



**CITY OF PARKLAND
PLANNING AND ZONING BOARD
THURSDAY, JULY 13, 2017 – 6:00 PM
6600 UNIVERSITY DR
PARKLAND, FL 33067**

I. CALL TO ORDER

**PLEDGE
ROLL CALL**

II. MINUTES APPROVAL

1. PLANNING AND ZONING BOARD - JUN 8, 2017 6:00 PM

III. COMMENTS FROM THE PUBLIC

IV. COMMENTS BY THE CHAIR

V. APPROVAL OF AGENDA

VI. PUBLIC HEARING

A. Local Planning Agency - New Business

1. CONSIDERATION OF AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF PARKLAND BY REZONING APPROXIMATELY 151.72 ACRES LOCATED ON THE SOUTH SIDE OF LOXAHATCHEE ROAD AND IMMEDIATELY WEST OF PARKSIDE DRIVE, FROM PALM BEACH COUNTY AGRICULTURAL RESIDENTIAL DISTRICT AND BROWARD COUNTY AGRICULTURAL ESTATE DISTRICT TO CITY OF PARKLAND PLANNED RESIDENTIAL DEVELOPMENT DISTRICT ("PRD") FOR 349 DETACHED SINGLE-FAMILY HOMES AND 106 ATTACHED SINGLE-FAMILY VILLAS; APPROVING THE PROPERTY MASTER PLAN ALSO KNOWN AS "MCJUNKIN FARMS"; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. CASE NUMBERS: MP16-002; RZ16-002. ORDINANCE 2017-06.

Staff is requesting to table

VII. PLANNING & ZONING BOARD - NEW BUSINESS

1. **CONSIDERATION OF A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, APPROVING A VARIANCE REQUEST FROM SEC. 95-1010.C. (H) TO EXTEND THE TIME THAT NUISANCE VEGETATION MUST BE REMOVED ON THE SITE KNOWN AS MCJUNKIN FARMS, FROM THE TIME OF LOT CLEARING TO THE TIME THAT THE EXISTING VEGETATION NO LONGER PROVIDES ADEQUATE SCREENING AGAINST THE SITE IMMEDIATELY SOUTH; LOCATED ON THE SOUTH SIDE OF LOXAHATCHEE ROAD, IMMEDIATELY WEST OF PARKSIDE DRIVE; PROVIDING FOR AN EFFECTIVE DATE. CASE NUMBER: V17-001.**

Staff is requesting to table

2. **CONSIDERATION OF A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, APPROVING A SUBDIVISION PLAT FOR 349 DETACHED SINGLE-FAMILY HOMES AND 106 ATTACHED SINGLE-FAMILY VILLAS, IN AN AGE-RESTRICTED COMMUNITY KNOWN AS MCJUNKIN FARMS, LOCATED ON THE SOUTH SIDE OF LOXAHATCHEE ROAD, IMMEDIATELY WEST OF PARKSIDE DRIVE; PROVIDING FOR AN EFFECTIVE DATE. CASE NUMBER: PL16-001.**

Staff is requesting to table

3. **CONSIDERATION OF A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, APPROVING A SITE PLAN FOR 349 DETACHED SINGLE-FAMILY HOMES AND 106 ATTACHED SINGLE-FAMILY VILLAS IN AN AGE-RESTRICTED COMMUNITY KNOWN AS MCJUNKIN FARMS; LOCATED ON THE SOUTH SIDE OF LOXAHATCHEE ROAD, IMMEDIATELY WEST OF PARKSIDE DRIVE; PROVIDING FOR AN EFFECTIVE DATE. CASE NUMBER SP16-005.**

Staff is requesting to table

4. **CONSIDERATION OF A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, IMPOSING "ZONING-IN-PROGRESS" REGARDING MEDICAL MARIJUANA TREATMENT CENTERS AND DISPENSARIES FOR A PERIOD OF NINETY DAYS FROM THE DATE OF THE ADOPTION OF THIS RESOLUTION; PROVIDING THAT WHILE "ZONING IN PROGRESS" IS IN EFFECT, THE CITY STAFF SHALL NOT ACCEPT NOR PROCESS APPLICATIONS THAT WOULD RESULT IN A DEVELOPMENT ORDER BEING ISSUED FOR MEDICAL MARIJUANA TREATMENT CENTERS OR DISPENSARIES; AND PROVIDING FOR AN EFFECTIVE DATE. RESOLUTION NUMBER: 2017-62.**

