-way shall not mean roads under the control of the State of Florida, Broward County or any other private roads or any real property involving the beach or coastal shore area.

Service or Utility service~~SERVICE or UTILITY SERVICE~~. Service provided by utilities, including but not limited to water, sewer, gas, electric power, ~~cable, or steam, or telecommunication services.~~

~~TELECOMMUNICATIONS FACILITIES~~. includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within the State of Florida and any portion of which occupies public property and/or rights-of-way. The term communications facility includes radio-transmitting towers, other supporting structures, and associated facilities used to transmit communication signals.

~~TELECOMMUNICATIONS SERVICE~~. The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

Trenchless technology~~TRENCHLESS TECHNOLOGY~~. The use of directional boring, horizontal drilling, microtunneling and other techniques used to construct underground facilities that result in the least disruption and damage to the rights-of-way as possible.

Underground facilities~~UNDERGROUND FACILITIES~~. All lines, cables, conduits, posts, tanks and other facilities owned, leased or operated by persons other than the City~~city~~ ~~that~~ which are located wholly or partially underneath the rights-of-way.

Use fee~~USE FEE~~. The compensation paid by the provider to the City~~city~~ ~~that~~ which is established by resolution of the City Commission.

Utility or Utilities~~UTILITY or UTILITIES~~. Any person, entity, public utility, electric utility or provider of water, sewer, electric power, gas, ~~cable, or steam or telecommunications service.~~

GENERAL REQUIREMENTS

§ 55.04 REGISTRATION AND RIGHTS-OF-WAY OCCUPANCY.

(A) Each person who occupies, uses, or seeks to occupy or use the rights-of-way or any equipment or facilities located in the rights-of-way, or who has, or seeks to have

equipment or facilities located in any rights-of-way shall register with the City Engineer or his/her designee and shall annually update its Registration Statement by October 1st of each year. Any person that maintains equipment in the rights-of-way on the effective date of this ~~Ordinance~~ shall register with the ~~City~~ within 90 days of the effective date of the ~~Ordinance~~.

~~(1) Any person seeking to occupy or use the rights-of-way for a telecommunication system, private communications system or open video system as defined in § 55.03 above, shall comply with the requirements set forth in this Part and Part II of this chapter. Registration shall consist of providing the registration information as set forth in § 55.04(C) of this chapter.~~

~~(12)~~ Any person seeking to occupy or use the rights-of-way for utility purposes such as electric, general railroad, gas or other public utility purposes shall obtain a franchise pursuant to § 53.01(B)(1) and (2) of the ~~City's~~ Code of Ordinances.

(B) No person shall construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof located in the rights-of-way without first filing a Registration Statement with the City Engineer or his/her designee.

Nothing herein shall be construed to repeal or amend the provision of any section of the Code of Ordinances or ~~City~~ policies permitting persons to plant or maintain boulevard plantings or gardens in the area of rights-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the rights-of-way and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. Updated Registration Statements shall be provided annually with the City Engineer or his/her designee. In the event that the provider decides to provide other telecommunication services not identified in the initial application or in an updated Registration Statement, the provider shall submit such information to the City Engineer within a reasonable time.

(C) *Registration information.* At the time of filing a Registration Statement, the registrant shall provide the City Engineer or his/her designee with the following information or shall notify the City Engineer or his/her designee that the following information is included in the registrant's existing franchise with the ~~City~~. The registrant shall inform the City Engineer or his/her designee of any changes to the information within 15 days. The required information is as follows:

(1) Registrant's name, including any affiliates, address and e-mail address, if applicable, and telephone and facsimile numbers.

(2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative, including information regarding how to contact the local representative in the case of an emergency.

(3) A Certificate of Insurance verifying that insurance coverage as set forth below has been obtained by the registrant by an insurance company licensed to do business in the State of Florida. Such policy or policies shall name the ~~City~~ as an additional insured and require that the ~~City's~~ Risk Manager be notified 30 calendar days in advance of cancellation of the policy or policies.

The following types and limits of insurance shall be maintained:

(a) Workers compensation insurance. Workers' compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees and, in the case any work is sublet, the registrant shall require any subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the registrant. The registrant and its subcontractors shall maintain during the life of this contract employer's liability insurance. The following must be maintained:

(1) Workers' Compensation - Statutory.

(2) Employer's Liability- \$100,000 per accident.

(b) Comprehensive general liability insurance with minimum limits of \$3,000,000 as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability, coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, and coverage for loss or damage arising out of publications or utterances in the course of or related to advertising, broadcasting, telecasting or other communication activities conducted by or on behalf of the registrant.

(c) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by the registrant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the applicable state law, including residual liability insurance with minimum limits of \$2,000,000.00 as the combined single limit for each occurrence for bodily injury and property damage.

The City reserves the right to require any other insurance coverage it deems necessary depending upon the exposures. However, in lieu of a Certificate of Insurance, registrant may submit proof of self-insurance status to the City's Risk Manager. Said proof shall demonstrate adequate financial resources to defend and cover claims.

(4) If the registrant is a corporation, written evidence that it is authorized to do business in the State of Florida, as recorded and certified by the Florida Secretary of State and the name of any affiliates who may place or maintain facilities within the City's rights-of-way.

(5) A copy of the registrant's certificate of authority from the Florida Public Service Commission, if the registrant is required by state law to have such certification.

(6) Proof that the registrant has posted all required bonds or provided proof of adequate financial resources to defend and cover claims.

~~—(7) A copy of the registrant's FCC 214 approval, if applicable and required for the provision of said telecommunication services.~~

~~—(8) A copy of the registrant's license pursuant to the Cable Land License Act, if applicable.~~

~~—(9) If the registrant is a telecommunications service provider, a written statement which indicates the type of telecommunication services the registrant intends to provide, or is currently being offered or provided.~~

§55.05 REPORTING REQUIREMENTS.

(A) Each registrant shall, at the time of filing a Registration Statement, file a construction and maintenance plan, to the extent known, with the City Engineer or his/her designee. Such plan shall be submitted using a format designated by the City Engineer or his/her designee and shall contain the information determined by the City Engineer, the Director of Design and Construction Management, and Director of Utilities to be necessary to facilitate the coordination and reduction in frequency of construction, excavation and obstructions in the rights-of-way. To the extent that the plan changes, each registrant shall use its best efforts to update the plan on an annual basis, or by December 1st of each year. The plan shall include:

(1) The specific locations and the beginning and ending dates of all known planned construction to be commenced during the next calendar year; and

(2) The tentative locations and beginning and ending dates for all construction contemplated for the five5 years following the next calendar year; and

(3) A description of how the equipment or new facility would fit into the affected rights-of-way.

~~When submitting the aforementioned information, there is no need for registrant to submit information that relates to its systems, plans or purposes of the telecommunication facilities.~~

(B) Each registrant shall maintain records of the location of its facilities in the rights-of-way, if available, and such other records as the City Engineer may reasonably require. Each registrant shall annually cause an audit to be performed, at its sole expense, or annually certify that the records that are on file with the City Engineer are accurate and complete when it provides its updated Registration Statement to the City Engineer.

§55.06 MAPPING DATA.

(A) Each registrant shall use its best efforts to provide to the City Engineer, within a reasonable time, information indicating the horizontal location of all facilities placed in the rights-of-way and the vertical location of all underground facilities that are placed in the rights-of-way. Each registrant shall use its best efforts to make this information available in electronic format as such information shall be included in the mapping system used by the Citycity.

(B) If the registrant acquires additional facilities, or abandons or disuses existing facilities, it shall supplement its mapping information with "as-builts" when it provides its updated Registration Statement annually to the City Engineer. In addition, "as-builts" shall be required in the event that there are significant deviations from the approved plans during construction. Each registrant shall use its best efforts to make this information available in electronic format.

§55.07 UNREGISTERED EQUIPMENT.

One year after the passage of the ordinance creating this chapter, any facilities in any rights-of-way that are owned by a person who has not registered shall be deemed a nuisance. The Citycity may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the rights-of-way at the facility owners' expense.

§55.08 ABANDONED AND UNUSABLE FACILITIES.

(A) A registrant who has determined to discontinue all operations in the City must either:

(1) Provide information satisfactory to the City Engineer that the registrant's obligations for its facilities in the rights-of-way under this chapter and under other applicable provisions of this Code, have been lawfully assumed by another registrant;

(2) Obtain permission from the City Engineer to abandon the facilities in place; or

(3) Submit to the City Engineer a proposal and instrument for transferring ownership of its facilities to the City.

(B) Facilities of a registrant who fails to comply with this section shall be deemed abandoned. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies and rights it has in law or in equity, but not limited to:

(1) Abating the nuisance and seeking reimbursement for the cost of abatement from the registrant; or

(2) Taking possession of the facilities and restoring them to a usable condition.

RIGHTS-OF-WAY CONSTRUCTION PERMITS

§55.09 CONSTRUCTION PERMIT.

Except as otherwise provided in this chapter, no person may perform major construction in the City rights-of-way without first having obtained a construction permit from the Utilities Department, Engineering Division. No permit shall be required for work in the rights-of-way that the City Engineer determines as minor construction.

(A) A Construction Permit is valid only for the dates, time and area of rights-of-way specified in the permit.

(B) No person may perform major construction in the rights-of-way beyond the date(s) specified in the Construction Permit unless an extension or a new construction permit is granted.

(C) Construction Permits shall be conspicuously displayed at all times at the work site and shall be available for inspection.

§55.10 REQUESTS FOR CONSTRUCTION PERMITS.

Requests for Construction Permits shall be filed with the City Engineer or his/her designee. All Construction Permit requests shall be in a form specified by the City Engineer and shall contain the following:

(A) Evidence that the person requesting the Construction Permit is a registrant or proof that the person has the authority to apply for the permit on behalf of a registrant.

(B) A traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the manual of uniform traffic control devices and standards of the Florida Department of Transportation, in order to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(C) If the person requesting the Construction Permit is proposing to install overhead facilities on new poles, a statement that it is not technologically or economically feasible to locate its telecommunication facilities on existing utility poles along the proposed route or underground.

(D) If the person requesting the Construction Permit is proposing an underground installation within new ducts or conduits to be constructed within the rights-of-way, the following information is required:

(1) A statement that it is not technologically or economically feasible to locate its facilities in existing ducts and conduits; and

(2) The location, depth, size and quantity of proposed new ducts or conduits.

(E) A preliminary construction schedule and completion date.

(F) When a Construction Permit is requested for purposes of installing additional facilities, the posting of a Construction Bond for the additional facilities, if required, or proof of self-insuring status that demonstrates adequate financial resources to defend and cover claims.

(G) If required by the City Engineer, a videotape documenting the condition of the rights-of-way prior to major construction.

(H) *Joint submissions.* Persons requesting a Construction Permit are encouraged to make joint submissions for said permits to work in the rights-of-way at the same place and time and may share in the payment of the construction permit fee. Persons requesting a Construction Permit that file jointly shall be jointly and severally liable for the construction permit fee and for compliance with the requirements of this chapter.

(I) Registrant shall submit a three year capital improvement plan for any future permits which may need to be issued relating to the project in order to coordinate such proposed construction work with other providers and the City. ~~Such Said~~ plan is to only designate the month and year of proposed capital improvements and the proposed location for ~~the said~~ improvements (e.g. - Hollywood Blvd.). When submitting the aforementioned information, there is no need for registrant to submit information that relates to its systems, plans or purposes of the telecommunication facilities.

(J) Registrant shall submit an Emergency Response Plan which shall include but not be limited to the requirements set forth in §55.13 of this chapter.

§55.11 ISSUANCE OF PERMIT; CONDITIONS.

(A) The issuance of a Construction Permit shall neither convey equitable or legal title in the streets, sidewalks, public property or rights-of-way.

(B) Each Construction Permit shall be non-exclusive and shall not in any manner prevent the City from granting other or further permits and agreements regarding any of the rights-of-way. Such Construction Permits and agreements shall in no way prevent or prohibit the City from using any of said properties/rights-of-way or affect its jurisdiction over them or any part of them, and the City shall retain its power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City deems necessary, including but not limited to the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties.

(C) *Conditions before a Construction Permit is issued.* Except in the case of an emergency, no Construction Permit will be granted:

- (1) To any person required to register and who has not registered;
- (2) To any person who is currently not in substantial compliance with the requirements of this chapter ~~or, if applicable, with the requirements set forth in Part II of this chapter.~~
- (3) To any person who has an outstanding debt which is due and payable to the ~~City~~city without offset or dispute.
- (4) To any person as to whom there exists grounds for the revocation of a Construction Permit until such person/registrant has corrected any such failure and/or default.
- (5) To any person who has not submitted an Emergency Response Plan₁ which shall include but not be limited to the requisites set forth in §55.13 of this chapter.
- ~~(6) To any person who has not provided a letter of authorization in accordance with §55.36 of this chapter.~~

(D) The City Engineer shall process applications for construction permits within the time frame provided by applicable law. Before the City Engineer denies issuance of a Construction Permit, the City Engineer shall provide notice of his/her preliminary decision to deny, in writing, and the person/registrant who applied for the permit shall have 10 business days to cure the default that precluded issuance of the permit. If the person/registrant cures the defects within the 10 day period, a Construction Permit will be issued. If the person/registrant fails to cure, the permit request will be denied.

(E) *Other conditions.* The City Engineer may impose reasonable conditions upon the issuance of the construction permit and the performance of the person/registrant requesting the permit thereunder in order to protect the public health, safety and welfare, and to ensure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.

(F) *Exceptions.* Notwithstanding the provisions of subsections (C) and (D) above, the City Engineer may issue a Construction Permit where necessary:

- (1) To prevent substantial economic hardship to a customer of the person/registrant requesting a permit; or
- (2) To allow such customer to materially improve its utility service; or
- (3) To allow a new economic development.

