

ORDINANCE No. 2025-28

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AMENDING CHAPTER 38, ARTICLE II, TITLED “COMMUNICATIONS RIGHT OF WAY”; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Chapter 38 of the City of Doral’s (the “City”) Code of Ordinances provides for regulations of telecommunication installations on the City’s Rights of Way; and

WHEREAS, from time to time it is advisable for these rules to be reviewed and revised as necessary; and

WHEREAS, in 2019, and in subsequent years, the legislature has made sweeping changes in the manner that local governments can regulated the installation of telecommunication infrastructure on local governments rights of way; and

WHEREAS, given the rapid growth in the City, there is a need for additional telecommunication towers; and

WHEREAS, in order to maintain uniform aesthetics and protect the City from blight, it is necessary to amend the City’s Telecommunications Code to provide for regulation as permitted by Florida Statutes; and

WHEREAS, the City Mayor and Council believe that these changes are in the City’s best interest.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA AS FOLLOWS

Section 1. Recitals. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance upon adoption hereof.

Section 2. Amending Chapter 38, Article II Communications Rights of Way:

ARTICLE II. COMMUNICATIONS RIGHTS-OF-WAY

Sec. 38-19. Definitions.

(a) For the purposes of this article II, 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 article or in any permit that may be granted pursuant to this article 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, 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 City Code, and if not defined in the City Code, shall be construed to mean the common and ordinary meaning.

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

Abandonment or *abandoned* means the cessation of all uses of a communications facility for a period of 180 or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be abandonment of a communications facility. A utility pole installed by a wireless infrastructure provider shall be considered abandoned if a wireless service provider is not providing communications service through a small wireless facility collocated on such utility pole within nine months after the application for the utility pole has been approved in accordance with F.S. § 337.401(7)(j). 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.

Abut means 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.

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

Applicable codes means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including, but not limited expressly to the Florida Building Code, the Florida Greenbook, National Electrical Code, National Electrical Safety Code, 2017 Florida Department of Transportation Utility Accommodation Manual, 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. To the extent not inconsistent with applicable law, the term also includes the City of Doral Code of Ordinances, and the City of Doral Department of Public Works standards and procedures as they may be amended, to the extent applicable based on the proposed facility.

Applicant means a person who submits an application and is a wireless provider.

As-built plans means 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 a licensed engineer that reflect all changes made during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the permit.

Authority means the City, to the extent it has jurisdiction and control of the public rights-of-way of any public road. The term does not include the Florida Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from this section.

Authority utility pole or City utility pole means 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:

- (1) Is deed restricted as housing for older persons as defined in F.S. § 760.29(4)(b);
- (2) Has more than 5,000 residents; and
- (3) 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, used for the transport of communications data wirelessly from a wireless facility to a network.

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

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

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

City manager means the City of Doral, Florida, city manager or his/her designee.

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

Communications facility or facility or system means 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 article. ~~means any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennas, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, 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.~~

Communications services means 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, regardless of the protocol used for such transmission or conveyance. Cable service, as defined in F.S. § 202.11(2), F.S. § 610.103(1) and (11) as it may be amended, is not included in this definition and cable service providers or providers of service via an open video system may be subject to other ordinances of the city and shall require separate authorization from the city.

Communications services provider means 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 means 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.

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

Days references to days in this article shall mean calendar days unless the language provides expressly for business days.

Excavate or excavation 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 means the Federal Communications Commission.

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

Florida Greenbook means 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 means 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 article, 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 means any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility.

Homeowners' association means 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 means in, on, over, under or across the public rights-of-way.

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

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

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

Micro wireless facility means 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 means this article [from which this article derived] codified in article III, chapter 70, of the city Code of Ordinances.

Parcel means any piece of real property that has a single parcel identification number assigned to it by the Miami-Dade County Property Appraiser.

Pass-through provider Pursuant to F.S. § 337.401(6)(a)1, any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the city pursuant to F.S. ch. 202, as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this article.

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

Person shall include any individual, child, 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, and but shall not include the city to the extent permitted by applicable law.

Place or maintain, placement or maintenance, placing or maintaining means 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. 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 means the Florida Public Service Commission.

Public rights-of-way means a public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path, or alley or any other property 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 to the extent the city holds a property interest therein. The term "public rights-of-way" shall not include private property. The term "public rights-of-way" shall not include any real or personal city property except as described above and shall not include city buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

Registrant or facility owner means a communications services provider or other person that has registered with the city in accordance with the provisions of this article.

Registration and register means the process described in this article whereby a communications services provider provides certain information to the city.

Requester means a person who submits a request pursuant to this article.

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

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

Signage means any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the wireless 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 means a wireless facility that meets the following qualifications:

- (1) Each antenna associated with the facility is located inside an enclosure of no more than six cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than six cubic feet in volume; and
- (2) 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 city technology means the city's information technology department's present and future technology to support the city's smart city 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 design means a method of camouflaging any wireless support structure, antenna, or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole which is designed to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

Surrounding neighborhood means the area within a 500-foot radius of a communications facility site or proposed communications facility site.

Utility means any person or entity that is an electric, gas, water, steam or other public utility, or entity defined as a utility per F.S. § 366.02 or F.S. § 337.401, and who owns or operates appurtenant facilities or equipment that is situated within the public rights-of-way for transmission of such utility's goods, commodities, or services.

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

- (1) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (2) Wireline backhaul facilities; or
- (3) 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 means a person who has been certificated under chapter 364 to provide telecommunications service or under chapter 610 to provide cable or video services in this state, or that 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 means a wireless infrastructure provider or a wireless services provider.

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

Wireless services provider means a person who provides wireless services.

Wireless support structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

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.

Sec. 38-20. Intent and purpose.

~~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 F.S. § 337.401, as it may be amended, and in accordance with the provisions of the Federal Telecommunications Act of 1996 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 the ordinance from which this article is derived; 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.~~

Intent and Purpose. 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, final effective orders of the Federal Communications Commission (FCC), 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. To the extent provisions in this article conflict with final, effective orders of the FCC, the city reserves the right not to apply such conflicting provisions in this article.

Applicability.

- (1) Persons seeking to place or maintain communications facilities on private property or other property to which the City, any municipality, Miami-Dade County, Miami-Dade County Public 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 Code, including, but not limited to article 5, division 20 to the extent it applies, unless such property is addressed expressly in this article. This article is not applicable to communication facilities outside the public rights-of-way, unless addressed expressly herein. Pursuant to this article, 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

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

collocation of small wireless facilities, fiber, coaxial cable, and backhaul facilities in the public rights-of-way. 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 article provides different regulations applicable to various communications facilities. Wireless support structures, telecommunications towers, and antennas that are 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 article applies to the placement of conduit, fiber or cable for the purpose of providing backhaul or communications service consistent with F.S. § 337.401, as well as 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. ch. 610, that places or maintains a cable system or wireline facilities in the City's public rights-of-way. This article shall not apply to the City to the extent consistent with applicable law. This article shall not apply to wireless facilities owned by a person, including an electric cooperative, to the extent such facilities are utilized solely on an internal, noncommercial basis by said person.