5. **CONSIDERATION OF AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, AMENDING ARTICLE 105 OF THE CITY'S LAND DEVELOPMENT CODE REGARDING COMMUNICATIONS FACILITIES IN RIGHTS-OF-WAY REGULATIONS; PROVIDING AND AMENDING DEFINITIONS OF TERMS; PROVIDING FOR UNIFORM, NONDISCRIMINATORY STANDARDS TO PREVENT OVERCROWDING, PROLIFERATION AND SATURATION OF CITY RIGHTS OF WAY, INCLUDING STANDARDS RELATED TO STEALTH DESIGN, PROTECTION OF RESIDENTIAL PROPERTIES, AND EQUIPMENT LOCATION AND SIZE; PROVIDING FOR THE ENCOURAGEMENT OF COLLOCATION OF COMMUNICATIONS FACILITIES; PROVIDING REGULATIONS FOR SMALL WIRELESS FACILITIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE. ORDINANCE NUMBER: 2017-07.**

VIII. COMMENTS FROM THE PLANNING & ZONING DIRECTOR

IX. COMMENTS FROM THE BOARD

X. ADJOURNMENT

NEXT MEETING - AUGUST 10, 2017

Please be advised that if a person decides to appeal any decision made by the Board, Agency, or Commission with respect to any matters considered at such hearing or meeting, he will need a record of the proceedings, and for such purpose he will need to ensure that a verbatim record includes the testimony and evidence upon which the appeal is based.

Members of the City of Parkland City Commission are permitted to and may attend meetings of the Planning and Zoning Board. They are also permitted, within the discretion of the Chair, to present comments to the Planning and Zoning Board during any portions of the meeting, which are open to the public.

In accordance with the Americans with Disability Act and Florida Statute 286.26, persons with disabilities needing special accommodation to participate in this proceeding should contact the City Clerk no later than two (2) days prior to the meeting at (954) 757-4132 for assistance.



**DEVELOPMENT SERVICES DEPARTMENT
PLANNING & ZONING BOARD**

CITY OF PARKLAND

Meeting: Thursday, July 13, 2017

STAFF REPORT

Agenda Item: 6.A.1

PETITION NO. MP16-002; RZ16-002

SHORT TITLE: Ordinance approving Rezoning and Master Plan for McJunkin Farms

SUBMITTED BY: Michele Mellgren

SPONSOR:

DEPARTMENT: Planning and Zoning Board

ORIGIN OF REQUEST:

BACKGROUND & PURPOSE:

See Staff Report attached.



**DEVELOPMENT SERVICES DEPARTMENT
PLANNING & ZONING BOARD**

CITY OF PARKLAND

Meeting: Thursday, July 13, 2017

STAFF REPORT

Agenda Item: 7.1

PETITION NO. V17-001

SHORT TITLE: Variance approval for extension of time to remove nuisance vegetation from McJunkin parcel

SUBMITTED BY: Jean Panebianco

SPONSOR:

DEPARTMENT: Planning and Zoning Board

ORIGIN OF REQUEST:

BACKGROUND & PURPOSE:

See Staff Report attached.



**DEVELOPMENT SERVICES DEPARTMENT
PLANNING & ZONING BOARD**

CITY OF PARKLAND

STAFF REPORT

Meeting: Thursday, July 13, 2017

Agenda Item: 7.2

PETITION NO. PL16-001

SHORT TITLE: Resolution approving a Plat for an age-restricted community known as McJunkin Farms

SUBMITTED BY: Jean Panebianco

SPONSOR:

DEPARTMENT: Planning and Zoning Board

ORIGIN OF REQUEST:

BACKGROUND & PURPOSE:

See Staff Report attached.



**DEVELOPMENT SERVICES DEPARTMENT
PLANNING & ZONING BOARD**

CITY OF PARKLAND

Meeting: Thursday, July 13, 2017

STAFF REPORT

Agenda Item: 7.3

PETITION NO. SP16-005

SHORT TITLE: Resolution approving Site Plan for 349 single family homes and 106 villas at McJunkin Farms

SUBMITTED BY: Michele Mellgren

SPONSOR:

DEPARTMENT: Planning and Zoning Board

ORIGIN OF REQUEST:

BACKGROUND & PURPOSE:

See Staff Report attached.