§55.12 CONSTRUCTION PERMIT FEES; BOND REQUIREMENTS; INDEMNIFICATION AND LIABILITY.

(A) *Construction Permits.* Construction Permit fees shall be established by resolution of the City Commission. The payment requirements of such fees shall be as follows:

- (1) *Nonpayment of permit fees.* No Construction Permit shall be issued without the prior payment of all requisite fees unless:
 - (a) Approved by the City Engineer and Director of Financial Services;
 - (b) In the event of an emergency; or
 - (c) Unless the registrant holds a franchise with the ~~City~~city which exempts it from such payments.

~~(2) *Exemption for providers of communication services.* Pursuant to F.S. 337.401(3)(c)1.a.(II)(b), providers of communication services as defined in F.S. 202.11(3), are exempt from payment of the required construction permit fees established by resolution of the City Commission. However, the providers of communication services shall comply with all other requirements set forth in this Chapter, including but not limited to registration requirements and obtaining a construction permit(s).~~

~~(3) *Probationary fees.* All Construction Permit fees shall be doubled during a probationary period.~~

~~(43) *Non-refundable fees.* Permit fees that were paid for a permit that the City Engineer has revoked for a breach or violation of this chapter are not refundable.~~

(B) *Construction Bond.* Prior to commencement of construction, a registrant shall deposit a Construction Bond in form acceptable to the Director of Financial Services. ~~The~~Such Construction Bond shall be in an amount equal to 1190% of the anticipated construction costs or such other amount approved by the Director of Financial Services, or shall provide proof of self-insuring status that demonstrates adequate financial resources to defend and cover any and all claims.

(C) *Indemnification and liability.*

(1) By reason of the acceptance of a registration request or the granting of a Construction Permit, the Citycity does not assume any liability for:

(a) Injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the Citycity;

(b) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment or facilities by a registrant or its agents, or activities of the registrant.

(2) By registering with the Department, a registrant agrees to defend, indemnify and hold harmless the Citycity, its officers, employees and agents, from and against any and all costs, liabilities, losses, expenses and claims for damages of any kind, including but not limited to loss of life or personal injury and damage to property, arising out of and in connection with the construction, presence, installation, maintenance, repair or operation by the registrant or its agents, of its conduit, facilities and use of the Citycity's rights-of-way, whether any act or omission complained of is authorized, allowed or prohibited by the Citycity or due to the issuance of a permit. The Citycity's right to indemnification shall not be affected by the issuance of permits and inspection of plans or work by the Citycity. Nothing in this subsection shall affect the Citycity's rights, privileges and immunities under the doctrine of sovereign immunity and as set forth in F.S. § 768.28.

~~(DE)~~ *Construction schedule.* A registrant shall submit 30 days prior to any construction activities authorized by an approved Construction Permit, a construction schedule to the City Engineer and Director of Design and Construction Management. This schedule will include proposed starting and completion dates. Registrant shall submit three business days prior to the actual construction commencement date written notification confirming the actual construction date for the project.

§55.13 WORK WITHOUT A PERMIT.

(A) *Emergency situations.* Each registrant shall promptly notify the City Engineer of any event regarding its facilities which it considers to be an emergency. In any emergency

event relating to registrant's facilities or arising out of its installation of such facilities, the registrant shall proceed to take whatever actions are necessary in order to respond to the emergency. In the event that the City becomes aware of an emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency and shall enforce the Emergency Response Plan submitted by the registrant. In any event, the Department may take whatever action it deems necessary in order to respond to the emergency, the reasonable and documented direct cost of which shall be borne by the registrant whose facilities occasioned the emergency. Each registrant shall be responsible for the cost of repairing any facilities that it or its facilities damage at any time, or that are damaged during an emergency caused by the registrant or its facilities. In addition to the above, in the event that an emergency does arise, the registrant shall provide the following:

(1) A Public Relations/Customer Service Representative shall be contacted immediately for all emergencies and shall be available to handle all homeowner questions and issues as well as media information. Such activities shall be coordinated with the City's Public Relations Office.

(2) The name, address and telephone number of the company retained by the registrant to handle all emergency matters, including but not limited to immediate repair of any of the facilities and/or property affected by the emergency situation.

(B) *Minor construction.* For those instances relating to minor construction or individual service repair work being done to one flag of the sidewalk, the registrant shall provide written notification to the City 24 hours prior to the commencement of such work.

CONSTRUCTION AND RESTORATION

§55.14 SUBSURFACE UTILITY ENGINEERING STUDY REQUIRED.

(A) Prior to commencement of any major construction, a registrant shall, if required by the City Engineer, conduct a subsurface utility engineering study on the proposed route of construction. The City Engineer may waive all or part of this requirement in construction situated where it is not necessary. A subsurface utility engineering study consists of:

(1) Securing all available "as built" plans, plats and other location data indicating the existence and approximate location of all underground facilities along the proposed construction route.

(2) Visibly survey and record the location and dimensions of any above-ground features of all underground facilities along the proposed construction route, including but not limited to manholes, valve boxes, utility boxes, posts and visible street cut repairs.

(3) Determining and recording the presence and approximate horizontal location of all underground facilities in the rights-of-way along the proposed system construction route utilizing surface geophysical designating techniques such as electromagnetic and elastic wave locating methods.

(4) Utilizing non-destructive digging methods, such as vacuum excavation, to determine as precisely as possible the horizontal, vertical, and spatial position, composition, size, and other specifications of the conflicting underground facilities where system design and the location of underground facilities appear to conflict on the updated system route maps, plans, and computer aided drafting and design electronic format files.

A registrant shall not excavate more than a 200 millimeter square hole in the rights-of-way to complete this task.

(5) Plotting, incorporating, and reconciling the data obtained by completion of the task described above on the registrant's proposed system with the updated route maps, system plan sheets, and electronic format files, in a format designated by the City. The registrant shall also provide the City Engineer with this information.

(6) Based on all of the data collected upon completion of the tasks described in this section, adjusting the proposed system design elevations, horizontal or vertical locations to avoid the need to relocate other existing underground facilities.

(B) Upon completion of a subsurface utility engineering study pursuant to this chapter, the registrant shall record all of the data collected into an electronic format file compatible with that used by the City and deliver a copy to the City.

(C) *Qualified firm.* All subsurface utility engineering studies conducted pursuant to this section shall be performed by a firm specializing in subsurface utility engineering or may be performed by the registrant if the registrant proves to the City Engineer that it possesses the requisite education and experience to complete the project itself.

(D) Except as otherwise provided in an existing franchise agreement with the City or under applicable state law, the registrant shall bear the cost of compliance with this section.

§55.15 LOCATION OF FACILITIES.

The City Engineer shall have the power to prohibit or limit the placement of new or additional facilities within the rights-of-way if there is insufficient space to accommodate all requests to occupy and use the rights-of-way. In making such decisions, the City Engineer shall strive to the extent possible to accommodate all existing and potential users of the rights-of-way, but shall be guided primarily by considerations of public interest, the public's need for the particular utility service, the condition of the rights-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the rights-of-way, and future City plans for public improvements and development projects ~~that~~^{which} have been determined by the City Commission to be in the public interest.

§ 55.16 MANNER OF CONSTRUCTION.

(A) All major and minor construction shall conform to specifications and standards established by the City which include the Public Utilities Standards and Policies.

(B) All major and minor construction shall be accomplished in the manner resulting in the least amount of damages and disruption to the rights-of-way. Specifically, every registrant performing major construction shall utilize trenchless technology, unless the City Engineer approves another method of construction.

(C) Entire road closures will not be permitted in major traffic ways which shall include any road listed as an arterial, collector or one-way pair on the Broward County Traffic Ways Plan. Lane closures shall not occur during the rush hour period starting at 7:00 a.m. and ending at 9:00 a.m. and from 4:00 p.m. to 6:00 p.m.

§ 55.17 SPECIAL EXCEPTIONS.

The City Engineer may grant a special exception to the requirements of §§ 55.14 and 55.16 if a registrant demonstrates with written documentation that:

(A) The exception to such requirements will not create any threat to the public health, safety or welfare; or

(B) The increased economic burden and the potential adverse impact on the registrant's construction schedule resulting from the strict enforcement of the requirements set forth in §§ 55.14 and 55.16 prohibits or effectively prohibits the ability of the registrant to provide utility services; or

(C) The requirements unreasonably discriminate against the registrant in favor of another person/registrant.

§ 55.18 REMOVAL AND RELOCATION OF FACILITIES.

(A) In the event the ~~City~~city reasonably requires the removal or relocation of any utilities' facilities installed in the ~~City's~~city's rights-of-way, the statutory requirements set forth in F.S. Chapter 337, and as amended from time to time, for such removal and relocation shall be implemented and complied with by the parties.

(B) The reasonable and documented direct costs of such removal or relocation shall be borne by the registrant pursuant to F.S. Chapter 337, as amended from time to time.

§ 55.19 PRE-CONSTRUCTION FACILITIES LOCATION.

(A) Before commencing major construction, each registrant who has facilities located in the proposed construction area shall mark the horizontal and vertical placement of all of its facilities, in conformance with the marking guidelines of the Utility Location and Coordination Council of the American Public Works Association.

(B) Any registrant whose facilities are less than 20 inches below a paved surface shall notify and work closely with any other registrant proposing to construct equipment in the construction area to minimize the potential damage or disruption from construction.

§55.20 RESTORATION OF RIGHTS-OF-WAY.

(A) Restoration of the rights-of-way shall conform with the sections, details, and specifications set forth in the "Standard Details, Specifications, Policies and Procedures" of the Public Utilities Department of the City of Hollywood, as amended from time to time.

(B) The work to be done under a Construction Permit and the restoration of the rights-of-way as required herein, must be completed within the dates specified in the Construction Permit.

(C) The registrant shall restore the rights-of-way and perform the work according to the standards and with the materials necessary to return the rights-of-way to the same or similar condition as existed prior to construction. In the event that the registrant fails to restore the rights-of-way within 10 days after completion of the construction or repair, the ~~City~~city may restore the rights-of-way and make a claim under the Construction Bond or seek reimbursement from the registrant. Upon the registrant's completion of the

restoration, the City will inspect ~~the~~said work and, if the City determines that the property has been properly restored, it shall release 50% of the Construction Bond amount to the registrant. However, the registrant shall be responsible for its restoration work and shall maintain and correct any improper construction and/or restoration at its cost for 12 months following its completion. During the 12 month period, it shall, upon notification from the Department, correct all restoration work to the extent necessary using the method required by the Office of the City Engineer. Said work shall be completed within 21 calendar days of the receipt of the notification from the Department. In the event that the registrant fails to restore the property within 21 days, the City may restore the property and make a claim against the Construction Bond. If, during the 12 months following such restoration, the pavement settles due to registrant's improper backfilling, the City shall make a claim under the Construction Bond to recover the cost of repairing the pavement. If, 12 months after completion of the restoration, the City determines that the rights-of-way have been properly restored, it shall release the remaining Construction Bond balance.

(D) The registrant shall perform the work according to the standards and with the materials specified by the City Engineer and Utilities Department. The City Engineer shall have the authority to prescribe the manner and extent of the restoration. The City Engineer in exercising this authority shall be guided by the following standards and considerations:

- (1) The number, size, depth and duration of the excavations, disruptions or damage to the rights-of-way;
- (2) The traffic volume carried by the rights-of-way;
- (3) The character of the neighborhood surrounding the rights-of-way;
- (4) The condition of the rights-of-way prior to the excavation;
- (5) The remaining life-expectancy of the rights-of-way affected by the excavation;
- (6) Whether the relative cost of the method of restoration to the registrant is in reasonable balance with the prevention of an accelerated depreciation of the rights-of-way that would otherwise result from the excavation, disturbance or damage to the rights-of-way; and
- (7) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the rights-of-way that would otherwise take place.

§55.21 PROTECTION OF FACILITIES.

(A) When the City performs work in the rights-of-way and finds it necessary to maintain, support, or move a registrant's facilities in order to protect it, the reasonable and documented direct costs associated therewith will be billed to that registrant and must be paid within 30 days from the date of billing, unless otherwise provided by state law. Before performing such work, the City will provide notice as required under the Sunshine One Call System; however, if a registrant is not part of the Sunshine One Call System, the City shall provide 60 days prior notice to the registrant. In cases of emergency, the City will provide such notice as soon after the emergency work is conducted as is possible.

(B) Each registrant shall be responsible for the cost of repairing any equipment or personal property that it damages at any time, or that is damaged during an emergency caused by the registrant, its agents or its equipment.

§55.22 INSPECTION.

- (A) The registrant shall notify the City within 48 hours of completion of construction.
- (B) The work site shall be available for inspection at all reasonable times during and upon completion of construction.
- (C) The City may at any time order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public.
- (D) The City may order the registrant to correct all violations of this chapter. Within 10 business days after issuance of the order, the registrant shall present proof to the City that all violations have been corrected and shall pay a reinspection fee and all applicable fines or penalties. If such proof has not been presented within the required time, the City may revoke the permit pursuant to § 55.23.

§55.23 GENERAL OBLIGATIONS.

- (A) Obtaining a construction permit does not relieve a registrant of its duty to obtain all other necessary authorizations and to pay all fees required by other City, county, state or federal rules, laws or regulations.
- (B) A registrant shall comply with all requirements of local, state, county and federal laws.
- (C) The construction performed in the rights-of-way shall be done in conformance with specifications promulgated by the City Engineer and Utilities Department and as set forth in the City's administrative policies.
- (D) A registrant shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all construction performed pursuant to its permit, regardless of who performs the construction.
- (E) Except in the case of emergency, and with the approval of the City Engineer, no construction in the rights-of-way may be performed when climatic conditions are unreasonable for such work.
- (F) A registrant shall not obstruct the rights-of-way in a manner that will interfere with the natural free and clear passage of water through the gutters or other waterway.
- (G) Private vehicles, other than authorized company vehicles, may not be parked within or adjacent to a construction site. The loading and unloading of trucks adjacent to a construction site area is prohibited unless specifically authorized by the permit.
- (H) A registrant shall belong to the Sunshine State One-Call notification system as required by state law or such other line location system acceptable to the City.