- (2) This article implements inter alia, F.S. § 337.401, including the Advanced Wireless Infrastructure Deployment Act, F.S. § 337.401(7) ("Wireless Act"), as amended. By adopting this article, the city does not waive any rights with respect to the Wireless Act 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 article may no longer apply, in which case pending and future applications for small wireless facilities or utility poles intended to support the collocation of small wireless facilities in the public rights-of-way, will be governed by applicable law. In addition, permits issued pursuant to this article may be suspended or revoked, and facilities installed pursuant to permits issued pursuant to this article or without permits as authorized by this article 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 facilities addressed in the Wireless Act in the public rights-of-way as a result of this article or any permit issued pursuant to this article, to the extent not inconsistent with applicable law.
- (3) To the extent any provision of this article conflicts with the Code of Ordinances or Zoning Code of the City of Doral, this article shall control.
- (4) This article shall be applicable to all communications facilities placed or maintained in the public rights-of-way on or after the effective date of this article,

all pending applications or requests subject to this article, and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law. An existing registrant with an effective registration pursuant to the City Code shall comply with this article by the earlier of the following: 90 calendar days from the effective date of this article, the renewal or updating of a registration as required herein, or prior to applying for a permit pursuant to this article. This article shall not require removal or modification of communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit prior to the effective date of this article with the exception, to the extent not inconsistent with applicable law, of compliance with objective or stealth design standards that may require concealment such as landscaping, or unless such facilities are abandoned or otherwise required to be altered or removed pursuant to this article or applicable law.

- (5) Reservation of rights. The City reserves the right to manage the City's public rights-of-way and to amend this article as it shall find necessary in the lawful exercise of its police powers as expressly authorized in F.S. § 337.401(3)(b) and the Florida Constitution. The City's police powers include, but are not limited to, the power to issue orders and to establish laws and regulations for the preservation of public order and tranquility, the promotion of public health, safety and general welfare and to define and to proscribe public nuisances. All fees, charges and financial obligations previously accrued pursuant to any ordinances and resolutions repealed or no longer effective pursuant to this Ordinance, shall continue to be due and owing until paid.

Sec. 38-21. Registration for placing or maintaining communications facilities in the public right-of-way

- ~~(a) A communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this article. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider with an existing communications facility in the public rights-of-way of the city as of said effective date of the ordinance from which this article is derived has 60 days from the effective date to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.~~

(a) *Registration required.* 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, or utility pole for collocation of a small wireless facility in public rights-of-way in the City pursuant to this article shall maintain an effective registration with the City in accordance with this article. An effective registration shall be required before being eligible to receive any permit from the City. Subject to the terms and conditions prescribed in this article 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 article shall comply with the terms of this article, including, but not limited to obtaining an effective registration, within 90 calendar days from the effective date of this article, or be in violation thereof. This provision 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 article unless such facilities are abandoned or otherwise required to be altered or removed by applicable law or by the City manager consistent with applicable law.

(b) Requirements for an effective registration. A person that places or maintains a communications facility in the public rights-of-way in the city shall file an original registration, with the city manager. The registration shall be submitted by the person that owns or controls the communications facility and 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, seven days per week;

(3) A statement of whether the registrant is a pass-through provider in the city as defined in F.S. § 337.401(6)(a)1;

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

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

(6) A copy showing the number of the registrant's current 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.

~~(b) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this article governs only the placement or maintenance of communications facilities in public rights-of-way. Registration does not excuse a communications services provider from:~~

~~(1) Obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another person's facilities.~~

~~(2) Complying with all applicable law, including city ordinances, codes or regulations, including this article.~~

~~(c) Each communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file a single registration with the city that shall include the following information:~~

~~(1) Name of the applicant;~~

- ~~(2) Name, address and telephone number of the applicant's primary contact person in connection with the registration and of the person to contact in case of an emergency;~~
- ~~(3) Evidence of the insurance coverage required under this article and acknowledgment that the registrant has received and reviewed a copy of this article;~~
- ~~(4) A copy of federal or state certification authorizing the applicant to provide communications services, if any;~~
- ~~(5) If the applicant is a corporation, proof of authority to do business in the state, which may be satisfied by the number of the corporate certification or other means; and~~
- ~~(6) A security fund in accordance with this article.~~
- ~~(d) The city manager or his designee shall review the information submitted by the applicant. If the applicant submits information in accordance with subsection (c) of this section, the registration shall be effective and the city shall notify the applicant of the effectiveness of registration in writing. If the city determines that the information has not been submitted in accordance with subsection (c) of this section, the city shall notify the applicant in writing of the noneffectiveness of registration, and reasons for the noneffectiveness. The city shall so notify an applicant within 30 days after receipt of registration information from the applicant.~~
- ~~(e) 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 cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.~~
- ~~(f) 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 article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.~~
- ~~(g) A registrant shall renew its registration with the city by October 1, of even-numbered years in accordance with the registration requirements in this article, except that a registrant that initially registers during the even-numbered year when renewal would be due or the odd-numbered year immediately preceding such even-numbered year shall be required to renew until the next even-numbered year. Within 30 days of any change in the information required to be submitted pursuant to subsection (c) of this section, except, as of October 1, 2008, subsection (c)(3) of this section, a registrant shall provide updated information to the city. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this article.~~

- ~~(h) In accordance with applicable city ordinances, codes or regulations and this article, a permit shall be required of a communications services provider that desires to place or maintain a communications facility in public rights-of-way. 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.~~
- ~~(i) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay compensation to the city as required by applicable law and ordinances of the city. A registrant that places or maintains communications facilities in the public rights-of-way, other than a registrant that provides local services as defined in F.S. § 203.012(3), within the city, shall pay to the city the fees required to be paid by providers of toll service within the city.~~

Sec. 38-22. Placement or maintenance of a communications facility in public rights-of-way.

Permit information requirements and review procedures.

Consistent with Florida law, this section provides different requirements and procedures for applications and for requests, as defined herein. Applications shall not be included with requests and requests shall not be included in applications unless allowed by the City manager.

(a) Pre-application meeting.

- (1) Applications. To minimize issues related to a permit application, prior to submitting a permit application, registrants are strongly encouraged to engage in a pre-application meeting to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way including all city permits or approvals that may be required based on the nature of the registrant's proposed work in the public rights-of-way. A registrant is encouraged to be prepared to discuss its network needs and planned locations, design of facilities and other issues that may arise under this article. The city shall undertake efforts to accommodate a registrant's request for a pre-submission meeting within ten business days of a request.
- (2) Requests. To minimize issues related to a permit request, prior to submitting a permit request, 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 including all city permits or approvals that may be required based on the nature of the registrant's proposed work in the public rights-of-way. A registrant is encouraged to be prepared to discuss its network needs and planned locations, design of facilities and other issues that may arise under this article. At a registrant's request, the city, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this article. In no event shall the requirement of a pre-submission meeting that is not

prohibited by applicable law be waived for a permit request that involves excavation of over 50 feet of public rights-of-way.

- (3) The city shall undertake efforts to accommodate a registrant's request for a pre-submission meeting within ten business days of a request. 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 an application or a request.

(b) *Application requirements.* As part of any permit application to collocate small wireless facilities, to place a new utility pole used to support a small wireless facility, or to place or maintain a communications facility pursuant to this article in the public rights-of-way, a registrant or a registrant's agent or contractor shall provide a permit application on the form provided by the City, that sets forth, at a minimum, the following:

- (1) If the applicant for the permit is not the registrant, a statement of authority executed by the registrant for the applicant to act on behalf of the registrant. In addition, if the applicant is a contractor, pursuant to City Code, a contractor applying for a permit to perform any work in the city's public rights-of-way must comply with the requirements of the City public works department with respect to providing copies of certifications, licenses and insurance. An applicant shall submit the number of copies of a permit application in the format as required by the City public works department and shall file a copy of the application with the city's historical resources department and the City's information technology department. Failure to comply with such filing requirements shall render an application incomplete.