**DEVELOPMENT SERVICES DEPARTMENT
PLANNING & ZONING BOARD**

CITY OF PARKLAND

STAFF REPORT

Meeting: Thursday, July 13, 2017

Agenda Item: 7.4

PETITION NO. R2017-62

SHORT TITLE: "Zoning in Progress" regarding Medical Marijuana Treatment Centers

SUBMITTED BY: Michele Mellgren

SPONSOR:

DEPARTMENT: Planning and Zoning Board

ORIGIN OF REQUEST:

BACKGROUND & PURPOSE:

This "Zoning-In-Process" is of a temporary nature so as to allow the City staff to study and complete in a careful, but expeditious manner appropriate amendments to the Land Development Code related to medical marijuana treatment centers and dispensaries.

WHEREAS, on November 8, 2016, Constitutional Amendment 2 was voted into law and established Article X, Section 29 of the Florida Constitution, effective January 3, 2017, which created certain exemptions from criminal and civil liability for qualifying patients, physicians and medical marijuana treatment centers concerning the prescribing and use of medical marijuana in compliance with the Constitutional Amendment; and

WHEREAS, the Florida Constitution authorizes the Florida Legislature to enact laws consistent with the language in the Florida Constitution; and

WHEREAS, on June 9, 2017, the Florida Legislature enacted Florida Senate Bill 8A (“SB 8A”) regarding medical use of marijuana in the State of Florida; and

WHEREAS, SB 8A preempts the regulation of cultivation, processing and delivery of medical marijuana to the State, and further restricts a municipality’s ability to regulate medical marijuana treatment centers and dispensaries; and

WHEREAS, with the adoption of this Resolution, the City Commission hereby declares “zoning in progress” to be in effect and directs the Development Services staff and City Attorney’s Office to study the recently enacted state law and current federal laws regarding medical marijuana treatment centers and dispensaries; and

WHEREAS, during the “zoning in progress” period, the City Commission directs City staff to expeditiously study and develop, for the City Commission’s consideration, appropriate amendments to City of Parkland Land Development Code in order to ensure compliance with state and federal law relating to medical marijuana treatment centers and dispensaries.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, AS FOLLOWS:

Section 1. The above WHEREAS clauses are incorporated herein, are true and correct, and represent the City Commission’s legislative findings and intent regarding the necessity of the specified “zoning in progress”.

Section 2. In accordance with the provisions of Section 50-50 of the City of Parkland Land Development Code, the City Commission hereby imposes “zoning in progress” upon the processing or issuance of any applications for development permits, administrative, or otherwise, until City staff has concluded its study and the City Commission has adopted such Land Development Code regulations as it deems appropriate. This “zoning in progress” is of a temporary nature so as to allow the City staff to study and complete in a careful, but expeditious manner appropriate amendments to the Land Development Code relating to medical marijuana treatment centers and dispensaries.

Section 3. The “zoning in progress” set forth in this Resolution shall take effect immediately upon the adoption of this Resolution and shall terminate ninety days after adoption.

The City will not accept applications that are subject to the “zoning in progress” until ninety days after adoption of this Resolution.

Section 4. The “Zoning in progress” set forth in this Resolution shall be limited to applications received by the City after the date of this Resolution for development orders relating to medical marijuana treatment centers and dispensaries.

Section 5. This Resolution shall become effective immediately upon adoption.



**DEVELOPMENT SERVICES DEPARTMENT
PLANNING & ZONING BOARD**

CITY OF PARKLAND

Meeting: Thursday, July 13, 2017

STAFF REPORT

Agenda Item: 7.5

PETITION NO. O2017-07

SHORT TITLE: Parkland Telecom Right of Way Ordinance

SUBMITTED BY: Michele Mellgren

SPONSOR:

DEPARTMENT: Planning and Zoning Board

ORIGIN OF REQUEST:

BACKGROUND & PURPOSE:

In the 2017 legislative session, the Florida Legislature passed the Advanced Wireless Infrastructure Deployment Act, thereby creating subsection (7) to Section 337.401, Florida Statutes, which establishes a process by which wireless providers may install certain “small wireless facilities” within public rights-of-way under the jurisdiction and control of counties and municipalities.

It is the City’s intent to exercise its authority to adopt reasonable rules and regulations regarding communications facilities in the public rights-of-way to the fullest extent permitted by Federal and State law.

See Ordinance attached.