ENFORCEMENT

§55.24 PERMIT OBLIGATIONS; REVOCATION.

(A) The City Engineer may order the suspension of work under a Construction Permit and ultimately revoke any Construction Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or regulation, or any condition of the Construction Permit that remains uncured following notice and reasonable opportunity to cure as provided below. The types of substantial breach by the registrant may include, but are not limited to:

- (1) The violation of any material provision of the Construction Permit;
- (2) An evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- (3) Any material misrepresentation of fact in the process of registrant's request for a Construction Permit;
- (4) The failure to maintain the required Construction Bond or insurance;
- (5) The failure to properly restore the rights-of-way; or
- (6) The failure to correct within the specified time an order issued by the Department Inspector.

(B) If the City Engineer determines that the registrant has committed a substantial breach of a term or condition of the Construction Permit, the City Engineer shall make a written demand upon the registrant to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Construction Permit. Further, a substantial breach, as stated above, will allow the City Engineer, at his or her discretion, to place additional or revised conditions on the Construction Permit.

(C) Within five business days of receiving notification of the breach, the registrant shall contact the City Engineer with a plan, reasonably acceptable to the City Engineer and Utilities Department, for its correction. Registrant's failure to contact the City Engineer, to submit an acceptable plan, or failure to reasonably implement the approved plan, shall be cause for revocation of the Construction Permit. Further, registrant's failure to submit an acceptable plan, or registrant's failure to implement the approved plan, shall be cause for the registrant to be placed on probation for one full year.

(D) The City Engineer may establish a list of conditions of any Construction Permit which, if breached, will be cause for the registrant to be placed on probation for one full year, such as, but not limited to, working out of the allotted time period or working on rights-of-way significantly outside of the permit. These conditions shall be stated on the permit.

(E) If a registrant, while on probation, commits a breach as outlined above, the registrant's permit may be revoked and no other permits shall be issued for a one year period, except for emergency repairs and service requirements as mandated by state or federal regulations and unless otherwise determined by the City Engineer.

(F) If a Construction Permit is revoked, the registrant shall also reimburse the City for the City's reasonable costs, including restoration costs, the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

(G) The Department Inspector may issue an immediate stop work order where the registrant's construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has abated.

Section 3: The City Commission hereby repeals in its entirety Title V, Chapter 55, Part II, Sections 55.30 – 55.38, entitled "Telecommunications and Open Video System

Facilities Rights-of-Way Usage Findings and Definitions,” of the Code of Ordinances, and creates a new Chapter 55, Part II, entitled “Hollywood Communications Rights-of-Way Ordinance,” to read as follows:

CHAPTER 55

Part II: Hollywood Communications Rights-of-Way Ordinance.

§55.30 Intent and purpose; Applicability; Authority to Implement.

(A) It is the intent of the City to promote the public health, safety and general welfare by providing for the placement and maintenance of communications facilities in the public rights-of-way within the City; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including the United States and Florida Constitutions, F.S. § 337.401, as it may be amended, the City’s home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, the Spectrum Act of 2012, FCC regulations, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this section; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City shall be governed by and shall comply with all applicable federal and state laws.

(B) Applicability.

(1) ~~Chapter 55, Part II This Ordinance~~ shall apply to all facilities for communications services placed or maintained in the City public rights-of-way pursuant to F.S. § 337.401, including but not limited to any person holding a certificate of franchise authority pursuant to F.S. § 610.103, Florida Statutes, communications services providers, pass-through providers, and wireless providers. To the extent not prohibited by applicable law, this Ordinance shall apply to all applications pending at the time of adoption of this Ordinance, and as it may be amended, to place or maintain communications facilities in the public rights-of-way. Persons seeking to place or maintain communications facilities on private property or other property to which the City, any municipality, Broward County, Broward County School Board, State of Florida, or federal government has a fee-simple or leasehold interest in real property, not within and exclusive of the public rights-of-way, located within the jurisdictional boundaries of the City, shall comply with the applicable provisions of the City’s Zoning and Land Development Regulations, to the extent they apply, unless such property is addressed expressly in this Ordinance. This Ordinance is not applicable to communication facilities outside the public rights-of-way, unless addressed expressly herein. Pursuant to this Ordinance, a person may be authorized to place or to maintain communications facilities, including but not limited to small wireless facilities, micro wireless facilities, utility poles for collocation of small wireless facilities, fiber, coaxial cable, and backhaul facilities in the City public rights-of-way. Wireless support structures,

telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law. This Ordinance applies to the placement of conduit, fiber or cable for the purpose of providing backhaul or communications service. Consistent with F.S. § 337.401, this Ordinance applies to a cable or video service provider that has been issued and holds a certificate of franchise authority from the Florida Department of State pursuant to F.S. § 610.103 that places or maintains a cable system or wireline facilities in the City's public rights-of-way.

(2) Rules or regulations imposed by the City relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way shall be generally applicable to all providers of communications services, to the extent federal or Florida law does not require different treatment. Florida law requires that the City's rules and regulations take into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities. Accordingly, in the exercise of the City's authority, as required by Florida law, this Ordinance provides different regulations applicable to various communications facilities.

(3) This Ordinance does not apply to electric utility poles for an electric distribution system located in the City public rights-of-way pursuant to a valid franchise agreement with the City. However, collocation of small wireless facilities on such utility poles and any utility poles in the public rights-of-way that are installed, altered or replaced to support the collocation of small wireless facilities will be governed by the applicable provisions of this Ordinance. Ordinances approving a franchise agreement and a valid franchise agreement with an electric utility shall remain in full force and effect, notwithstanding any provision of this Ordinance. In addition, this Chapter 55, Part II Ordinance does not apply to the use of the public rights-of-way by public utilities, addressed in Chapter 53, or in Chapter 55, Part I, of the Code of Ordinances. To the extent of any conflict between this Chapter 55, Part II Ordinance and the provisions of Chapter 53 or Chapter 55, Part I, with respect to communications facilities, this Chapter 55, Part II Ordinance shall control. This Ordinance shall not apply to communications facilities owned by the City or to communications facilities owned by a person, including an electric cooperative, to the extent such facilities are utilized solely on an internal, non-commercial basis by said person.

(C) This Ordinance implements *inter alia*, F.S. § 337.401, as amended, including the Advanced Wireless Infrastructure Deployment Act, F.S. § 337.401(7) ("Small Cell Statute"). By adopting this Ordinance, the City does not waive any rights including any rights that may exist under federal law, the Florida Constitution and the U.S. Constitution. In the event F.S. § 337.401, is repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law or regulation, in whole or in part, provisions of this Ordinance may no longer apply, in which case pending and future applications or requests for communications facilities in the public rights-of-way will be governed by applicable law. In addition, permits issued pursuant to this Ordinance may

be suspended or revoked, and facilities installed pursuant to permits issued pursuant to this Ordinance or without permits as authorized by this Ordinance may be required to be removed at the facility owner's expense, to the extent consistent with applicable law. It is the City's intent not to create any vested rights in placing and maintaining communications facilities in the public rights-of-way as a result of this Ordinance or any permit issued pursuant to this Ordinance, to the extent not inconsistent with applicable law.

(D) To the extent any provision of this Ordinance conflicts with the City's Code of Ordinances or the Zoning and Land Use Regulations, this Ordinance shall control.

(E) This Ordinance shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Ordinance, all pending applications for permits subject to this Ordinance, and 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 state and federal law. A person with existing communications facilities in the public rights-of-way shall comply with the registration, bond, and other applicable requirements of this Ordinance by the earlier of the following: 90 days from the effective date of this Ordinance or prior to submitting an application for a permit pursuant to this Ordinance. This provision is not intended to ~~shall not~~ require the removal or alteration of existing communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit or otherwise lawfully installed prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed by the City Manager, or pursuant to enforcement of this Ordinance or applicable law.

(F) **Reservation of rights.** The City reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.

(G) **Authority to implement Ordinance.** The City Manager is authorized to adopt, to modify, and to repeal rules and regulations, not inconsistent with this Ordinance, to carry out the intent and purposes of this Ordinance.

§55.31 Definitions. For the purposes of this Chapter 55, Part II Ordinance the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined in this Ordinance or in any permit that may be granted pursuant to this Ordinance shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §151 *et seq.*, as amended or the Spectrum Act of 2012, 47 U.S.C. §1455(a) (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the code, and if not defined in the code, shall be construed to mean the common and ordinary meaning.

Abandonment or Abandoned. The cessation of all uses of a communications facility for a period of 90 or more consecutive days, provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be *Abandonment* of a communications facility. A wireless infrastructure provider's failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine months after the application is approved in accordance with F.S. § 337.401(7)(j), shall constitute abandonment. The terms *Abandonment* or *Abandoned* are not intended to include a dropped line from a potential or existing customer in the event the communications services provider reasonably anticipates future use of the dropped line. In addition, underground communications facilities that have been placed out of service or deactivated, and that may not be left in place pursuant to the 2017 FDOT UAM, shall be considered abandoned.

Abut. When used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot line or boundary line with another lot or parcel of land or public right-of-way.

Adjacent properties or Properties adjacent. (i) Those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site, and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

Antenna. Communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Applicable codes. Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including but not limited expressly to the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual ("2017 FDOT UAM"), 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, City codes or ordinances, and standards and regulations, to the extent not inconsistent with the 2017 FDOT UAM and Florida law.

Applicant. A registrant who submits an application.

Application. A request submitted by an applicant to the City for a permit to collocate small wireless facilities or to place a new utility pole used to support a small wireless facility in the public rights-of-way.

As-built plans. A set of final and complete drawings in a format as specified by the City submitted upon completion of a project, signed and sealed by professional surveyor or mapper as defined in F.S. § 472.005, or licensed engineer, that reflects all changes made during the construction process, and shows the exact dimensions, geometry and location of all elements of the work completed under the permit.

Authority. The City, to the extent it has jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from F.S. § 337.401(7).

Authority or City utility pole. A utility pole owned by the City in the public right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

A retirement community that:

- (i) Is deed restricted as housing for older persons as defined in F.S. §760.29(4)(b).
- (ii) Has more than 5,000 residents; and
- (iii) Has underground utilities for electric transmission or distribution.

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

Below-grade communications facility. Communications facilities, including manholes or access points, which are entirely contained below grade within the public rights-of-way.

City. The City of Hollywood, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

City Manager. The City of Hollywood, Florida City Manager or designee.

Clear zone. Consistent with the latest edition of the Florida Department of Transportation Index, the roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

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

Communications Facility or Facility or System. Any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the City and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. A utility pole intended for collocation of a small wireless facility shall be considered a facility for purposes of this Ordinance.

Communications services. The transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission or conveyance, and shall also include cable service and video service as defined in F.S. §§ 610.103(1) and (11).

Communications services provider. Any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider.

Communications services tax. The local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to F.S. § 202.19, as amended.

Consolidated permit application. A single permit application that would otherwise require individual permit applications for the collocation of between two and 30 small wireless facilities to existing structures within the public rights-of-way.

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

Extension of existing facilities or Extension. Those extensions from the public rights-of-way into a customer's private property for purposes of placing a service drop or those extensions from the public rights-of-way into a utility easement to provide service to a discreet identifiable customer or group of customers. ~~An extension of fiber or cable to serve a property with multiple customers, for example, a commercial building with multiple tenants, shall not constitute an extension of existing facilities unless all tenants are served by the owner of the facilities under one agreement.~~

FCC. The Federal Communications Commission.

Florida Building Code. The Florida Building Code promulgated under F.S. Chapter 553, and includes the applicable amendments thereto as both may be amended from time to time.

Florida Greenbook. The latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

Force majeure event. A cause or event not within a person's control that shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a person's control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person's directors, officers, employees, contractors or agents.

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

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

Homeowners' association. An incorporated association whose members consist of owners of single-family homes or condominium units that manage or control property owned by the association.

In public rights-of-way or In the public rights-of-way. In, on, over, under or across the public rights-of-way.

Licensed engineer. A Florida registered professional engineer, or person who is exempt from such registration requirements as provided in F.S. § 471.003.

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

Micro wireless facility. A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

Ordinance. This Ordinance, codified in Title V, Chapter 55 of the Code of Ordinances.

Parcel. Any piece of real property that has a single parcel identification number assigned to it by the Broward County Property Appraiser.

Pass-through provider. Any person as defined in F.S. § 337.401(6)(a)1., who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the City pursuant to F.S. Chapter 202, as amended. A person who does not remit taxes imposed by the City pursuant to Chapter 202, but pursuant to F.S. §202.16(2) sells communications services for resale to a person who sells such services at retail or who integrates such services into communications services sold at retail in the City and who remits taxes imposed by the City pursuant to F.S. Chapter 202, is not a pass-through provider. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this Ordinance.

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

Person. Shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the City.

Place or Maintain, or Placement or maintenance, or Placing or maintaining. To erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is *PLACING OR MAINTAINING* the facilities. To the extent required by applicable law, a party providing service only through resale or only through use of a third party's unbundled network elements is not *PLACING OR MAINTAINING* the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not *PLACING OR MAINTAINING* facilities in the public rights-of-way.

PSC. The Florida Public Service Commission.

Public rights-of-way. A public right-of-way, public easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley, or any other way for which the City is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the

surface and the area below the surface. *PUBLIC RIGHTS-OF-WAY* shall not include private property. *PUBLIC RIGHTS-OF-WAY* shall not include any real or personal City property except as described above, and shall not include City parks, buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the *PUBLIC RIGHTS-OF-WAY*.