- (2) Information as to whether the registrant engaged in a pre-application meeting, that the registrant has an effective registration with the city, and that this registrant is otherwise in compliance with the city Code.

- (3) Engineering plan. An engineering plan signed and sealed by a licensed engineer, that includes the information required by the city's application form, including, but not limited to 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) survey or other survey that may be specified in the city's application form submitted by a licensed engineer or professional surveyor as defined in F.S. § 472.005, 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 attestation that the proposed facility is located with the public rights-of-way;

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

c. The global positioning system (GPS) coordinates of the proposed facility. The location must be the actual location where registrant intends to construct the proposed communications facilities and shall not include

contingent or alternative locations. Permit applications or requests containing contingent or alternative locations will be returned as incomplete. 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;

- d. Distances between the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, smart city technology, fire hydrants, nearby structures in the public rights-of-way, above-grade and below-grade utilities, and other above-grade structures within a 100-foot radius of the proposed facility. Upon request, the city manager may modify the radius requirements for such distance information for good cause related to the safe and efficient management of the public rights-of-way;
- e. For proposed new communications facilities, a sketch showing pavement, sidewalks, driveways, ramps, trees, above-grade utilities, and other above-grade and below-grade structures and utilities located within a 100-foot radius of the proposed facility. With respect to identifying other communications facilities, the applicant need only identify at-grade communications facilities within a 50-foot radius of the location for the installation of proposed at-grade communications facilities. Upon request, the city manager may modify the radius requirements for such sketch for good cause related to the safe and efficient management of the public rights-of-way;
- f. Sufficient specificity demonstrating compliance with applicable codes, the Florida Greenbook, the Florida Building Code, most current edition, specifically including, but not limited to compliance with the wind velocity standards for risk category III and IV buildings and structures specified therein, or as otherwise established in the Florida Building Code, as applicable; National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, FCC and OSHA standards;
- g. The routes of all new 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) or any connection to tie-in to existing lines in the public rights-of-way, as may be applicable based on the proposed installation;
- 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.
- (4) Description of trees or landscaping proposed to be removed or impacted upon the placement or maintenance of the proposed facility. The applicant shall include with the application an effective tree removal permit obtained pursuant to Miami-Dade County's Code of Ordinances, and the plan for tree and root protection pursuant to Miami-Dade County's Code of Ordinances, as applicable.
 - (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 and timetable for each phase by which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques). If the applicant intends to perform excavation in the public rights-of-way, the applicant shall include with the application an effective permit for excavation pursuant to the City Code, as applicable.
 - (7) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, designed by a holder of an FDOT Temporary Traffic Control Advanced Maintenance of Traffic Certificate, if appropriate, to accommodate placement or maintenance of the facility.
 - (8) Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and MOT plan, if appropriate, to accommodate placement or maintenance of the facility. The MOT plan shall be prepared in conformance with the City's requirements. If a road closure is necessary, the detour and MOT shall be designed and signed and sealed by a licensed engineer. Road closures must be coordinated with the city at least two weeks in advance of the planned work.
 - (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. Such good faith estimate shall be accepted by the city unless the city determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. 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 good faith 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 application shall be restored as provided with a tree removal permit, if applicable.
- (10) Indemnification. A statement shall be included with the permit application that by execution of the application and by applying for the permit, the applicant shall be bound to the city with respect to the indemnification provisions set forth in section 70-79(f)(5) of the City Code.
- (11) Airport airspace protection. If applicable, the applicant shall confirm compliance with F.S. ch. 333, and all State and federal laws and regulations pertaining to airport airspace protections.
- (12) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an officer 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, or such utility pole shall be deemed abandoned.
- (13) Pole attachment agreement. Except for pole attachments regulated pursuant to 47 U.S.C. § 224, if applicable for the proposed facility, the applicant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the applicant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the 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 an application to collocate on a utility pole, the applicant is certifying to the City that it has the utility pole owner's authority.
- (14) 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 location with GPS coordinates 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.
- (15) If the permit request includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfy the applicable provisions of the city Code.
- (16) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility in the public rights-of-way, the applicant shall provide the following:
- a. 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;

- b. Certification and description by the applicant to the satisfaction of the City how the proposed small wireless facility complies with the objective design standards set forth in this article. For a proposed ground-mounted small wireless facility, such information shall include the landscaping for the proposed small wireless facility and the architectural design to demonstrate that the small wireless facility satisfies the requirements of this article.
- c. Accurate photo simulations of the proposed small wireless facility and if applicable, as collocated on the utility pole.

(17) Applicable permit fees including reimbursement for city consultants, to the extent not inconsistent with applicable law.

(18) Consolidated permit application. 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 facilities. In addition, prior to applying for a consolidated permit to collocate small wireless facilities, the applicant is strongly encouraged to engage in a pre-submittal meeting with the city. A separate application must be filed for each utility pole to be placed in the public rights-of-way for the collocation of a small wireless facility unless the city consents to a single application for multiple utility poles at a pre-submission meeting. The city may act on a consolidated permit application in its entirety or may separately address small wireless facility collocations for which incomplete information has been received or which are granted or denied.

(19) To the extent not inconsistent with applicable law, such additional information requested by the city reasonably necessary to demonstrate the application's compliance with applicable codes.

(20) The applicant shall provide proof that they have notified all real property owners, and any Home Owner Association located within a 5 mile radius of the intended

(c) *Application review and procedures for applications for small wireless facilities and utility poles for collocation of small wireless facilities.* The following procedures and time periods shall apply solely to applications for small wireless facilities and to the installation of utility poles in the public rights-of-way for collocation of small wireless facilities. The city shall process applications in the order in which they are filed. To the extent that a later-filed application is required to be granted or denied prior to an earlier filed application that has been extended, and the granting of the earlier filed application would cause the denial of the later-filed application, such later filed application shall be denied if not extended. The applicant may re-file the application following the city's action on the earlier filed application.

(1) Time periods within this subsection may be extended for the period of time impacted by a force majeure event or by a declared local, state or federal emergency that directly affects the administration of all permitting activities of

the city ("force majeure extension"). If an applicant opposes a force majeure extension of city time periods pursuant to this section 70-81(c)(1) of the city Code, it shall notify the city within 24 hours of such extension or force majeure event becoming effective or the applicant shall be deemed to have consented to the extension.

a. Unless extended by mutual consent of the applicant and city, within 14 days after receiving an application, the city manager will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the city will specifically identify the missing information. An application is deemed complete if the city fails to provide notification to the applicant within 14 days.

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. Pursuant to F.S. § 337.401(7)(d)4., 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 not only for any new location for which there is agreement but for all other locations in the application. The city manager may withdraw the request for an alternative location, objective design standard, reasonable spacing requirements, or any other item subject to negotiation pursuant to this subsection at any time, and may grant or deny the application as submitted.

3. If an agreement is not reached, the applicant must notify the city of such nonagreement and the city must grant or deny the original application within 90 days after the date the application was filed 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 rejection of the city's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

c. The city processes all applications on a nondiscriminatory basis. Unless the city and the applicant engage in negotiations as provided above or mutually agree to an extension, the city will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within 60 days after the receipt of an application. The city shall deny an application that does not meet the city's applicable codes, or does

not comply with the city Code. A complete application is deemed approved if the city fails to approve or to deny the application within 60 days after receipt of the application. The city may, at the request of a registrant, perform an expedited review of a permit application, if the applicant agrees to pay costs incurred by the city for the city to engage consultants to review the application.

d. Extension of time. If the city and the applicant do not engage in negotiations, or a force majeure extension does not apply, the applicant and city may mutually agree to extend the 60 day application review period. The city shall grant or deny the application at the end of the extended period.

e. The city may deny an application to collocate a small wireless facility in the public rights-of-way or to place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed collocation or utility pole used to support a small wireless facility:

1. Materially interferes with the safe operation of traffic control equipment;
2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
4. Materially fails to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual; or
5. Fails to comply with applicable City codes.
6. Fails to comply with objective design standards set forth in this article;
or
7. Would constitute a violation of the City code.

f. Cure procedure.