ORDINANCE NO. 2017-07

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PARKLAND, FLORIDA, AMENDING ARTICLE 105 OF THE CITY'S LAND DEVELOPMENT CODE REGARDING COMMUNICATIONS FACILITIES IN RIGHTS-OF-WAY REGULATIONS; PROVIDING AND AMENDING DEFINITIONS OF TERMS; PROVIDING FOR UNIFORM, NONDISCRIMINATORY STANDARDS TO PREVENT OVERCROWDING, PROLIFERATION AND SATURATION OF CITY RIGHTS OF WAY, INCLUDING STANDARDS RELATED TO STEALTH DESIGN, PROTECTION OF RESIDENTIAL PROPERTIES, AND EQUIPMENT LOCATION AND SIZE; PROVIDING FOR THE ENCOURAGEMENT OF COLLOCATION OF COMMUNICATIONS FACILITIES; PROVIDING REGULATIONS FOR SMALL WIRELESS FACILITIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, to promote the public health, safety, aesthetics, and general welfare, the City of Parkland has a substantial and significant public interest in maintaining and protecting its public rights-of-way in a non-discriminatory manner, and requiring that individuals and entities seeking permits to conduct any type of excavation, construction or other activity in the public rights-of-way do so in a safe, expeditious, and professional manner with minimal disruption to the public and other users of the rights-of-way; and

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

WHEREAS, Section 337.401, Florida Statutes, authorizes municipalities to adopt regulations of telecommunications facilities in the public rights-of-way that are related to the placement or maintenance of facilities in the public rights-of-way, are reasonable and non-discriminatory, and are necessary to the management of the public rights-of-way; and

WHEREAS, courts applying Florida and federal law have held that a municipality may impose reasonable design limitations on telecommunications facilities and may regulate the placement of wireless facilities where such regulation does not prohibit or effectively prohibit the provision of wireless services; and

WHEREAS, in the 2017 legislative session, the Florida Legislature passed the Advanced Wireless Infrastructure Deployment Act, thereby creating subsection (7) to Section 337.401, Florida Statutes, which establishes a process by which wireless providers may install certain “small wireless facilities” within public rights-of-way under the jurisdiction and control of counties and municipalities; and

WHEREAS, it is the City’s intent to exercise its authority to adopt reasonable rules and regulations regarding communications facilities in the public rights-of-way to the fullest extent permitted by Federal and State law; and

WHEREAS, the City Commission desires to adopt this Ordinance to amend the City’s regulations concerning communications facilities in rights-of-way within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PARKLAND, AS FOLLOWS:

SECTION 1. The above referenced “Whereas” clauses are true and correct and made a part hereof.

SECTION 2. Article 105 of the City’s Land Development Code is hereby amended to read as follows¹:

ARTICLE 105. - COMMUNICATIONS FACILITIES IN RIGHTS-OF-WAY

Sec. 105-10. - Intent; definitions.

A. *Use for public purposes.* Pursuant to state law, the city does hereby ratify and confirm the fact that the public rights-of-way of the city are to be held by the city for the benefit of the public and no use may be made of such rights-of-way by private parties for the placement of any objects of any kind whatsoever on such rights-of-way whether such objects are placed on, under or above such rights-of-way, without the authorization of the city, as provided for herein and pursuant to city ordinance ~~private rights-of-way shall be held to the same standards as public rights-of-way.~~

B. *Intent.* 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, the city's home-rule authority, 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

¹Proposed additions to existing City Code text are shown by underlining; proposed deletions from existing City Code text are shown by ~~strike through~~.

communications services providers, communications facilities providers and pass-through providers after the effective date of this article; 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.

C. Definitions. For the purposes of this article, 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 section 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 USC 151 et seq., as amended (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, shall be construed to mean the common and ordinary meaning.

Abandonment means the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be abandonment of a facility in public rights-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, or local codes or ordinances adopted to implement Section 337.401(7), Fla. Stat. The term includes objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

City means the city of Parkland, Florida.

City utility pole means a utility pole owned by the city and located in the right-of-way.

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

Communications facility or facility or system means any permanent or temporary plant, equipment ~~and~~ or 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, 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 Facilities Provider means a person (other than a communications services provider) operating one or more communications facilities located within the city, who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more communications service providers all or a portion of the tangible personal property used in a communications facility. A pass-through provider may be a communications facility provider.

Communications services means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Cable service, as defined in F.S. § 202.11(2), as it may be amended, is not included in the definition of "communications services" 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. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer's premises.
- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

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.

Distributed antenna system or DAS means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Existing Structure means a structure within the city's public right-of-way that exists at the time an application for permission to place a communications facility on the preexisting structure is filed with the city. The term includes utility poles and any structure that:

(i) can structurally support the attachment of a communications facility;

(ii) can be modified or repurposed to support the attachment of a communications facility;
or

(iii) can be removed and replaced with a structure of similar design and purpose as the original existing structure that supports the attachment of a communications facility.

FCC means the Federal Communications Commission.