Registrant or Facility owner. A communications services provider or other person that has registered with the City in accordance with the provisions of this Ordinance.

Registration and Register. The process described in this Ordinance whereby a communications services provider provides certain information to the City.

Requester. A person who submits a request pursuant to this Ordinance.

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

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

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

Small wireless facility. A wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than 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 6 cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based

enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

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

Stealth or camouflage design. A method of camouflaging any tower, antenna or other communications facility, including but not limited to supporting electrical or mechanical equipment, or utility pole that is designed to fulfill objective design standards to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

Surrounding neighborhood. The area within a 500 foot radius of a communications facility site or proposed communications facility site.

Utility. Any electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in F.S. §§ 337.401, 337.402, 337.403, and 337.404, as the "utility."

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

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

- (a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (b) Wireline backhaul facilities; or
- (c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider. A person who has been certificated under Chapter 364, Florida Statutes, to provide telecommunications service or under Chapter 610, Florida Statutes, to provide cable or video services in the state, and such person's affiliate, and

who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

Wireless provider. A wireless infrastructure provider or a wireless services provider.

Wireless services. Any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

Wireless services provider. A person who provides wireless services.

Wireless support structure. A freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than five feet in height.

Wrap. An aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

§55.32 Registration For Placing Or Maintaining Communications Facilities in the Public Rights-Of-Way.

(A) All persons, including but not limited to a communications services provider, pass-through provider, or wireless provider, seeking to place or maintain a communications facility, backhaul facility, utility pole for collocation of a small wireless facility, or wireless support structure in public rights-of-way in the City pursuant to this Ordinance shall maintain an effective registration with the City in accordance with this Ordinance before being eligible to receive a permit. Subject to the terms and conditions prescribed in this Ordinance and approval of a permit, if required, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless provider with an existing communications facility in the public rights-of-way of the City as of the effective date of this Ordinance has 90 days from the effective date of this Ordinance to comply with the terms of this Ordinance as set forth herein, including but not limited to obtaining an effective registration, or be in violation thereof.

(B) Requirements for an effective registration. A person that places or maintains a communications facility in the City shall file an original registration, along with two complete copies with the City Manager that shall include the following information:

(1) Name of the registrant;

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

week.

(3) A statement as to whether the registrant is a pass-through provider in the City as defined herein;

(4) Evidence of the insurance coverage required under this Ordinance;

(5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;

(6) A copy showing the number of the registrant's certificate of authorization issued by the Florida Public Service Commission, the Florida Department of State, or the FCC; and

(7) The registrant's federal employer identification number.

(C) Insurance.

(1) Minimum Insurance. Registrant shall provide, pay for and maintain satisfactory to the City, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a minimum rating in Best's Insurance Guide of A-VIII, or having a rating acceptable to the City. All liability policies, except for employer's liability, shall provide that the City is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty days' advance written notice by registered or certified mail must be given to the City of any cancellation, and ten days' advance notice of cancellation for non-payment of premium. In addition to the certificate of insurance, except for registrants that are self insured, the registrant shall provide a copy or summary of the insurance policy, if requested by the City. A provider of communications services may add the City to any existing insurance policy and the City shall accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the City is a party.

The limits of coverage of insurance required shall be not less than the following:

a. Employer's liability insurance: Shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Commission on Compensation Insurance, without restrictive endorsements. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One: "Statutory" Coverage A when required by Florida Statute 440 as amended

Part Two: \$1,000,000 (Each Accident)

\$1,000,000 (Disease-Policy Limit)

\$1,000,000 (Disease-Each Employee)

The Workers' Compensation Policy must be endorsed to waive the insurer's right to subrogate against the City and City Commission, officials, officers, agents and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right to Recover From Others Endorsement (Advisory Form WC 00 03 13) with City and the City Commission, officials, officers, agents and employees scheduled thereon.

b. Comprehensive general liability: Coverage shall not exclude contractual liability, products/completed operations, explosion, collapse, and underground property damage, subcontractors or independent contractors. Cyber liability shall be included. The City, and its members, officials, officers and employees shall be included as "Additional Insureds" on a form no more restrictive than the latest edition of ISO Form CG 20 10 (Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

General Aggregate	\$3,000,000
Products/Completed Operations Aggregate	\$3,000,000
Personal and Advertising Injury	\$3,000,000
Each Occurrence	\$3,000,000

The insurance provided by registrant shall apply on a primary basis. Any insurance, or self-insurance, maintained by the City shall be excess of, and shall not contribute with, the insurance provided by registrant.

c. Automobile liability. Bodily injury and property damage: \$3,000,000 combined single limit each accident. Said coverage shall not exclude contractual liability, products/completed operations, independent or contractors. The Policy must be endorsed to waive subrogation against the City and City Commission members, officials, officers, agents and employees, shall be primary and non-Contributory, and the registrant's primary insurance shall cover its subcontractors work within the City.

d. Pollution Coverage of \$1,000,000 with non-owned disposal site coverage and a two year tail.

(2) Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability, or employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The City shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis or is at least as broad.

(3) Self-insurance. Registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan and/or retention if acceptable to the City in its sole discretion based on the City's evaluation of the registrant's ability to comply with the Code. Registrant agrees to notify the City, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The City reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity to self-insure.

~~(1) Registrant shall provide, pay for and maintain satisfactory to the City, the types of insurance and endorsements described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Insurance Guide of A- or better, or having a rating acceptable to the City. All liability policies shall provide that the City is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty-days advance written notice by registered or certified mail must be given to the City of any cancellation, intent not to renew, or reduction in the policy coverages. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the City. A provider of communications services may add the City to any existing insurance policy and the City shall accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the City is a party.~~

~~(a) The limits of coverage of insurance required shall be not less than the following:~~

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

~~ii. Comprehensive general liability. Bodily injury and property damage: \$3,000,000 combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations, independent or contractors.~~

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

~~iv. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The City shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow form" basis.~~

~~v. Self-insurance. Registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan and/or retention if acceptable that is acceptable to the City in its sole discretion based on the City's evaluation of the registrant's ability to comply with the code. Registrant agrees to notify the City, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The City reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity self-insure.~~

(4) Right to review. City, by and through its risk Manager, reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this Ordinance. City reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.

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

(D) Review of Registration. The City shall review the information submitted for the registration. If the information is in accordance with this subsection, the City shall notify the requester of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with this subsection, the City shall notify the requester in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The City shall undertake to provide such notification within 60 days after receipt of registration information. A notice of non-effectiveness of a registration shall not preclude reapplying or filing subsequent requests for registration under the provisions of this Ordinance.

(E) Regulations Applicable to Registrations.

(1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this Ordinance governs only the placement or maintenance of communications facilities in public rights-of-way. To the extent not inconsistent with applicable law, registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the City's or another person's facilities. Within 90 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the City.

(2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any particular area in public rights-of-way within the City. Registrations are expressly subject to any future amendment to or replacement of this Ordinance, and further subject to any additional City ordinances as well as any applicable state or federal laws.

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

(4) Registration renewal. A registrant shall renew its registration with the City by September 30, every five years from the first September after the effectiveness of the registration in accordance with the registration requirements in this Ordinance, as may be amended. By way of example, if a registration is effective April 1, 2020, the registration renewal shall be due by September 30, 2025. 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 Ordinance. An existing effective registration pursuant to the City Code, prior to the effective date of this Ordinance shall continue to be effective and the registrant shall comply with this Ordinance by the earlier of the following: 90 days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.

(5) Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, or otherwise caused by the registrant, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, provided however that a registrant's obligations hereunder shall not extend to any damages caused solely by the negligence, gross negligence, wanton or willful acts of the City and to the extent not inconsistent with applicable law. In no event shall the City be liable for any damage or destruction to a communications facility placed in the City public rights-of-way including on a City utility pole, to the extent not inconsistent with applicable law. This provision includes but is not limited to the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. City agrees to notify the registrant, in writing, within a reasonable time of City receiving notice, of any issue it determines may require indemnification. Nothing in this Ordinance shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost, if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict.

Nothing contained in this Ordinance shall be construed or interpreted:

- i. as denying to either party any remedy or defense available to such party under the laws of the State of Florida;
- ii. as consent by the City to be sued; or
- iii. as a waiver of sovereign immunity beyond the waiver provided in F.S. §768.28, as it may be amended.

(6) A registrant may cancel a registration upon written notice to the City that the registrant will no longer place or maintain any communications facilities in public rights-of-way, and will no longer need to obtain permits to perform work in the public rights-of-way. A registrant shall not cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

(7) Liens. No liens shall apply to public rights-of-way or City property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or on a City utility pole. Any liens on a registrant's facilities shall be subordinate to the rights of the City pursuant to this Ordinance. In the event any liens are filed on the City property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the City may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.

(8) A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on the City's property including a utility pole as a result of a registrant's collocation on a City utility pole. A registrant shall reimburse the City for taxes paid by the City as a result of a registrant's facilities being placed or maintained in the public rights-of-way or on a City utility pole.

(9) Reports and records.

(a) Upon reasonable request, a registrant shall provide the following documents to the City as received or filed:

- i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the City to protect its interests under this Ordinance.
- ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

(b) The City shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.

(10) Termination of Registration. The City may terminate a registration if:

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

(b) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;

(c) The registrant abandons all of its facilities in the public rights-of-way;
or

(d) The registrant commits substantial and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.

(e) Notice of intent to terminate. Prior to termination, the City shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The registrant shall have 30 days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the City, to accomplish the same and to take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way of the City safe. If the plan is rejected by the City, the City shall provide written notice of such rejection within 15 days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.

(f) Post termination action. In the event of termination, following any appeal period, the former registrant shall: (a) in accordance with the provisions of this Ordinance and as may otherwise be provided under state law, notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in the public rights-of-way; or (b) provide the City with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the communications facilities are deemed to be abandoned and the City may exercise any remedies or rights it has at law or in equity as well as the City's remedies pursuant to this Ordinance, including but not limited to utilize or allow other persons to utilize the registrant's facilities. The obligations of the registrant hereunder shall survive the termination of a registration. A registrant that has its registration terminated by the City under this Ordinance may reapply for registration one year after the termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the City.

(11) When removal not authorized or required. In the event of termination of a registration, this Ordinance does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant 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 the provision of such service, and is registered with the City, if required.

(12) Transfer or control, sale or assignment of assets. If a registrant transfers,

sells or assigns its registration or its facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Ordinance. Written notice of any such transfer, sale or assignment shall be provided to the City within 20 days of the effective closing date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, and is in compliance with the provisions of this Ordinance, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Ordinance as it may have been amended, then the transferee, buyer or assignee shall register as provided in this Ordinance within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate City officials that the transferee, buyer or assignee is the new applicant.

(13) ~~Pledges in trust or mortgages of the registrant may be made to any person with notice to the City.~~ Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the City under this Ordinance and applicable law.

(14) City makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications facilities, and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this Ordinance shall affect the City's authority to add, vacate or abandon public rights-of-way, and the City makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

(15) Conditional use of public rights-of-way.

(a) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the City for such activities as may be required by applicable law.

(b) To the extent that any person or registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the City, such person or registrant shall make no claim, nor assert any right which will impede the lawful exercise of the City's rights, including requiring the removal of such facilities from the public rights-of-way of the City, regardless of the effect on registrant's ability to place or maintain its own communications facilities in public rights-of-way of the City.

§55.33 Requirement of a Permit.

(A) In accordance with applicable law, City ordinances, codes and regulations, including this Ordinance, a right-of-way use permit issued by the City shall be required for a communications services provider, wireless infrastructure communications facility provider or a pass-through provider to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this Ordinance. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or to maintain a communications facility in the public rights-of-way until all applicable permits have been issued by the City or other appropriate authority. Registrant shall comply with all City requirements for issuing permits, including reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The City may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements. Requests for ancillary permits required to operate a communications facility, including but not limited to electrical permits, shall be processed pursuant to the City's rules and regulations. The City may deny or withhold the ancillary permit if the registrant is otherwise in violation of the City Code.

(B) Limited Exceptions to Permit Requirement.

A registrant that is in compliance with this Ordinance shall be allowed to perform routine maintenance, service restoration work on existing facilities, ~~or repair work~~, including but not limited to emergency repairs of existing facilities, or extensions of such facilities for providing communications services to customers without a rights-of-way permit required herein. Notwithstanding the exceptions to a rights-of-way permit provided herein, other permits may be required depending on the nature of the work being performed. The term *Emergency* shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Prior to performing any work in the public rights-of-way without a permit, the registrant shall provide reasonable advance notice, generally at least 48 hours, to the City, explaining the location, date and duration of such anticipated work. For emergency maintenance situations where such advance notice may not be possible, the registrant shall notify the City through appropriate means, including through notification to the City's Police Department or other City department as designed by the City if the City is otherwise closed. Registrant shall provide prompt notice to the City of the service restoration work or repair work ~~and,~~ within two business days of commencing the work, and shall apply for an after-the-fact permit if such activity required a permit under this Ordinance within 30 days. If authorized herein, a registrant performing excavation or work that involves closure of a public rights-of-way without first obtaining a permit shall ensure that there is photographic and video documentation of the work, including depiction of the area of the public rights-of-way impacted, and such photographic and video documentation shall be provided to the City upon the earlier of the City's request, or within ten (10) days following completion of the work. Any maintenance of traffic required for service restoration or repair work shall meet the requirements of the latest edition of the FDOT 600 Series

Standard Drawings and the Manual on Uniform Traffic Devices. In addition, as-built plans shall be provided to the City within ten (10) days following completion of any construction in the public rights-of-way.