1. If the application is denied, the city will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the city denies the application.
2. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days after the notice of denial is sent.
3. If an attempt to cure is made by the applicant, the city will approve or deny the revised application within 30 days after receipt of the revised application. If the applicant revises any information in the application other than to address expressly the deficiencies identified by the city, the applicant shall submit a new application.
4. The city's second and subsequent reviews of revised applications will be limited to the deficiencies cited in the denial notice.

g. Requests for waivers.

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

1. Nothing in this article shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers or pass-through providers, in violation of federal or state law.
2. A waiver may be granted by the city in those circumstances where a competitively neutral use of the public rights-of-way as may be required by applicable law is impaired by strict application of the requirements of this article. In addition, a waiver of provisions of this article may be granted by the city as set forth in this article.
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. If an applicant for a small wireless facility seeks a waiver of an objective design standard contained herein, the city may waive such standard upon a showing that such standard is not reasonably compatible with the particular location of a small wireless facility or utility pole or is technically infeasible or that the design standard imposes an excessive expense. To satisfy this showing, the request for a waiver shall include the following information, as applicable:
 - (i) If applicable, a detailed explanation, with supporting engineering material by a licensed engineer or other data, as to why a waiver from the requirements of this article 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 including the cost of complying with the standard and why such cost is excessive or why the objective design standard is technically infeasible;
 - (ii) Nature and characteristics of the surrounding neighborhood;
 - (iii) Any special conditions and circumstances affecting the proposed site which prevent compliance with the article or subsection for which a waiver is being sought;
 - (iv) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
 - (v) 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;
 - (vi) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., and applicable codes;

- (vii) Any other information the city may reasonably require to process the request for waiver.
 - (viii) The City shall grant or deny an application for a waiver within 45 days after receiving the application for waiver or time frame under applicable law unless the applicant and city consent to an 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.
 - 4. 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 article.
 - h. A permit issued pursuant to an approved application for a small wireless facility or utility pole for collocations of a small wireless facility shall remain in effect for one year unless otherwise extended, suspended, or revoked by the city pursuant to this article. The city shall issue other permits for 30 days and may extend such permits for registered utility companies for up to one year. If a small wireless facility or utility pole is installed without a permit pursuant to applicable state or federal law or this article, the applicant shall nevertheless be required to have an effective registration, comply with the requirements of this article, including the development standards and provide the performance construction bond required in this article prior to performing construction.
 - i. A permit from the City constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
 - (2) Permits other than pursuant to applications.
 - a. Requests for communications facilities. The City shall review and process requests for permits for backhaul facilities, fiber, cable, conduit, and communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities, and other permit requests, consistent with applicable law and the City Code, and the City's policies and procedures.
 - b. Ancillary permits. The City shall process requests for ancillary permits required for the operation of a communications facility, including, but not limited to an electrical permit, in accordance with the City's policies and procedures. Consistent with the City's policies, the City may withhold or deny an ancillary permit if the person seeking such permit is otherwise in violation of the City Code.

- ~~(a) The registrant agrees at all times to comply with and abide by all applicable provisions of the state statutes and city ordinances, codes and regulations in placing or maintaining a communications facility in public rights-of-way.~~
- ~~(b) A registrant shall not commence to place or maintain a communications facility in public rights-of-way until all applicable permits have been issued by the city or other appropriate authority, except in the case of an emergency. The term "emergency" means a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. A registrant shall provide prompt notice to the city of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency. The registrant acknowledges that as a condition of granting such permits, the city may impose 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.~~
- ~~(c) As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide a proposal for construction of the communications facility that sets forth at least the following:
 - ~~(1) An engineering plan signed and sealed by a state-registered professional engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in public rights-of-way;~~
 - ~~(2) A description of the manner in which the facility will be installed (i.e., anticipated construction methods and/or techniques);~~
 - ~~(3) A traffic maintenance plan for any disruption of the public rights-of-way;~~
 - ~~(4) Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons with facilities in the public rights-of-way);~~
 - ~~(5) If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;~~
 - ~~(6) The timetable for construction of the project or each phase thereof, and the areas of the city which will be affected; and~~
 - ~~(7) Such additional information requested by the city that the city finds reasonably necessary to review the permit application.~~~~

- ~~(d) The city shall have the power to 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 in that area of the public rights-of-way, for the protection of existing facilities in the public rights-of-way or to accommodate city plans for public improvements or projects that the city determines are in the public interest and to the extent not prohibited by applicable law.~~
- ~~(e) All communications facilities shall be placed and maintained so as not to interfere unreasonably with the use of the public rights-of-way by the public and so as not to cause unreasonable interference with the rights and convenience of property owners who adjoin any of the public rights-of-way. The registrant shall endeavor to install all communications facilities underground. To the extent not inconsistent with Public Service Commission regulations, the city may require the use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit. In making such requests, the city shall take into consideration several factors, including inconvenience to the public and other users of rights-of-way and the economic and technical feasibility of such requests. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The appropriate city official may issue such rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way as may be consistent with this article and other applicable law.~~
- ~~(f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.~~
- ~~(g) 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, subject to the city's satisfaction upon inspection. The 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 30 calendar days after completion of construction, or such other time as may be reasonably 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 against 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 bill by the city to the registrant.~~
- ~~(h) 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.~~
- ~~(i) A permit from the city constitutes authorization to undertake only certain activities on public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.~~

- ~~(j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.~~
- ~~(k) 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.~~
- ~~(l) A registrant shall place or maintain a communications facility in public rights-of-way in compliance with all applicable standards as established by all local, state or federal law and in conformance with the city ordinances, codes and regulations. The 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.~~
- ~~(m) In the interest of the public health, safety and welfare, upon request of the city, a registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way. The city may require a registrant to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the public rights-of-way. The city may provide a more definite timeframe based on specific city construction or maintenance schedules.~~
- ~~(n) A registrant shall not place or maintain its communications facilities so as to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the city or any other person's facilities lawfully occupying the public rights-of-way of the city.~~
- ~~(o) The 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 article shall affect the city's authority to add, vacate or abandon public rights-of-way and city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.~~
- ~~(p) 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 article. 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 the registrant no less than three days' written notice setting forth the violation and requesting correction.~~
- ~~(q) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans or "as-builts" upon completion of any installation or construction. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the city's geographical database, or other format acceptable to the city. The~~

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

~~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.~~

- ~~(r) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. The registrant may allow city facilities to be co-located within city's public right-of-way through the use of a joint trench during the registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between the registrant and the city and may be subjected to other city right-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 and within said limits as same may from time to time be altered.~~
- ~~(s) A registrant shall, on the request of any person holding a permit issued by the city, temporarily support, protect, raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary support, protection, 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. Subject to applicable law, if the city requests the temporary support, protection, raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary support, protection, raising or lowering of the facility.~~

Sec. 38-23. Suspension of permits.

- (a) Subject to the city providing reasonable notice and an opportunity to cure any violations, the city manager or his designee may suspend a permit issued or deny an application for a subsequent permit to a registrant for work in the public rights-of-way for one or more of the following:
- (a) For a material breach by committed the permittee, which may include, but is not limited to:
1. The violation of any material provision of the permit, city code, or applicable codes;
 2. An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the city;
 3. Any material misrepresentation of fact in the process of permittee's request or application for a permit or registration;
 4. The failure to maintain the required performance bond, construction bond, or insurance;
 5. The failure to properly restore the public rights-of-way;

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

6. The failure to comply within the specified time with an order issued by the city;

7. The failure to register, renew a registration, or provide notice of transfer in accordance with this article;

8. The failure to relocate or remove facilities pursuant to this article and F.S. §§ 337.402, 337.403 and 337.404, as amended;

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

b. 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 the City Code, 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, City Code, or applicable codes, 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.

c. Within 30 days of receiving notification of the breach, the permittee shall contact the City and provide a plan, acceptable to the City to remedy the breach. 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 article. Nothing herein shall affect the City's ability to take immediate action or to cause a registrant to take immediate action pursuant to this article or applicable law to address any condition that threatens the health, safety or welfare of persons or property.

d. 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 bond in the City's discretion.

e. The City may cause an immediate stop work order, whether performed pursuant to a permit or without a permit, where the construction poses a serious threat to the health, safety, or welfare of the public or property until such time as such serious threat has been abated.

- (1) Failure to satisfy permit conditions, or conditions set forth in this article or other applicable city ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way, including,

- without limitation, failure to take reasonable safety precautions to alert the public of work at the work site, or to restore any public rights-of-way;
- (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
 - (3) Failure to properly renew or ineffectiveness of registration;
 - (4) Failure to relocate or to remove facilities as may be lawfully required by the city.
- (b) After the suspension or denial of a permit pursuant to this section, the city shall provide written notice of the reason to the registrant.

Sec. 38-24. 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. A decision to deny a permit is not final if the applicant has resubmitted a revised application or request in an effort to cure the bases for denial within 30 days of being notified of such denial, in which case the City shall review the revised application or request and grant or deny it within 30 days or applicable time frame consistent with applicable law and the city's policies and procedures. An appeal must be filed with the City clerk with the appeal fee as established in the City fee ordinance, within 30 days of the date of the final, written decision to be appealed. An applicant or requester shall waive any appeal that is not timely filed as set forth herein. The City's Special Magistrate shall hear the appeal and make a determination of fact and law. 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 person pursuing the appeal, and a written decision shall be rendered within 15 days of the hearing or by the time period required by applicable law.
- (2) Prior to filing an action in an appropriate court, any person challenging a provision of the city Code, city policy or procedure, or City action shall be required to exhaust administrative remedies as provided herein. To challenge action by a designee of the city manager, the person shall be required to file an appeal with the city manager as provided in this subsection. If a person is challenging a provision of this article or a policy or procedure of the city that is adopted pursuant to this article, the person shall provide documentation to the city manager with sufficient detail explaining why such Code provision or policy or procedure is in violation of applicable law. The city manager may reject or grant the appeal in whole or in part, and may place the matter on an agenda of the city commission. For administrative remedies related to the city's denial of an application, to the extent required by applicable law, the city waives administrative reviews that are not complete within 45 days after the person files a complete request for review. For all challenges to city action other than denial

of an application, the city does not waive the exhaustion of administrative remedies. Nothing herein shall constitute a waiver of the City's rights under applicable law including the Florida Constitution.

- (3) Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, following the exhaustion of administrative remedies, a party aggrieved by a decision of the city manager may appeal an adverse decision to the Circuit Court In And For Miami-Dade County or applicable federal district court in Miami-Dade County. The party making the appeal shall be required to pay to the city clerk the fee established in the city fee ordinance, to defray the costs of preparing the record on appeal.
- (a) Final, written decisions of the city manager or his designee ~~suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration~~ are subject to appeal 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's Special Magistrate. A decision to deny a permit is not final if the applicant has resubmitted a revised application or request in an effort to cure the bases for denial within 30 days of being notified of such denial, in which case the City shall review the revised application or request and grant or deny it within 30 days or applicable time frame consistent with applicable law and the city's policies and procedures. An appeal must be filed with the special magistrate via the code compliance department within 30 days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth in this section shall be waived. The special magistrate shall consider the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within 20 days of the hearing. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.
- (b) Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, following the exhaustion of administrative remedies, a party aggrieved by a decision of the city manager may appeal an adverse decision to the Circuit Court In And For Miami-Dade County or applicable federal district court in Miami-Dade County. The party making the appeal shall be required to pay to the city clerk the fee established in the city fee ordinance, to defray the costs of preparing the record on appeal.
- (c) Nothing in this article shall affect or limit the remedies the city has available under applicable law.

Sec. 38-25. Other utility or nonutility services in right-of-way require separate authorization.

- (a) In the event the registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or nonutility 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.

Sec. 38-26. Termination of registration.

- (a) The involuntary termination of a previously effective registration may only be accomplished by an action of the special magistrate. The city manager or his designee may declare the registration terminated and revoke and cancel all privileges granted under that registration if:
 - (1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications services;
 - (2) The registrant's placement and maintenance in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way; or
 - (3) The registrant abandons all of its communications facilities in the public rights-of-way.
- (b) Prior to such termination for any of the reasons set forth in subsection (a) of this section, the city manager or his designee shall notify the registrant in writing setting forth the matters pertinent to such reasons and describing the proposed action of the city with respect thereto. The registrant shall have 60 days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the special magistrate, to accomplish the same.
- (c) In the event of an order by the special magistrate to terminate the registration, the registrant shall, within a reasonable time following such termination, provide an acceptable plan for transferring ownership of the communications facilities to another person in accordance with this article or shall remove or abandon the facilities and 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 registrant has either abandoned its facilities or chooses to abandon its facilities, the city may either:
 - (1) Require the registrant or the registrant's bonding company to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal;
 - (2) The city may require that some or all of the facilities be removed and the public rights-of-way restored to its such condition at the registrant's expense, using city employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement; or

- (3) Utilize or allow other persons to utilize the registrant's abandoned facilities.

The obligations of the registrant hereunder shall survive the termination of a registrant. In the event of a declaration of termination of registration, this provision does not permit the city to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered with the city, for such certificated service, where required.

Sec. 38-27. Transfer or control, sale or assignment of assets.

- (a) 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 article. Written notice of any such transfer, sale or assignment shall be provided to the city within 20 days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in this section within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate city officials that the transferee, buyer or assignee is the new applicant.
- (b) Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the city under this article and applicable law.

Sec. 38-28. Insurance.

- (a) 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 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. 30 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 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 and having a Best's Insurance Guide rating 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 coverage 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 coverage. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.~~

- (b) The limits of coverage of insurance required shall be not less than the following:
- (1) ~~Worker's compensation and employer's liability insurance. Employer's liability for the following:~~
 - a. ~~Each accident: \$500,000.00 limit.~~
 - b. ~~Per each employee: \$500,000.00 limit.~~ Worker's compensation and employer's liability insurance. Worker's compensation Coverage A when required by F.S. ch. 440, as amended and employer's liability Coverage B with limits of \$1,000,000.00 per accident, per disease and per policy limit with a waiver of subrogation in favor of the city. Registrant shall require any contractor to provide to a registrant this coverage for the contractor's employees.
 - (2) *Comprehensive general liability.* Bodily injury and property damage: \$3,000,000.00 combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations or independent contractors.
 - (3) *Business automobile liability.* Bodily injury and property damage: \$3,000,000.00 combined single limit each accident.
- (c) *Umbrella or excess liability.* A registrant may satisfy the minimum limits required in subsection (b) of this section for 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.
- (d) *Self-insurance.* A registrant may satisfy the insurance requirements and conditions of this section under a self-insurance plan and/or retention. The registrant agrees to notify the city, and/or indicate on the certificates of insurance, when self-insurance is relied upon or when a self-insured retention exceeds \$100,000.00. 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.
- (e) *Right to review.* The city reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverage, or

endorsements, herein from time to time throughout the life of this section. The 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.