(1) ~~A registrant that is in compliance with this Ordinance shall be allowed to perform routine maintenance within the public rights-of-way without a permit if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation or utilities in the public rights-of-way.~~ In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the City identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. If routine maintenance requires the closure of the public rights-of-way regardless of the duration, a rights-of-way road or sidewalk closure permit consistent with the City's rules and regulations shall be required. ~~As-built plans shall be provided to the City within ten (10) business days.~~

(2) Work on Existing Aerial Lines and Underground Facilities on Private Property.—A registrant shall be allowed to perform maintenance, repair, replacement, extension, or upgrade of existing aerial lines between existing utility poles or underground communications facilities located on private property outside of the public rights-of-way without first obtaining a permit. However, a right-of-way use permit shall be required for work in the public rights-of-way that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane, regardless of the duration. ~~All underground work or excavation without a permit shall be photographed and videotaped, and such photograph and videotape documentation shall be provided to the City upon request or, if not requested, within ten (10) business days.~~

(3) Replacement of Existing Wireless Facilities. A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size. If such replacement will require excavation or the closure of a rights-of-way, the registrant shall obtain an appropriate rights-of-way road or sidewalk closure permit consistent with the City's rules and regulations. A registrant shall provide 48 hours' notice to the City prior to such work being done. As-built plans shall be provided to the City within ten (10) business days.

(4) Service Drops. A registrant shall be allowed to place or to maintain a service drop within the public rights-of-way without first obtaining a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights-of-way.

(5) Micro Wireless Facilities. A permit shall not be required for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under F.S. Chapter 202. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, the registrant shall submit a notarized letter to the City from or on behalf

of the communications services provider, which shall be effective upon filing, attesting that the micro wireless facility's dimensions comply with F.S. § 337.401(7) and this Ordinance. A registrant's submission to demonstrate a micro wireless facility's dimensions may apply to all of the same, substantially similar, or small size micro wireless facilities sought to be placed in the public rights-of-way by such registrant. If the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way. ~~As-built plans shall be provided to the City within ten (10) business days.~~

(6) Notwithstanding the exceptions to permit requirements contained in this subsection, a registrant shall obtain from the City a right-of-way permit for work that involves excavation, closure of a sidewalk regardless how temporary, or closure of a vehicular lane or parking lane regardless how temporary, unless the registrant is a communications services provider that is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, including but not limited to the requirement to notify Sunshine 811 prior to any excavation or demolition activities in accordance with F.S. Chapter 556, and to comply with the City Code. In such instance, to the extent not inconsistent with the 2017 FDOT UAM, the communications services provider shall provide information acceptable to the City as to the service restoration work and shall provide reasonable advance notice to the City so that the City may have an observer present. In all instances of excavation or closure of a public rights-of-way, the City may require a specific method of excavation and a maintenance of traffic or sidewalk closure plan, as applicable. In addition, the registrant shall file for an after the fact permit within 30 days after completing restoration of the public rights-of-way. A registrant performing work without a permit shall ensure that the work is photographed and videotaped, including of the area of the public rights-of way impacted, and such photograph and videotape documentation shall be provided to the City upon request or, if not requested, with the after the fact permit application.

(C) The City Manager may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies as set forth in this Ordinance and applicable law.

§55.34 Permit Information Requirements and Review Procedures.

(A) Pre-submittal meeting. To minimize issues related to a permit request, the City may require in its forms that, prior to submitting materials for a permit request, which does not include an application for a small wireless facility or a new utility pole to support a small wireless facility, a registrant ~~shall~~ conduct a pre-submittal meeting with the City to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way. A pre-submittal meeting, whether required herein or voluntary on the part of a registrant, shall not commence the time frames provided herein for City

review and processing of a request or an application.

(B) Requirements for all communications facilities in the public rights-of-way. As part of any permit application or request to place or maintain any facility pursuant to this Ordinance in the public rights-of-way, a registrant or a registrant's agent or contractor shall complete a permit form provided by the City that, at a minimum, includes the following information:

(1). If the person seeking the permit is not the registrant, a statement of authority by the registrant to act on behalf of the registrant. In addition, if the person seeking the permit is a contractor, the contractor's license or registration and contractor's insurance information confirming the contractor's authority to perform construction in the City and statements as to whether the contractor has any open permits with the City, and if so, the permit identification number or information.

(2). Confirmation that ~~the registrant or person seeking the permit engaged in a pre-submittal meeting, if required, or such meeting was waived by the City and that~~ the registrant has an effective registration with the City, and is otherwise in compliance with the City Code.

(3). Engineering plan. An engineering plan signed and sealed by a licensed engineer, that includes the following:

(a) Except for applications to collocate small wireless facilities on existing utility poles in the public rights-of-way, an American Land Title Association (ALTA) or other survey pursuant to the City's form demonstrating that the proposed location of the facility or utility pole is within the public rights-of-way, unless waived by the City in its sole discretion, pursuant to an applicant's or requester's attestation that the proposed facility is located within the public rights-of-way;

(b) The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, ~~stealth~~ camouflage design, and concealment features of the proposed facility;

(c) The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six decimal point precision or as otherwise required by the City;

(d) Whether the proposed facility is proposed within a location subject to restrictions pursuant to this Ordinance;

(e) For new communications facilities and extensions of existing communications facilities that require a permit, within a 50 foot radius, a sketch showing pavement, sidewalks, driveways, ramps, trees, below-grade utilities, and other above-grade and below-grade structures and facilities located within the public rights-of-way and the distances from the

proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way;

(f) Sufficient specificity demonstrating compliance with applicable codes, as defined herein and as may be amended;

(g) If applicable, the routes of all transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);

(h) Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;

(i) Certification that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook;

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

(k) Other engineering information that may be requested by the City necessary to demonstrate compliance with applicable codes.

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

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

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

(7). Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.

(8). Maintenance of Traffic ("MOT") plan. The applicant shall provide a temporary traffic lane closure and Maintenance of Traffic plan (MOT), if appropriate, to accommodate placement or maintenance of the facility.

(9). Restoration plan and estimated 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 by a licensed engineer. Such 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 as compared to the

Broward County Highway Engineering Cost Estimating Template. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition. Such estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced. Tree or landscaping removal shown on the permit shall not be considered damage or impairment to be restored to the original condition provided the applicant or requester complies with the approved mitigation plan, if any.

(10). Timetable for construction or installation. The timetable for construction, placement or maintenance of the proposed facility or each phase thereof.

(11). Indemnification. A statement shall be included with the permit application or request that by execution of the application or request and by filing for the permit, the registrant shall be bound to the City with respect to the indemnification provisions set forth in this Ordinance.

(12). Airport airspace protection. If applicable, certification of compliance with F.S. Chapter 333, and all City, State and federal laws and regulations, as amended, pertaining to airport airspace protections.

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

(14). Pole attachment agreement. If applicable for the proposed facility, except for registrants whose pole attachments are regulated by 47 U.S.C. § 224, the registrant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the registrant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the City, and indicating the registrant is authorized to install its facility on the identified utility pole. By submitting the City's permit form, the registrant certifies to the City that it has authority from the utility pole owner to collocate its facility.

(15). Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the height and GPS location of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade

in place within 500 feet of the proposed location of the utility pole. If there is no utility pole within 500 feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.

(16). If the permit request includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfies the applicable codes as well as codes and standards of the National Fire Protection Association.

(17). In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility or utility pole in the public rights-of-way, the applicant shall provide the following:

(1) Documentation to the satisfaction of the City from a licensed engineer, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;

(2) Certification and description by the applicant to the satisfaction of the City how the proposed small wireless facility or utility pole complies with the objective design standards set forth in this Ordinance. For a proposed ground-mounted small wireless facility, such information shall include whether the proposed small wireless facility includes a wrap that has been approved by the City or is of an architectural design that is substantially similar to other infrastructure in the area of the public rights-of-way or has been approved by the City.

(3) Accurate photo simulations of the proposed utility pole or small wireless facility and if applicable, as collocated on the utility pole.

(18). Applicable permit fees including reimbursement for City consultants, to the extent not inconsistent with applicable law. The City acknowledges that currently, applicable law does not allow the City to require permit fees.

(19). Consolidated permit application and single application or request for multiple locations. The City may authorize a registrant to file a single application or request to place or to maintain multiple facilities in the public rights-of-way, where it would be more efficient for the registrant and the City to address multiple facilities in one permit. An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application for each of the proposed small wireless facilities. In addition, prior to applying for a consolidated permit, the applicant is strongly encouraged to engage in a pre-submittal meeting with the City to discuss all proposed small wireless facilities. If the application includes multiple small wireless facilities, the City may separately address small wireless facility collocations for which incomplete information has been received or which are denied. Each proposed utility pole to be placed in the public rights-of-way for the collocation of a small wireless facility shall require a separate application, and each

communications facility to be placed in the public rights-of-way except for the collocation of a small wireless facility, shall require a separate request unless the City consents at a pre-submission meeting to a single application or request for such multiple facilities.

(20). To the extent not inconsistent with applicable law, such additional information requested by the City necessary to demonstrate compliance with applicable codes.

(C) ~~Application Review and Procedures for Small Wireless Facilities and Utility Poles for Collocation of Small Wireless Facilities.~~

(1) Time periods within this subsection shall be extended for the period of time impacted by a force majeure event or by a declared State of Emergency by the City or Governor of the State that impacts the City's permitting ("force majeure extension"). If a registrant opposes a force majeure extension pursuant to this subsection, it shall notify the City within 24 hours of such extension becoming effective or the registrant shall be deemed to have consented to the extension. Except as otherwise provided herein, requests for permits for the placement of communications facilities in the public rights-of-way, including but not limited to backhaul facilities or fiber, shall be subject to the time frames and review procedures set forth in this subsection; requests shall be considered to be applications and requesters shall be considered to be applicants for purposes of time frames referenced in this subsection. The time frames and procedures herein shall not apply to other requests that do not involve the placement of communications facilities in the public rights-of-way, including but not limited to requests for permits to perform maintenance on existing communications facilities in the public rights-of-way.

(a) Unless extended by mutual consent of the applicant and City, within 14 days after receiving an application or request for a rights-of-way permit, the City Manager will notify the applicant by electronic mail as to whether the application or request is complete. If an application or request is deemed incomplete, the City will specifically identify the missing information. An application or request is deemed complete if the City fails to provide notification to the registrantapplicant within 14 days.

(b) Negotiation Process.

(1) Unless extended by mutual consent of the applicant and the City, within 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 right-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 30 days after the date of the request.

(2) At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the City of such

acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.

(3) 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 90 days after the date the application was filed unless extended by mutual consent of the applicant and City. Failure of the applicant to so notify the City as required herein shall be deemed to constitute the applicant's consent to the City's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

(c) The City processes all applications and requests on a nondiscriminatory basis. Unless the City and the registrant ~~applicant~~ engage in negotiations as provided above, the City will approve or deny the application or request and will notify the ~~registrant applicant~~ by electronic mail whether the application or request is approved or denied within 60 days after the receipt of a completed application or request.

(d) Extension of time. If the City and the ~~applicant~~ registrant do not engage in negotiations, the ~~registrant applicant~~ and City may mutually agree to extend the 60-day application review period. The City shall grant or deny the application or request at the end of the extended period.

(2) Basis to Deny Applications for Small Wireless Facilities or Utility Poles to Support a Small Wireless Facility. The City may deny an application for a proposed collocation of a small wireless facility or to place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed small wireless facility or utility pole to support a small wireless facility:

- (a) Materially interferes with the safe operation of traffic control equipment;
 - (b) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
 - (c) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (d) Materially fails to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual;
 - (e) Fails to comply with applicable codes;
 - (f) Fails to comply with objective design standards set forth in this Ordinance;
- or

(g) Fails to comply with the City Code, to the extent not inconsistent with applicable law.

(3) Basis to Deny Requests for Communications Facilities Other Than Small Wireless Facilities or Utility Poles to Support a Small Wireless Facility. Except for applications for permits to collocate small wireless facilities or for utility poles to support the collocation of a small wireless facility addressed above, the City may deny a request for a permit to place or to maintain communications facilities in the public rights-of-way, including but not limited to a permit to place backhaul facilities, or fiber, or conduit, consistent with applicable law and the City's standard procedures.

(4) Cure Procedure.

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

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

(c) If an attempt to cure is submitted by the registrant within such 30-day period, the City will approve or deny the revised application or request within 30 days after receipt of the revised application. If the registrant revises any information in the application or request other than to address expressly the deficiencies identified by the City, the registrant shall submit a new application or request and the denial of the pending application or request shall be final.

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

(e) A permit issued pursuant to an approved application or request to install a new communications facility shall remain in effect for one year unless otherwise extended, suspended, or revoked by the City pursuant to this Ordinance. If a communications facility including a small wireless facility or utility pole is going to be installed without a permit pursuant to this Ordinance or applicable state or federal law, the applicant or requester shall nevertheless be required to have an effective registration, comply with development standards and provide the bonds required in this Ordinance prior to performing construction. A permit from the City constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this Code, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

~~(D) Review Procedures and Basis to Deny Requests.~~

~~(1) Time Frames. The City shall review and process other requests that~~

~~are not for the placement of communications facilities, including but not limited to requests for a permit to perform maintenance or to remove facilities, consistent with time frames required under applicable law and the City's standard procedures.~~

(D) Review Procedures for Wireless Facilities Modifications Pursuant To the Spectrum Act of 2012. It is the City's intention that permits that the City issues for utility poles for the collocation of small wireless facilities and for small wireless facilities shall not constitute permits for towers or base stations as defined in the Spectrum Act and applicable FCC regulations, to the extent consistent with applicable federal law. A registrant may file an eligible facilities request to modify an existing tower or base station in the public rights-of-way, that does not substantially change the physical dimensions of such tower or base station, pursuant to Section 6409(a) of the Spectrum Act of 2012, 47 U.S.C. §1455(a), and FCC regulations adopted thereto, 47 C.F.R. §1.6100, as amended. Such request shall include the following: (1) confirmation that the registrant possesses an effective registration and submitted a permanent performance bond with the City; (2) a statement that it is an eligible facilities request; (3) a report, signed and sealed by a licensed engineer, that addresses the factors set forth in the FCC regulations, including a description of proposed modifications and the factors regarding whether the proposed modifications constitute a substantial change, and (4) a certified copy of the permit for the existing tower or base station that is proposed to be modified. The City shall review such request pursuant to the procedures and time frames set forth in the FCC regulations, notwithstanding other provisions of this Ordinance. The procedures in this Ordinance for appeal shall apply.