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

Sec. 38-29. Indemnification.

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

- (b) Nothing in this section 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 section shall be construed or interpreted:
 - (1) As denying to either party any remedy or defense available to such party under the laws of the state;
 - (2) As consent by the city to be sued; or
 - (3) As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.

Sec. 38-30. Performance Construction bond and permanent performance bond.

- ~~(a) Prior to performing any permitted work in the public rights-of-way, the city may require the registrant to establish in the city's favor a construction bond to secure the restoration of the public rights-of-way and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of this Code. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in this section.~~
- ~~(b) In the event a registrant subject to such a construction bond fails to complete the work in accordance with the provisions of the permit and this article, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.~~
- ~~(c) No less than 12 months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the public works director or his designee to remove the requirement to continue the construction bond and the city shall release the bond within ten days. Notwithstanding, the city may require a new bond for any subsequent work performed in the public rights-of-way.~~
- ~~(d) The construction bond shall be issued by a surety, having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the city attorney; and shall provide that:

Unless released by the city, this bond may not be canceled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.~~
- ~~(e) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this section, or at law or equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.~~

- (a) Prior to the issuance of any permit in accordance with this article, 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 article, a registrant shall establish in the City's favor a performance construction bond to secure the restoration of the public rights-of-way, and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with a permit and applicable sections of the City Code. The city may require a performance construction bond pursuant to this article in addition to any bond that may be required in accordance with other permits that may be required based on the nature of the registrant's proposed work in the public rights-of-way, including, but not limited to, an excavation bond pursuant to the City Code.
- (b) The performance construction bond must name the City as obligee and be conditioned upon the full and faithful compliance by the registrant with all requirements, duties, and obligations imposed by the permit and provisions of this article 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 percent of the estimated costs of the restoration of the public rights-of-way. No performance construction bond is required if the estimated costs of the restoration of the public rights-of-way is less than \$1,000.00, provided the registrant has a fully replenished permanent performance bond on file with the city. For a consolidated permit, the registrant 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 \$25,000.00. The minimum amount of the performance construction bond for a new or replaced utility pole or ground-mounted small wireless facility up to 28 cubic feet shall be \$25,000.00. The bond shall be issued by a surety licensed to operate in Florida having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the city Attorney and may be administratively accepted by the City manager. Depending on the nature of construction, location, and utilities in the area, the City public works director may require a cash performance construction bond. Notwithstanding this provision, 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 Miami-Dade County for purposes of any litigation to which the City is a party.
- (c) In the event a registrant 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 City Code, there shall be recoverable, jointly, and severally

from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.

- (d) The performance construction bond must be issued as non-cancelable and shall provide the following: "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (e) The performance construction bond 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. In the event the term of any performance construction bond expires, or is reasonably expected to expire, prior to one year after the completion of construction, restoration, and city inspection, the registrant shall immediately obtain, pay for, and file with the City a replacement performance bond. No less than one year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request that the City public works department remove the requirement to continue the performance construction bond. In accordance with the current standards of the public works department of the City, and satisfaction of all obligations in accordance with the bond, the City shall eliminate the bond. Notwithstanding, the City may require a new performance construction bond for any subsequent work performed in the public rights-of-way.
- (f) The rights reserved by the city with respect to any performance construction bond established pursuant to this article are in addition to all other rights and remedies the city may have under the city Code, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance construction bond will affect any other right the city may have.
- (g) 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 other utilities within the public rights-of-way, creating disruption to the city, to businesses to residents and to the traveling public. In addition, the city is concerned that it will not be able to obtain adequate security to address damage to its rights-of-way or to utilities within the public rights-of-way, because of restrictions on construction bonds, placement and maintenance of facilities that may occur lawfully or unlawfully without permits, in accurate locates, permits issued by other government entities within the city that could impact city utilities, 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 \$50,000.00, 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 Miami-Dade 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 article 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 city 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 article, 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 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 article. 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 a person 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 article. The city manager shall render a decision which the person may appeal, pursuant to the procedures set forth herein.

Sec. 38-31. Fees 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 article.
- (b) 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 article 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.
- (c) 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. ch. 202, as amended.
- (d) 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 built plans 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 30 days after the due date shall bear interest at the rate of one-half percent per month from the date due until paid. The acceptance

CODING: Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

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. The city shall require a pass-through provider to 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 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.

- (e) 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 article and applicable law, including, but not limited to drawing upon a registrant's security fund and/or performance bond.
- (f) To the extent consistent with applicable law, the city reserves the right to establish fees for registrations and permits pursuant to this article.

Sec. 38-31. Security fund.

~~At the time of registration and as a condition of receiving its first permit to place or maintain a communications facility in public rights-of-way after the effective date of the ordinance from which this article is derived, the registrant shall be required to file with the city, for city approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$25,000.00 having as a surety a company qualified to do business in the state, and acceptable to the city manager or his designee, which shall be referred to as the security fund. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon the registrant by the provisions of this article. The bond or guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, there shall be recoverable, jointly and severally from the security fund and/or from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The city may in its reasonable discretion accept a corporate guarantee of the registrant or its parent company.~~

38-33 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 public works department. All safety practices required by applicable codes and 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.
- (b) In connection with excavation in the public rights-of-way, a permit issued by the director of public works pursuant to this article shall satisfy the requirement of a permit for excavation in the public rights-of-way as prescribed the City's 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 36-inch depth of cover for the paved portion of roadways, a 24-inch to 30-inch depth of cover in all areas except the paved portion of roadways, and shall have a two-foot horizontal clearance from underground utilities and their appurtenances. The lowest wire on any poles or micro wireless facility placed in any rights-of-way used by vehicular traffic shall be at a height from the ground in accordance with the National Electrical Safety Code and whenever telephone and electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as all may be amended.
- (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 applicable FDOT Standard specifications, comply with the city Public Works Department standards manual, and be listed on the FDOT Approved Products List. A concrete

pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.

- (f) The City may require the use of trenchless technology (i.e., horizontal directional drilling, jack and bore, or micro trenching 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 article 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. In the event a registrant will be performing excavation without a permit consistent with this article, the registrant shall provide the city Public Works Department advance notice of at least three business days prior to commencing construction to afford the city an opportunity to require a specific method of construction, as well as a plan for maintenance of traffic or pedestrians. Failure to comply with these requirements may result in a stop work order, the withholding of future permits, and enforcement remedies.
- (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 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 consistent with a registrant's guarantee of restoration of the public rights-of-way, a specific 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 four years following the completion of such restoration, to the extent not inconsistent with applicable law. The city may waive this requirement if a subsequent permittee applies for and the city issues a permit that requires the subsequent

permittee to restore the public rights-of-way to the original condition and such subsequent permittee will warrant such restoration as provided herein. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact utilities, other registrants, and communications services providers to coordinate the placement of communications facilities in the public rights-of-way and to engage in joint trenching.

- (i) Trees. A registrant shall not prune, remove, or materially damage trees or tree roots in the public rights-of-way during placement or maintenance of communications facilities, including, but not limited to small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way without a tree permit issued in accordance with Miami-Dade County Code. 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. A registrant obtaining a permit to perform construction in the public rights-of-way shall be required to protect trees and tree roots as required by Miami-Dade County Code, as amended.
- (j) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way consistent with the City Code, as amended, to at least its original condition before such work in public rights-of-way was initiated, subject to the City's satisfaction upon inspection. If the registrant fails to make such restoration within the completion date specified in the permit as may be required by the City, the City may perform such restoration using City employees, agents or contractors, and pursuant to F.S. § 337.402 and chapter 62, section 62-125 of the City Code, as they may be amended, the registrant shall reimburse the City for any such costs in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City and 25 percent of such cost as compensation to the City for general overhead and administrative expenses associated with such work, and shall pay costs as directed by the City no later than 20 calendar days after receipt of an invoice. A registrant shall comply with section 62-125 of the City Code, as amended, with the exception that a registrant shall warrant restoration of the public rights-of-way for a period of 12 months after completion of such restoration or the time period set forth on a permit, or adopted pursuant to city public works standards.
- (k) A registrant shall immediately notify the City of any damage to utilities, including 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 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's Magistrate in order to contest said 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 permanent performance bond or construction 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. If circumstances permit, the City shall attempt to notify the registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.
- (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 article. In the determination of the city, when practicable, such inspections shall be conducted by nonintrusive means. The city shall have access without charge to any manholes or handholes 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 handholes 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 with written notice setting forth the violation and requiring correction by a time specified in the notice, but in no event later than 30 days following notice.

- (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 built plans upon completion of any installation or construction. The plans shall be in a digitized format, showing the two-dimensional location of the facilities, based on the City's geographical database or other format acceptable to the City. The registrant shall provide such plans at no cost to the City. The City shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195 as it may be amended.
- (s) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, fire hydrants, smart city technology, public safety equipment, 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 the 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 and within said limits 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 to the extent not inconsistent with applicable law.
- (u) This article 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. 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 use of the facility. If the provider or registrant fails to provide the requested documentation within 30 days, a rebuttable presumption shall exist that the provider

or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned constitutes a public nuisance and shall be removed by the registrant or communications services provider at its expense within 30 days of receipt of notice from the city. Failure to remove an abandoned facility within the 30 days' period shall be 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.

- (w) 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.

Sec. 38-34. 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 facilities 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 a city utility poles. The City hereby reserves the top one-third of the useable space of the vertical pole component of all City utility poles in the public rights-of-way for future public safety uses. The City manager may waive the reservation of space on city utility poles. 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, as well as the city's existing uses of the utility pole, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use, as well as the city existing uses. The replaced pole shall continue to be owned by the city, subject to the city's acceptance of a replaced pole that complies with these requirements.
- (3) The rate to collocate a small wireless facility on a city utility pole shall be \$150.00 per pole annually, which is the maximum amount currently authorized pursuant to F.S. § 337.401(7)(f)3., 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. By establishing the maximum amount currently allowed pursuant to F.S. § 337.401(7), the City is not indicating that such amount provides full compensation for the taking of city property and does not waive any rights under the Florida Constitution.

- (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 article 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, or such application shall be deemed denied. 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 article, 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 registrant collocating a small wireless facility on a city utility pole or replacing a city utility pole to accommodate a collocation of a small wireless facility shall not impair, damage or affect the city's equipment that may be on the pole, including public safety equipment, smart city technology, or other city equipment. The registrant shall ensure that the altered or replaced utility pole accommodates the city's equipment and functionality. A registrant performing installation or maintenance of a small wireless facility on a city utility pole shall provide the city with at least three business days' notice so the city may have an observer present. The City may require the registrant or its contractor to apply for and obtain at its cost a security clearance from the City's police department if the city utility pole supports city public safety equipment. Without waiving any rights including the right to pursue criminal charges for interfering with emergency or public safety communications, impairing or affecting the operation of the city's equipment on a city utility pole shall be grounds for terminating a registrant's registration. A registrant shall maintain for four years accurate records identifying the date, time, location and identity of persons accessing facilities collocated on a city utility pole and shall make such records available to the city for inspection and copying promptly upon request.
- (10) Registrants placing or maintaining small wireless facilities on City utility poles shall be responsible for all costs of placing, maintaining and operating its small wireless facilities, including, but not limited to, costs of electric service for such facilities. A registrant that damages a city utility pole shall be responsible for the cost of repair or replacement of the city utility pole. Unauthorized use of city facilities and resources, including without limitation, electric power, constitutes theft, punishable under F.S. §812.014, and shall be grounds to terminate a registrant's registration or to revoke a permit.
- (11) 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. If a city utility pole is damaged or destroyed, the city may, in its sole discretion, remove the utility pole, notwithstanding the collocation of a small wireless facility on such pole. 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. In no event shall the city be liable for damage, destruction, theft, or removal of a small wireless facility collocated on a city utility pole or any small wireless facility or utility pole within the city public rights-of-way.
- (12) The city reserves the right in its sole discretion to refuse to allow the attachment of any equipment to a city-owned utility pole that does not constitute the collocation of a wireless facility. In addition, subject to city commission approval, the city reserves the right to charge a rate that may be negotiated between the

city and a person requesting to attach a communications facility that does not constitute a small wireless facility to a city-owned utility pole.

(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 structure granted a permit and installed pursuant to this article shall comply with F.S. ch. 333, and federal regulations pertaining to airport airspace protections.

(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 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 article regulating the location context, color, 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 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. All proposed new or replaced utility poles for collocation of small wireless facilities shall meet the design standards contained in this subsection unless waived by the city. To limit the number of new utility poles installed for collocation of small wireless facilities, registrants are encouraged to share utility poles and to accommodate more than one small wireless facility on each utility pole.

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

b. The replaced or restructured utility pole shall be substantially similar in design and color in terms of finish, base and pole design, diameter, material and height as the original pole being replaced, unless the city adopts a different design, color or composition to be consistent with applicable city standards for new utility poles, as they may be amended.

- c. Unless waived by the City, the height for a new utility pole or replaced utility pole installed pursuant to this article shall not exceed the height of the tallest existing utility pole as of July 1, 2017, other than a utility pole for which a waiver has previously been granted, 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 location context and 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, color, and cap, as applicable. 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 between existing poles. Unless waived by the city, to the extent not inconsistent with applicable law, any such stealth designed 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 city Code, at the expense of the registrant. By way of example, if a registrant installs a utility pole for collocation small wireless facility to resemble a nearby light pole, the facility should include a light that is operated in the same manner as other light poles, at the applicant's expense.
 - 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, historic property, 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 to follow the city's design standards to be adopted via Resolution
 - g. 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, applicable codes, or City Code including, but not limited to this article.
- (5) Stealth design for collocation of small wireless facilities.