(E) Suspension and revocation of permits.

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

- (a) The violation of any material provision of the permit or applicable codes;
- (b) An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City;
- (c) Any material misrepresentation of fact in the process of permittee's request or application for a permit or registration;
- (d) The failure to maintain the required performance cash bond or insurance;
- (e) The failure to properly restore the public rights-of-way within the time frame required by the City;
- (f) The failure to comply within the specified time with an order issued by the City;

(g) The failure to register, renew a registration, or provide notice of transfer in accordance with this Ordinance;

(h) The failure to relocate or remove facilities pursuant to this Ordinance and F.S. §§ 337.402, 337.403 and 337.404, F.S., as amended; or

(i) Conducting work in the public rights-of-way without a permit, if required.

(2) If the City determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes or this Ordinance, the City shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the City may place additional or revised permit conditions on the permit following a substantial breach. In addition, the City may refuse to issue new permits and may deny an application or request for a new permit to a registrant or registrant's contractor that has materially violated any provisions of a permit or applicable codes or this Ordinance, until such time as the registrant cures the violation to the satisfaction of the City, including paying any damages, costs or penalties that may have been assessed.

(a) Within 30 days of receiving notification of the breach, the permittee shall contact the City and provide a plan acceptable to the City. The City shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the City, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the City's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens the health, safety or welfare of persons or property.

(b) If a permit is revoked, the permittee shall reimburse the City for the City's reasonable costs, including restoration costs, administrative costs, and the cost of collection. These costs may also be deducted from the registrant's permanent performance ~~cash~~ bond in the City's discretion. A permittee that has its permit suspended or revoked may seek to have its permit reinstated upon providing evidence to the satisfaction of the City that the basis for the suspension or revocation has been corrected.

(F) The City Manager may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated. Nothing in this Chapter shall serve as a

waiver of the City's police powers.

(G) Requests for waivers.

(1) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the ~~nondiscriminatory and competitively neutral~~ use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.

(2) A waiver may be granted by the City Manager in those circumstances where a competitively neutral use of the public rights-of-way is impaired by strict application of the requirements of this Ordinance, in violation of applicable law.

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

(a) A detailed explanation, with supporting engineering information by a Florida licensed engineer or other data, as to why a waiver from the requirements of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;

(b) Nature and characteristics of the surrounding neighborhood;

(c) Any special conditions and circumstances affecting the proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;

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

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

(f) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. §12101, *et seq.*, and applicable codes;

(g) A request for waiver of the objective design standards contained herein shall include a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole, or are technically infeasible with supporting information from a licensed engineer, or that the design standards impose an excessive expense on the

registrant with information as to the additional costs of compliance with the standards and the registrant's anticipated revenue from the proposed facility or assets. The City shall grant or deny a request for a waiver of objective design standards within 45 days after receiving the request for waiver unless the applicant and City consent to an extension, subject to a force majeure event.

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

(4) Except for a request for a waiver of objective design standards, the City shall grant or deny a request for a waiver of any other provisions of the City Code pursuant to its standard procedures for requests for waivers or variance of its Code, consistent with applicable law. If a request for waiver or variance is not processed by the City within the time frame for granting or denying an application or request for a permit, the City shall deny the permit application or request unless the City and the registrant consent to an applicable extension. In granting any waiver, the City may impose conditions to the extent the City determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public.

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

(H) Appeals.

(1) Final, written decisions of a designee of the City Manager, including but not limited to a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration or denying a request for a waiver, or imposing costs or a fine, are subject to appeal to the City Manager. An appeal must be filed with the City Manager within 30 days of the date of the final, written decision to be appealed. An appeal that is not timely filed as set forth herein shall be waived. The City Manager shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the City and no new information shall be considered. Subject to a force majeure event, the hearing shall occur within 30 days of the receipt of the appeal, unless waived by the applicant, and a written decision shall be rendered within 20 days of the hearing.

(2) An appeal from a decision of the City Manager or a hearing officer may be appealed to the City Commission within ~~ten~~ 30 days, by filing a written notice of appeal with the City clerk and providing copies to the City Manager and the City attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee to be established by administrative order of the City Manager. The City Commission may affirm, modify or reverse the decision of the City Manager. The City Manager shall notify any party who

has filed a written request for such notification of the date when the matter will be presented to the City Commission. Nothing contained herein shall preclude the City Commission from seeking additional information prior to rendering a final decision. The decision of the City Commission shall be by resolution and a copy of the decision shall be forwarded to the City Manager and the appealing party. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the City Commission may appeal an adverse decision to the Circuit Court In And For Broward County or applicable federal district court. To the extent not inconsistent with applicable law, the party making the appeal shall be required to pay to the City Clerk a fee to be established by administrative order of the City Manager, to defray the costs of preparing the record on appeal. The fee shall be effective upon approval by the City Commission. To the extent required by applicable law, the City shall waive any claim or defense based on failure to exhaust administrative remedies if the City's administrative review is not complete within 45 days after a person files a complete request for review.

§55.35 Performance construction bond and permanent performance bond.

(A) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to this Ordinance, a registrant or contractor that applies for a permit on behalf of a registrant shall deposit with the City a ~~performance~~ construction bond acceptable to the City to secure the restoration of the public rights-of-way, and to ensure the registrant's or contractor's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the code. The ~~performance~~ construction bond shall be conditioned upon the full and faithful compliance by the registrant or contractor with all requirements, duties, and obligations imposed by the permit and provisions of this Ordinance during and through completion of the placement or maintenance project. The ~~performance~~ construction bond shall be in an amount as determined by the City based on 110% of the estimated costs of the restoration of the public rights-of-way submitted by the registrant. The cost estimate shall be based on Broward County Highway Engineering Cost Estimating spreadsheets. For a consolidated permit, the registrant or contractor shall provide a ~~performance~~ construction bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event, shall be less than \$10,000. Notwithstanding any provision herein, the minimum amount of the ~~performance~~ construction bond for a new or replaced utility pole or small wireless facility over six cubic feet shall be \$25,000. The City shall not require a ~~performance~~ construction bond if the estimated cost of restoration of the public rights-of-way is less than \$1,000, provided a registrant has an effective permanent performance bond and insurance certificate on file.

(B) In the event a registrant or contractor subject to such a ~~performance~~ construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit or code, and restore the site within the time frame

provided in the permit, there shall be recoverable, from such construction bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.

(C) The ~~performance~~ construction bond shall be non-cancelable and shall be for a term of not less than one year but not more than 18 months after the anticipated date of the later of completion of construction, restoration and City inspection. No less than one year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant or contractor may request that the City remove the requirement to continue the performance construction bond. In accordance with the current standards of the City, and satisfaction of all obligations in accordance with the bond, the City shall return the ~~performance~~ construction bond without interest. Notwithstanding, the City shall require a new ~~performance~~ construction bond for any subsequent work performed in the public rights-of-way as required by this Ordinance. Notwithstanding this provision, to the extent required by applicable law, the City shall accept a letter of credit or similar financial instrument as a construction bond issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add the City to any existing bond, or other relevant financial instrument, and the City shall accept such proof of coverage without any conditions other than consent to venue in Broward County for purposes of any litigation to which the City is a party.

(D) Permanent Performance Bond.

(1) The City is concerned that, based on past experience in the City and throughout the State, the placement and maintenance of communications facilities in the public rights-of-way has the potential to cause significant damage to the public rights-of-way and to utilities within the public rights-of-way, creating disruption to the City residents, businesses and the travelling public. In addition, the City is concerned that it will not be able to obtain adequate security to address damage to public rights-of-way or to utilities, because of restrictions on construction bonds, placement and maintenance of facilities lawfully or unlawfully without permits, inaccurate locates, permits issued by other government entities within the City that could impact City utilities, abandoned facilities, and other issues associated with such facilities in the public rights-of-way. Accordingly, pursuant to the City's authority and obligation to manage the public rights-of-way and to provide for the public safety in the exercise of its police power, and to the extent not inconsistent with applicable law, the City shall require all persons that place or maintain communications facilities in the public rights-of-way to establish a permanent performance bond in the City's favor.

(2) A Registrant or Facility Owner who places or maintains communications facilities in the public rights-of-way, shall file with the City, for City approval, a permanent performance bond in the amount of \$50,000, in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a separate account or City account. The

letter of credit shall be issued by a United States financial institution that allows drawing on the letter of credit via electronic means including facsimile, agrees to the jurisdiction of the appropriate court within Broward County, and shall be in a form and issued by a financial institution acceptable to the City Attorney. The permanent performance bond shall be conditioned on the full and faithful performance by the Registrant or Facility Owner of all requirements, duties, and obligations imposed by the provisions of this Ordinance and applicable law, including but not limited to requirements to restore the public rights-of-way and to guarantee such restoration, to remove any abandoned communications facilities, to indemnify the City as required herein, and to pay for any damage to City or other facilities in the public rights-of-way. The permanent performance bond shall not constitute a fee, tax or other imposition on a dealer of communications services in its capacity as a dealer of communications services or compensation for use of the public rights-of-way and shall not be used by the County as such. Should the City draw upon the permanent performance bond, the City shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed by the provisions of this Ordinance, subject to providing prior notice and a reasonable opportunity to cure the failure, there shall be recoverable, jointly and severally from the principal and surety of the permanent performance bond, including a letter of credit, any damages or loss suffered by the City as a result, including the full amount of any damages, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees. The cash deposit or letter of credit shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the person's full and faithful performance at all times. A registrant may change the form of the permanent performance bond on file with the City on an annual basis. A registrant may request that the City return the permanent performance bond or approve the cancellation of the performance bond upon the expiration of a registrant's obligations pursuant to the City Code and in no event while a registrant maintains any obligations with respect to facilities in the public rights-of-way. If the City determines it is appropriate to return the permanent performance bond, a cash deposit retained by the City shall be returned without interest.

(3) For new registrants seeking to place or to maintain communications facilities in the public rights-of-way, the permanent performance bond required herein must be filed with the City prior to any construction associated with the placement or maintenance of a communications facility in the public rights-of-way. For existing registrants, permanent performance bonds currently on file with the City, either in the form of a cash deposit or letter of credit, shall satisfy the requirement of this subsection and shall continue to be maintained by the City. To the extent that a communications services provider, wireless provider, or pass-through provider with facilities in the public rights-of-way, does not have a permanent performance bond filed with the City as required herein, said person shall submit the permanent performance bond as provided herein, within 90 calendar days from the effective date of this Ordinance. No permits shall be issued to a person for placement or maintenance of facilities within the public rights-of-way without a permanent performance bond filed with the City. For activity that does not require a permit, no placement or maintenance of a communications facility in the public rights-of-

way shall be performed by or on behalf of a registrant that does not have a permanent performance bond on file with the City. In addition to other remedies provided herein, including but not limited to revoking a registration, denying or withholding permits, or issuing a stop work order, the City may pursue code enforcement actions against any person who violates this subsection.

(4) Any person who seeks a waiver of the requirement of a permanent performance bond or seeks to pursue a challenge to such requirement shall submit an appeal to the City Manager setting forth the basis for such person's position, pursuant to the procedures set forth in this Ordinance. The City Manager shall render a decision which the person may appeal to the City Commission pursuant to the procedures set forth in this Ordinance.

(E) The rights reserved by the City with respect to any performance construction bond or permanent performance bond established pursuant to this division are in addition to all other rights and remedies the City may have under this Ordinance, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance construction bond or permanent performance bond will affect any other right the City may have.

§55.36 Construction Methods for Placing or Maintaining Communications Facilities in Public Rights-of-Ways.

(A) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes and must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. For purpose of complying with the notice and approval requirements contained within the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, the registrant shall provide notice and seek approval from the City Manager. All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas including maintenance of traffic.

(B) In connection with excavation in the public rights-of-way, the requirements of this Ordinance shall control to the extent of any conflict with the City Code.

(C) In addition, in connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.

(D) To the extent not inconsistent with applicable codes, underground cables, where required, shall have consistent alignment parallel with the edge of pavement, a thirty-six-

inch (36") depth of cover for the paved portion of roadways, sidewalks and driveway aprons a twenty-four-inch (24") to thirty-inch (30") depth of cover in all areas except the paved portion of roadways, sidewalks and driveway aprons, and shall have a three-foot (3') horizontal clearance from underground utilities and their appurtenances. Below grade communication facility shall not be allowed under a swale or ditch unless such restriction is waived by the City Manager with appropriate conditions of a permit that the registrant or permittee clean or re-excavate the swale or ditch to its appropriate grade prior to installation of the facility.

(E) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or 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 applicable codes and 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 pull boxes shall be located in pedestrian ramps.

(F) Consistent with applicable codes and City regulations, the City may require the use of trenchless technology (i.e., directional bore method) or may prohibit underground missile boring for the installation of facilities underground in the public rights-of-way. The registrant shall be solely liable for the displacement, damage or destruction of any property, public rights-of-way, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The City may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this Ordinance and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the City.

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

(H) Limits on excavation in restored rights-of-way. To avoid continual disruption and degradation to the public rights-of-way and in the interest of public safety, an area of the public rights-of-way that has been subject to excavation and restored shall not be subject to re-excavation until at least three years following the completion of such restoration, to the extent not inconsistent with applicable codes and law, unless waived by the City. If the areas where the excavation is to occur has not been fully restored by a permittee, the subsequent permittee may apply for and the City may issue a permit that requires the subsequent permittee to restore the public rights-of-way to the original condition and to warrant such restoration consistent with this Ordinance. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way.