- a. Consistent with the design of existing utility poles in the city, 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 that does not extend more than six inches beyond the pole. No exposed wires or cables are permitted. No conduit shall be installed on the exterior of utility poles. No equipment boxes shall be mounted on a utility pole. No small wireless facilities shall be attached to or collocated on a utility pole in the public rights-of-way less than eight feet above ground level.
 - 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 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. 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. Subject to the size allowed for small wireless facilities contained in this article, slim design of a small wireless facility up to six cubic feet shall be used wherein the top mounted antenna or small wireless facility does not exceed the diameter of the supporting utility pole at the level of the antenna or small wireless facility attachment by more than six inches, unless waived by the city. A small wireless facility up to six cubic feet collocated on a utility pole that does not contain an existing side-mounted fixture shall be mounted other than on the side of the utility pole and shall be finished in the city's standard forest green color finish and, to the extent consistent with the technology of the small wireless facility, of metal material to match the utility pole.
 - d. Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.
- (6) Small wireless facilities not collocated on utility poles or existing structures.
- a. Ground-mounted small wireless facilities up to 28 cubic feet in dimension shall be located within a ten-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 consistent with the proposed communication facilities installation

~~surrounding aesthetics, architectural design, and dimensions. Approval shall be at the discretion of the City Manager through consultation with the City's Director of Public Works, city's Mediterranean design style. Ground-mounted small wireless facilities up to 28 cubic foot shall be of forest green metal and placed on a forest green ornamental base. The small wireless facility shall have a metal or concrete ornamental top or capital to match the ornamental base. Alternatively, the registrant may propose a small wireless facility that would be substantially similar in terms of material, design and color finish to other at grade city owned infrastructure within a 500 foot radius of the proposed location in the public rights-of-way such as waste receptacles or City rights-of-way infrastructure. A waiver of the design standards herein or a proposed small wireless facility that does not satisfy these design guidelines shall be submitted to the city's board of architects (architectural review board) for review and approval prior to the registrant submitting an application. The city manager reserves the right to submit an application for an above-ground communications facility to the city's board of architects (architectural review board) with notice to the applicant, to determine if such proposed facility is consistent with the city's objective design standards.~~

- c. To the extent not inconsistent with applicable codes, at the city's direction the registrant of a ground-mounted small wireless facility in the public rights-of-way shall conceal the facility with landscaping and plantings consistent with other landscaping in the area. In areas with landscaped swales, the small wireless facility must be within the swale and concealed with consistent landscaping. 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 city Code for so long as the small wireless facility remains in the public rights-of-way.
 - d. The city manager is authorized to create or to revise a manual showing figures of acceptable and unacceptable designs for above-ground communications 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. When possible within technical considerations, communications provider are encouraged to consolidate equipment within one equipment cabinet or to install equipment below grade.
 - a. *Dimensional limits.* No communications facility other than small wireless facilities located above ground, excluding utility poles, having exterior dimensions greater than four feet high, by 4½ feet long, by 2½ 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:

1. 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 or that the larger communications facility is necessary to consolidate equipment in one cabinet; and
 2. 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
 3. 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 article; and
 4. The communications facility proposed by the communications provider does not otherwise create a hazard to the public health, safety, and welfare.
 5. Unless waived by the city, a communications cabinet shall not be located within 500 feet of another above ground communications cabinet.
- b. *Notice to residential areas.* Whenever a communications service provider subject to this subsection submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection within residentially-zoned districts in the city, the applicant shall provide notice by posting an 18 inch by 24 inch sign, satisfactory to the city, at the proposed location advising residents that they may review the permit application at the city and provide their comments to the city. The sign shall be posted a minimum of 14 days prior to any decision being made on the permit application to allow adequate time for input by residents and so as not to unduly delay the processing of any application.
- c. All communication service providers subject to this subsection shall provide by postcard to all residences, or in the event said residence is a

condominium, to the condominium association within a ¼ radius notification of their permit application and intent to erect a communication facility.

Sec. 38-35. Fees 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 article.
- (b) 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 article 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.
- (c) 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. ch. 202, as amended.
- (d) 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 built plans 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 30 days after the due date shall bear interest at the rate of one-half 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. The city shall require a pass-through provider to 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 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.
- (e) 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 article and applicable law, including, but not limited to drawing upon a registrant's security fund and/or performance bond.

- (f) To the extent consistent with applicable law, the city reserves the right to establish fees for registrations and permits pursuant to this article.

Sec. 38-36. Enforcement remedies.

- (a) In addition to any other remedies available at law, including but not limited to F.S. § 166.0415 and F.S. ch. 162, or equity or provided in this article, the city may apply any one or combination of the following remedies in the event a registrant violates this article, or applicable local law or order related to the public rights-of-way:
- (1) Failure to comply with the provisions of the article or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the registrant to the city in an amount of not less than ~~\$250.00~~ \$500.00 per day or part thereof that the violation continues.
 - (2) In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.
- (b) Before imposing a fine pursuant to subsection (a)(1) of this section, the code compliance department shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have 20 days to either:
- (1) Cure the violation to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation; or
 - (2) File an appeal with the code compliance department to contest the alleged violation.

Such appeal shall be heard by the city's special magistrate process. If no appeal is filed and if the violation is not cured within the 20-day period, the city may collect all fines owed, beginning with the first day of the violation, through any means allowed by law. The city may also, after proper notice has been attempted, remove any abandoned property that has been placed on the right-of-way.

- (c) In determining which remedies are appropriate, the code compliance department shall take into consideration the nature of the violation, the person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.
- (d) Failure of the code compliance department to enforce any requirements of this article 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.
- (e) In any proceeding before the city where there exists an issue with respect to a registrant's performance of its obligations pursuant to this article, 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 article. The city may find a registrant that does not demonstrate compliance with the terms and conditions of this article in default and apply any one or combination of the remedies otherwise authorized by this article.

- (f) The city manager or his designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law.

Sec. 38-33. Reports and records; inspections.

- (a) A registrant shall provide the following documents to the city as received or filed:
 - (1) Upon reasonable request, any pleadings, petitions, notices, and documents, which may directly impact the obligations under this article and which are reasonably necessary for the city to protect its interests under this article.
 - (2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
- (b) Nothing in this section shall affect the remedies the registrant has available under applicable law.
- (c) In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.
- (d) The city shall keep any documentation, books and records of the registrant confidential to the extent required under state statutes.

Sec. 38-34. Force majeure.

In the event a registrant's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result; provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.

Sec. 38-35. Reservation of rights; applicability.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of the ordinance from which this article is

derived and shall apply to all existing communications facilities placed in the public rights-of-way prior to the effective date of the ordinance from which this article is derived, to the full extent permitted by state and federal law.

Secs. 38-36—38-58. Reserved.

Section 3. **Conflicts.** All ordinances, or parts of ordinances in conflict herewith be, and the same, are hereby repealed.

Section 4. **Severability.** If any section, subsection, clause of provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.

Section 5. **Incorporation into the Code.** It is the intention of the Mayor and the City Council, that the provisions of this Ordinance shall become and made a part of the Code of Ordinances of the City of Doral, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions.

Section 6. **Effective Date** This Ordinance shall be effective immediately upon passage by the City Council on second reading.

The Prime Sponsor for this Ordinance is Councilman Rafael Pineyro.

The foregoing Ordinance was offered by _____, who moved its adoption. The motion was seconded by _____ upon being put to a vote, the vote was as follows:

Mayor Christi Fraga	_____
Vice Mayor Maureen Porras	_____
Councilwoman Digna Cabral	_____
Councilman Rafael Pineyro	_____
Councilwoman Nicole Reinoso	_____

PASSED AND ADOPTED on FIRST READING this 13 day of August, 2025.

PASSED AND ADOPTED on SECOND READING this 10 day of September, 2025.

CHRISTI FRAGA, MAYOR

ATTEST:

CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

LORENZO COBIELLA
GASTESI, LOPEZ, MESTRE & COBIELLA, PLLC
CITY ATTORNEY