(I) Trees. A registrant shall comply with the requirements of the City Code and Zoning and Land Development Regulations with respect to the proposed removal or disturbance of any trees on private property. A registrant shall not prune, remove or materially disturb trees during placement or maintenance of communications facilities, small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way, unless approved pursuant to an applicable permit issued by the City, to the extent not inconsistent with applicable law. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be disturbed or removed during placement or maintenance of communications facilities pursuant to a permit issued by the City. The City may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved mitigation plan.

(J) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the City's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. If the registrant fails to make such restoration within seven calendar days after completion of construction, or such other time as may be required by the City, the City may, after written notice to the registrant, perform such restoration using City employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the City to the registrant. Consistent with the City Code, if the registrant fails to complete restoration work by the estimated date for completion listed in the permit, following notice to the registrant or permittee, the City shall have the right to restore the right-of-way and to charge the registrant or permittee for actual costs of such restoration work plus 25 percent of such costs for administrative expenses, to the extent not inconsistent with F.S. § 337.402, Florida Statutes, as it may be amended. The costs and administrative expenses shall not be eligible for credit against any other payments that may be owed by the registrant to the City. Consistent with the City Code, the City Manager shall make inspections to administer and enforce the provisions of this subsection. The registrant or permittee shall notify the City Manager 48 hours prior to commencing construction and at the time of completion of work under the permit. Upon

completion, the City Manager shall inspect the work to determine whether the restoration has been acceptably completed. In such event, the City shall notify the applicant in writing that the 12 month restoration warranty period has begun.

(K) A registrant shall immediately notify the City of any damage to City utilities, City fiber or other City facilities as a result of a registrant's construction in the public rights-of-way. The registrant shall repair such damage at its expense within the time frame required by the City given the nature of the damage and impact on City services. In its discretion, the City may repair or arrange for the repair of such damage and charge such expense to the registrant.

(L) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the City to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon 30 days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. § 337.403. The City may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.

(M) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended. Subject to F.S. §337.403, whenever an order of the City requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the City may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. §§ 337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the City.

(N) Subject to F.S. §337.403, whenever it shall be necessary for the City to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than 20 nor more than 30 days in which to appear before the City Commission to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. § 337.404.

(O) A final order of the City shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's bond.

(P) The City retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

(Q) The City shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. The City shall have access without charge to any manholes or hand holes at any time, of a communications services provider in which the City has facilities, provided the City has given such provider reasonable prior notice so that such provider can have trained personnel present when the accesses such manholes. Notwithstanding the foregoing, the City, in the proper exercise of its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and hand holes without charge of such provider. In the event the City determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the City will provide registrant no less than three days written notice setting forth the violation and requesting correction.

(R) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, the registrant shall promptly provide revised plans and "as-builts" upon completion of any installation or construction. The plans shall be in a digitized PDF and CAD (Computer Aided Design) file formats, showing the two-dimensional and GIS location of the facilities, based on the City's geographical database or other format acceptable to or required by the City. The registrant shall provide such plans at no cost to the City. The City shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended.

(S) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, fiber, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant. To the extent not inconsistent with applicable law, a registrant shall allow City facilities to be collocated within City's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and City and may be subjected to other City rights-of-way requirements. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the City as same may from time to time be altered.

(T) A registrant shall, on the request of any person holding a permit issued by the City, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation. If the City requests a temporary raising or lowering of a facility for a public purpose, the City shall not be charged for the temporary raising or lowering of the facility.

(U) This Ordinance 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.

(V) Abandonment.

(1) Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-way is to be abandoned, the provider shall notify the City no later than 90 days from such determination, or no later than 30 days following such abandonment, whichever is sooner. The City may independently establish that a communications facility has been abandoned. In reaching such determination, the City may request documentation and/or affidavits from the communications services provider or registrant regarding the active or intended use of the facility. If the provider or registrant fails to provide the requested documentation within 30 days, which may be extended by the City, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any above ground or below ground communications facility, including but not limited to a small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, fiber, conduit, or other communications facility installed within the public rights-of-way that is abandoned shall be removed and the area of the public rights-of-way restored to its original condition by the registrant or communications services provider at its expense ~~within by the time period established by the 30 days of receipt of notice from the City.~~ Failure to remove an abandoned facility within such time the 30 days' period shall be deemed to be the registrant's or communications provider's consent for the City to remove the facility at the registrant's or provider's expense or for the City to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection.

(2) If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

§55.37 Development and Objective Design Standards for the Placement or Maintenance of Communications Facilities in the Public-Rights-Of-Way.

(A) Terms and conditions for collocation on City utility poles.

(1) The City shall not enter into an exclusive arrangement with any person for the right to attach equipment to City utility poles. The City reserves the right to enter into agreements for collocation on City utility poles in its discretion.

(2) Reservation of space on City utility poles. The City reserves the top one-third of the useable space of the vertical pole component of all City utility poles in the public rights-of-way for future public safety uses. The City Manager may waive the reservation of space on City utility poles. The City may reserve additional space on City utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the City utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the City.

(3) The rate to collocate a small wireless facility on a City utility pole shall be \$150 per pole annually, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the City. The fee shall be paid upon the City's issuance of a permit to collocate a small wireless facility on a City utility pole and annually thereafter on October 1.

(4) Agreements between the City and wireless providers that were in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-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 Ordinance for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

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

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

and intended function and shall remain the property of the City, subject to the City's acceptance of the replaced or altered pole that complies with these requirements.

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

(8) A collocation of a small wireless facility on a City utility pole shall comply with all applicable codes and this Code Ordinance, and shall not compromise the City utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.

(9) A collocation of a small wireless facility on a City utility pole shall not affect the City's ability to remove or to replace the pole in its sole discretion. A City utility pole that has been partially removed or has been designated to be removed by the City shall not be available for collocation or repurpose for collocation. Within 30 days after receiving notification that the City intends to remove or to replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost. The City may extend this time period. In the interest of public safety and safety of City employees, a City structure in the public rights-of-way used to support an avian structure or facility shall not be available for collocation or repurpose or replacement for collocation. A City building or City utility pole extending from a building in the public rights-of-way shall not be available for collocation, or repurpose or replacement for collocation.

(B) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements unless waived by the City. In conjunction with granting such waiver, the City may require conditions on the permit approving such facility.

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

(2) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual obstruction to the traveling public's the use of the public rights-of-way or the use of bicycle lanes or multipurpose trails. To avoid such visual obstructions, utility poles for collocation of small wireless facilities or ground mounted small wireless facilities shall not be located within traffic

circles.

(3) For public safety purposes, aboveground communications facilities, including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on multipurpose trails.

(4) Communications facilities shall be placed between the property line and the curb line of a street and shall not be located within a clear zone.

(5) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights, accessibility and safety of property owners who abut any of the public rights-of-way. By way of example, the placement or maintenance of a communications facility in the public rights-of-way shall not cause excessive noise or light levels in violation of the City Code, based upon the use occupancy category of the adjacent property, shall not impede ingress and egress to adjacent property, materially block views from or into a business or residence, or materially block visibility of address or other signage on abutting properties.

(6) A registrant shall not place or maintain its communications facilities to interfere, displace, damage or destroy any facilities, including but not limited to the City drainage plan, sewers, ponds, gas or water mains, storm drains, pipes, cables or conduits of the City or any other person's facilities or utilities lawfully occupying the public rights-of-way of the City, unless waived by the City.

(7) The City may prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities and utilities in the proposed location of the public rights-of-way, to safely accommodate additional installations at any location, for the protection of existing facilities and utilities in the public rights-of-way, or to accommodate City plans for public improvements, other approved capital improvements projects as part of the City Comprehensive Plan, the City's smart technology or projects the City determines are in the public interest.

(8) Facilities to be installed underground.

(a) All facilities shall be subject to the City's non-discriminatory undergrounding requirements that prohibit above-ground structures and utilities in the public rights-of-way, unless otherwise provided herein.

(b) Unless waived by the City, or as otherwise provided herein, all new communications facilities shall be placed underground, to the extent that new utilities other than fire hydrants are required to be located underground, including new electric and communications utilities in accordance with the City Code. In addition, to the extent required by applicable PSC rules and regulations, applicable codes, restrictive covenants, quasi-judicially approved conditions of a development, planned unit development, Regional Activity Zones, Community

Redevelopment Areas, community development district, or court order, a registrant shall install its facilities underground. Additionally, a registrant shall endeavor to place all new facilities underground unless prevented from doing so by existing technology or by the physical characteristics of the installation location.

(c) A registrant shall not place or maintain utility poles for the collocation of small wireless facilities or small wireless facilities in a location in the public rights-of-way where there are no existing electric or communications utility poles and where new electric and communications utilities are required to be installed underground to the extent not inconsistent with applicable law, except as otherwise provided herein.

(d) New proposed wireline fiber or coaxial backhaul facilities for small wireless facilities shall be installed underground consistent with applicable codes and the City Code, unless waived by the City.

(e) For purposes of this subsection, unless inconsistent with applicable law, adoption of a final resolution by the City Commission shall constitute an undergrounding requirement over any area of the public rights-of-way. This subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that if the City notifies the registrant of the micro wireless facility that aerial communications or electric distribution utilities will be converted to underground utilities, the registrant shall remove its micro wireless facility at its expense within the time frame required by the City.

(f) Conversion of overhead utilities to underground. No utility poles for the collocation of small wireless facilities, micro wireless facilities, or small wireless facilities collocated on utility poles shall be placed in a location in the public rights-of-way where the City Commission has determined that existing above ground electric and communications utilities should be removed and relocated underground, except as otherwise provided herein. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the City's requirements to convert above ground utilities to underground. To comply with the City's undergrounding requirements, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within 60 days of being notified by the City that such facilities must be removed. The City shall have the right to remove such facilities at the registrant's expense if the registrant fails to do so. For small wireless facilities installed before the City adopts requirements that public utility lines must be placed underground, the City, ~~in its discretion,~~ shall: (a) allow a wireless provider to maintain the small wireless facility in place subject to any applicable pole attachment agreement with the pole owner; or, in the City's discretion, (b) allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with the objective design standards contained within this Ordinance.

(g) Notwithstanding the provisions of this subsection, the City may approve a permit for a new utility pole for collocation of a small wireless facility and a permit for a small wireless facility in an area where all public utility lines must be placed underground, if a wireless provider satisfies the following:

(1) The wireless provider provides information from a licensed engineer that the City has not allowed structures to remain above ground that are reasonably available to the wireless provider for the collocation of small wireless facility and that may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;

(2) The proposed utility pole otherwise complies with this Ordinance including the objective design standards; and

(3) The wireless provider provides information acceptable to the City from a licensed engineer that it is not reasonably able to provide wireless service by collocation on a remaining utility pole or other structure in the rights-of-way.

(h) Prohibition against placement in violation of OSHA or NESC or NERC rules and regulations. Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities shall not be placed in a location which violates rules and regulations set by Occupational Safety and Health Administration or the National Electrical Safety Code or the North American Electric Reliability Corporation standards. By way of example and not limitation, if required by such rules and regulations, a small wireless facility or utility pole intended to support the collocation of a small wireless facility may not be placed within a ten (10) foot radius of an electric distribution facility or within a 20 foot radius of an electric transmission line.

(i) Marine Lighting to Protect Nesting Turtles. In applicable areas of the City, registrants installing small wireless facilities or utility poles for collocation of small wireless facilities shall comply with applicable requirements of the City's Marine Lighting Ordinance, Chapter 108 of the City Code, to reduce the impacts of artificial coastal lighting on nesting marine turtles or hatchlings.

(9) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be place in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. For purposes of this subsection, to the extent not inconsistent with applicable law, a location in a public right-of-way that abuts parcels within a homeowners' association on both sides of its width shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.

(10) Placement in relation to adjacent uses of property and building facades

thereon. So as not to interfere with sight lines or clear zones, or violate the 2017 FDOT UAM, where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e., front façade and front property line, side street façade and side street property line) by design standard, or such spaces do not exist in those locations on existing properties, new communication facilities and new utility poles for collocation of small wireless facilities shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building located on property that abuts the public rights-of-way.

(11) Specific locations, capital improvement projects, districts and community redevelopment agency areas.

(a) A registrant shall not place new utility poles for the collocation of small wireless facilities, small wireless facilities or micro wireless facilities within the public rights-of-way in such a location that would interfere with or impair the City's ability to pursue the projects identified within the City's Capital Improvement Program (CIP), unless waived by the City Manager. In conjunction with granting such waiver, the City may require conditions on the permit approving such facility so as to minimize the impact on the CIP. A registrant shall relocate at its expense, its utility poles, small wireless facilities and micro wireless facilities that need to be relocated to accommodate the City's CIP construction, to the extent not inconsistent with applicable law.

(b) Small wireless facilities, utility poles for collocation of small wireless facilities and aerial communications facilities shall not be permitted in an area within the public rights-of-way that would interfere with the City's public art program. The City may notify a registrant to relocate at its cost a utility pole used for collocation of a small wireless facility or ground mounted small wireless facility if such location interferes with a planned installation of art. A registrant that damages an object of art installed pursuant to the City's art program shall be responsible for the costs of the art and shall indemnify the City as required in this Ordinance. The City reserves the right to require an additional bond in conjunction with an application to place or maintain a communications facility in an area where an art object has been located.

(c) Community Redevelopment Area (CRA) Undergrounding Project. The City has adopted a Capital Improvement Plan to underground all utilities and construct streetscape enhancements, including new street lighting, on certain streets within the CRA Beach District and the Downtown District. The Beach District includes approximately 293 acres from Sherman Street south to the southern property line of the Westin Diplomat Resort and Spa, and from the Intracoastal Waterway east to the Atlantic Ocean. The CRA Downtown District, encompassing Downtown Hollywood's central business district and nearby residential neighborhoods, the District boundaries include approximately 580 acres, including the 10-acre ArtsPark at Young Circle. The boundaries are:

Washington Street to the south, 22nd Avenue to the west, and Johnson Street to the north. The eastern boundaries are: 14th Avenue from Johnson Street south to Polk Street, 16th Avenue from Polk Street to Van Buren Street, and 17th Avenue from Van Buren Street to Washington Street. Maps of the CRA Districts and more information as to their projects are available on the City's website. To support the projects and goals of the CRA Districts, to the extent not inconsistent with applicable law, small wireless facilities and utility poles for the collocation of small wireless facilities shall not be authorized in these areas, unless waived by the City Manager. Any new or replaced utility poles approved by the City Manager shall satisfy the objective design standards for utility poles within the CRA Districts in this Ordinance, unless approved by the City Manager. In addition, excavation of City streets and public rights-of-way within the CRA Districts shall not be allowed, unless approved by the City Manager. No utility poles, small wireless facilities or excavation shall be permitted that would interfere with or impair construction projects of the CRA Districts, to the extent not inconsistent with applicable law.

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

(13) Historic preservation. This Ordinance does not limit the City's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. §332(c)(7), the requirements for facility modifications under 47 U.S.C. §1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws. Communications facilities shall not be permitted to be collocated on or to interfere with historic property or landmark that may be within or adjacent to the public rights-of-way unless waived by the City. The City shall not allow small wireless facilities, utility poles for the collocation of small wireless facilities or micro wireless facilities to be located in a manner that would impact negatively historic property or landmark unless waived by the City. Historic properties and landmarks may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in the Florida, Broward County, or City Register of Historic Places, consistent with City codes, including but not limited to the City's Land Development Regulations, administrative rules, or regulations that were adopted by City ordinance on or before April 1, 2017, which are applicable to a historic area designation by the state, Broward County or City.

(C) Objective design standards.

(1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed consistent with the following standards in such a manner to maximize compatibility with the surrounding neighborhood and to minimize any negative visual impact on the surrounding neighborhood. The objective design standards contained in this Ordinance regulating the location context, color, camouflage

~~stealth~~ design, and concealment of the proposed small wireless facility shall apply, unless waived by the City.

(2) Applicants shall not place or maintain signage on communications facilities, including small wireless facilities or utility poles for collocation of small wireless facilities, in public rights-of-way, unless otherwise required by federal or state law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.

(3) A communications facility, including but not limited to a small wireless facility, shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, a permit issued by the City, or state and federal laws and regulations or as permitted by the City.

(4) Design standards for Utility Poles. ~~Stealth-Camouflage~~ design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall comply with applicable codes and shall meet the design standards contained in this subsection unless waived by the City.

(a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be in substantially the same location as the original utility pole.

(b) The replaced or restructured utility pole shall be substantially similar in finish, base and pole design, diameter, material and height as the original pole being replaced, unless the City requires a different design, color or composition to be consistent with applicable City standards for new utility poles.

(c) Unless waived by the City, the height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same right-of-way, measured from grade, in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet in the same public right-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, antennas, masts or other attachments to the utility pole.

(d) Unless waived by the City, a new utility pole shall be designed to be substantially similar in design to the predominant type of other utility poles at the proposed location in the same block or vicinity of the public rights-of-way. Such design aspects to follow include the material, base, pole diameter and style, location and style of attachments, finish, and cap, as applicable. The City maintains design details of existing utility poles in

the public rights-of-way, which will be provided to a registrant upon request. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed substantially similar to such light poles and to the extent consistent with location context regulations, equidistant or mid-span between existing poles. Unless waived by the City, any such camouflage stealth utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the code, at the expense of the registrant to the extent not inconsistent with applicable law. By way of example, if a registrant seeks to install a utility pole for collocation of a small wireless facility to resemble a nearby light pole, the registrant is encouraged to include a light that is operated in the same manner as other light poles, at the applicant's expense, since the City is not requiring or requesting the utility pole. The City Manager may, in the exercise of discretion, approve a collocation of a small wireless facility on a City light pole that would otherwise not qualify for collocation under this Ordinance.

(e) Notwithstanding this subsection, if the proposed location of a new utility pole for collocation of a small wireless facility is within a public right-of-way that is within a particular zoning district, planned unit development, community development district, community redevelopment agency, or a homeowners' association that has design standards applicable to utility poles, such proposed utility pole shall substantially comply with such design standards.

(f) If there are no existing utility poles in close proximity to a new utility pole for collocation to resemble or any applicable design standards based on the location, the new utility pole shall be designed pursuant to standards established by the City Manager. The City may include specific design requirements for various areas of the City in an Appendix to this Ordinance. Such Appendix shall be made available to registrants and may be revised by resolution adopted by the City Commission.

(g) In the CRA Downtown District, the City implemented a neighborhood street lighting project for all of the east west City streets from 21st Avenue to Federal Highway from Johnson St. to Washington Street to use LED Holophane acorn style fixtures and Holophane black fluted poles. Such design is required for new or replaced utility poles to accommodate small wireless facilities. In the CRA Beach District, the City implemented a street lighting project to use round fluted white etched lighting poles, and such design is required for new or replaced utility poles to accommodate small wireless facilities. Nothing herein shall waive requirements for construction and excavation within the CRA Districts, required in this Ordinance. The design standards for new or replaced utility poles to accommodate small wireless facilities for the CRA Downtown and Beach Districts are contained in the Appendix.

(h) This subsection does not authorize the installation of a new utility pole for collocation of a small wireless facility in a location that is otherwise prohibited pursuant to court order or applicable codes or this Ordinance.

(i) Maintenance of Utility Poles. All new and replaced utility poles for the collocation of small wireless facilities owned by a registrant or utility shall be maintained by the registrant or utility in accordance with applicable codes, including but not limited to the Florida Building Code, the 2017 FDOT UAM, applicable PSC standards, and the National Electric Safety Code. If a utility pole is leaning or becomes damaged, such that it is not in compliance with applicable codes or regulations of the PSC, the owner of the pole shall be required to repair or to replace the pole promptly at its cost. The City reserves the right to issue notices of violation to a registrant or owner of utility pole that fails to maintain a utility pole and to pursue code enforcement actions. In addition to other remedies available, the City reserves the right to remove a utility pole for the collocation of small wireless facilities that is not maintained in accordance with applicable codes that the City Manager determines creates a threat to public safety, or that is abandoned, and to charge the registrant or owner of the pole the costs of such removal. The City may draw upon the registrant's permanent performance bond to recover such costs. In addition, the City may deny permits to a registrant or contractor that is in violation of this subsection.

(5) ~~Stealth~~ Camouflage design for collocation of small wireless facilities.

(a) Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a shroud. No exposed wires or cables are permitted.

(b) If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to ~~conceal~~ camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side-mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility, to the extent not inconsistent with applicable law. Unless consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a utility pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.

(c) Slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole at the level of the antenna attachment by more than six inches, or if applicable for other than round poles, by more than six inches on each side, and side mounted enclosures, if any, do not extend more than 24 inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna.

(d) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.

(6) Small wireless facilities not collocated on utility poles or existing structures.

(a) Ground-mounted small wireless facilities up to 28 cu. ft. in dimension shall be located within a ten (10) foot radius of the existing structure or utility pole for the collocated small wireless facility.

(b) The ground-mounted small wireless facility shall be architecturally designed and of the same materials and color finish to be substantially similar to other at-grade infrastructure within 50 feet of the proposed location in the public rights-of-way. If there is no other at-grade infrastructure within 50 feet, then to the nearest at-grade infrastructure located in the rights-of-way within 500 feet of the proposed location in the public rights-of-way such as waste receptacles or utility facilities. If the ground-mounted small wireless facility is not substantially similar to other at-grade infrastructure as set forth herein, the proposed small wireless facility shall be submitted to the City for review and approval.

(c) To the extent not inconsistent with applicable codes, at the City's direction, ground-mounted small wireless facilities shall be concealed by being enclosed in a wrap the design of which has been approved by the City staff. The registrant shall maintain the wrap in good condition at its sole cost and expense. The City may designate specific areas of the City where all ground-mounted small wireless facilities must be enclosed in a wrap. The City shall make approved wrap designs available to registrants and may include designs to be used for wraps within the Appendix.

(d) To the extent not inconsistent with applicable codes, at the City's direction the registrant owner of a ground mounted small wireless facility or other ground mounted communications facilities in the public

rights-of-way shall conceal the facility with landscaping and plantings. Landscaping and plantings pursuant to this subsection shall be subject to the City's approval and be maintained by the registrant at its sole cost and expense consistent with the code for so long as the small wireless facility or communications facility remains in the public rights-of-way.

(e) The City Manager is authorized to create an Appendix showing examples of acceptable designs for facilities to be placed or maintained in the public rights-of-way.

(7) Development standards for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities.

(a) Dimensional limits. No communications facility other than small wireless facilities located aboveground, excluding utility poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed within the corporate limits of the City on any public rights-of-way unless:

(b) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and

(c) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and

(1) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians at the proposed site and does not negatively impact or violate location and other regulations contained in this Ordinance: and

(2) The communications facility proposed by the communications provider does not otherwise create a hazard to the public health, safety and welfare.

§55.38 Fees and Taxes for Access to Public Rights-of-Way.

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

(1) Pass-through providers shall pay to the City on an annual basis an amount equal to \$500.00 per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Ordinance shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.

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

(3) The initial amount of pass-through provider fees shall be paid prior to issuance of a permit to a pass-through provider based on the facilities authorized to be installed in the public rights-of-way pursuant to the permit. The amount due may be modified based upon the as-builts submitted by the pass-through provider. Subsequent annual payments of pass-through provider fees shall be due and payable on October 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one 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 acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable. All fee payments shall be subject to audit by the City, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the City, such additional payment shall be subject to interest at the rate of one percent per month until the date payment is made. A pass-through provider shall provide an annual notarized statement identifying the total number of linear miles of pass-through facilities in the City's rights-of-way. Upon request from the City, limited to no more than once annually, a pass-through provider must provide reasonable access to maps of pass-through facilities located in the rights-of-way of the City. The scope of the request shall be limited to only those maps of pass-through facilities from which the calculation of the linear miles of pass-through facilities in the public rights-of-way can be determined. The request shall be accompanied by an affidavit that the person making the request

is authorized by the City to review tax information related to the revenue and mileage calculations for pass-through providers.

(B) If the payments required by this Section are not made within 90 days after the due date, the City may withhold the issuance of any permits to the registrant until the amount past due is paid in full, in addition to any other remedies available pursuant to this Ordinance and applicable law, including but not limited to drawing upon a registrant's permanent performance bond.

(C) The City shall not charge fees for registrations and to process applications for permits pursuant to this Ordinance to the extent such fees are not authorized by applicable law.

§55.39 Enforcement Remedies.

(A) Nothing in this Ordinance shall affect or limit the remedies the City has available under applicable law. In addition to any other remedies available at law, including but not limited to F.S. § 166.0415 (municipalities) and F.S. Chapter 162 (municipalities and counties), or equity or provided in this section, the City may apply any one or combination of the following remedies in the event a registrant violates this Ordinance, or applicable local law or order related to the public rights-of-way.

(B) In addition to the City's ability to terminate a registration pursuant to this Ordinance or to deny, suspend or revoke permits, the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible person to the City in an amount of not less than \$100.00 per day or part thereof that the violation continues. A registrant's or person's failure to obtain a permit before commencing work, except where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the City in an amount of not less than \$1,000.00 or maximum amount allowed under applicable law, per day or part thereof that the violation continues.

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

(D) Before imposing a fine, the City shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the person shall have 30 days to either:

- i. Cure the violation to the City's satisfaction, and the City shall make good faith reasonable efforts to assist in resolving the violation; or
- ii. File an appeal with the City to contest the alleged violation pursuant to this section, which shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30 day period, the City may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(E) In determining which remedy or remedies are appropriate, the City or code enforcement officer shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required to prevent further violations, and such other matters as the City or code enforcement special magistrate determines are appropriate to the public interest.

(F) Failure of the City to enforce any requirements of this Ordinance 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.

(G) In any proceeding before the City where there exists an issue with respect to a registrant's performance of its obligations pursuant to this Ordinance, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The City may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this section.

(H) *Force majeure*. In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a *force majeure* cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided however that such registrant uses all practicable means to cure or correct any such inability to comply expeditiously.

§55.40 APPENDIX CONTAINING DESIGN STANDARDS. The attached Appendix showing the specific designs for utility poles in certain areas of the City as set forth in this Ordinance is approved. The Appendix shall not be codified in the City Code. The City Manager is authorized to revise the Appendix without requiring amending the City Code, provided that revisions to the Appendix are made available to registrants, and such revisions are subject to approval by the City Commission by resolution on the City's website and revisions comply with applicable law.

Section 4: That it is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Hollywood, Florida, and the provisions of this Ordinance may be renumbered to accomplish such intention.

Section 5: That if any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid, such invalidity shall not affect the validity of any remaining portions of this Ordinance.

Section 6: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict are repealed to the extent of such conflict.

Section 7: That this Ordinance shall be in full force and effect immediately upon its passage and adoption.

ADVERTISED on _____, 2020.

PASSED on the first reading this _____ day of _____, 2020.

PASSED AND ADOPTED on the second reading this _____ day of _____, 2020.

JOSH LEVY, MAYOR

ATTEST:

PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY for the use and reliance
of the City of Hollywood, Florida only.

DOUGLAS R. GONZALES
CITY ATTORNEY