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

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.

Pass-Through Provider means any person who places or maintains a communications facility in the city's public rights-of-way and who does not remit taxes imposed by the city pursuant to chapter 202, Florida Statutes, as same may be amended from time to time. A utility as defined in 47 U.S.C. § 224 is not a pass-through provider.

Person includes any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, ~~and~~ but shall not include the city to the extent permitted by applicable law.

Place or maintain or placement or maintenance or placing or maintaining means to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider, communications facilities provider or pass-through 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.

Public rights-of-way means a public right-of-way, public utility easement, highway, street, bridge, road, tunnel, pier, waterway, dock, wharf, court, lane, path, or alley or any other similar 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.

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.

Repurposed structure means an existing structure that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its primary existing purpose while also supporting the attachment of communications facilities through stealth design or otherwise that is approximately in the same location as the existing structure and in such a manner that does not result in a net increase in the number of structures located within the city's public rights-of-way and does not interfere with pedestrian or vehicular access, and is compliant with applicable codes. To "repurpose an existing structure" shall mean the act of renovating, reconfiguring or replacing an existing structure as described above.

Small wireless facility means a wireless facility that meets the following qualifications:

- a. Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

Stealth Design means a method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure or a wrap.

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

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.

Video Service means a communications service as defined at section 202.11 (24), Florida statutes, as may be amended from time to time.

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:

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

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

Wireless support structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

Wrap means an aesthetic covering depicting scenic imagery, such as vegetation, which blends with the surrounding area.

Sec. 105-20. - Registration.

A. *Registration required.* A communications services provider, communications facilities provider or a pass-through 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 upon complying with all permitting and other applicable requirements. ~~A communications services provider with an existing communications facility in the public rights-of-way of the city as of the effective date of the ordinance from which this article is derived has sixty (60) days from the effective date of the ordinance from which this article is derived to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.~~ 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, communications facilities provider or a pass-through provider from obtaining appropriate access or pole attachment agreements before locating its facilities ~~on the city's or another person's facilities in the city's public rights-of-way.~~ Registration does not excuse a communications services provider, communications facilities provider or a pass-through provider from complying with all applicable law, including city ordinances, codes or regulations.

B. *Application.* Each communications services provider, communications facilities provider or pass-through 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. The applicant shall state whether it provides or expects to provide local service or toll service or both;
4. Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article;
5. A copy of federal or state certification authorizing the applicant to provide communications services, if any;
6. If the applicant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or by other means; and
7. A security fund in accordance with this article.

C. *Processing.* The city manager or designee shall review the information submitted by the applicant. If the applicant submits information in accordance with subsection (B-) above, the registration shall be effective and the city shall notify the applicant of the effectiveness of registration in writing. If the city determines that the information has not been submitted in accordance with subsection (B-) above, the city shall notify the applicant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The city shall so notify an applicant within thirty (30) days after receipt of registration information from the applicant.

D. *Cancellation of registration.* 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.

E. *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.

F. *Renewal of registration.* A registrant shall renew its registration with the city by April 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 not be required to renew until the next even-numbered year. ~~Within thirty (30) days of any change in the information required to be submitted pursuant to subsection B., a registrant shall provide updated information to the city.~~ Registration renewals shall include an inventory of the registrant's newly installed facilities or abandoned communications facilities within the city's public rights-of-way, placed since the most recent renewal or update to the city. If an inventory of the registrant's facilities within the city had not previously been provided, then the registration renewal shall provide such inventory. 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, communications facilities provider or pass-through provider has complied with the registration requirements of this article.

G. *Registration updates.* Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (B), a registrant shall provide updated information to the city.

~~G~~H. *Termination of registration.*

1. The involuntary termination of a previously effective registration may only be accomplished by an action of the city commission. The city may declare the registration terminated and revoke and cancel all privileges granted under that registration if:

- a. A federal or Florida authority suspends, denies, or revokes a registrant's certification or license to provide communications service,
- b. 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
- c. The registrant abandons all of its communications facilities in the public rights-of-way.

Prior to such termination for any of the reasons set forth in this section, the city manager 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 sixty (60) days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the city commission, to accomplish the same.

2. The registrant shall be provided with written notice of the meeting at least five days prior to the meeting where the city commission is scheduled to consider termination of the registrant's registration. At such meeting, the registrant shall be given the opportunity to address the city commission regarding the proposed termination action prior to the city commission's vote on termination.

23. In the event of a vote by the city commission 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:

- a. 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;
- b. 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
- c. Utilize or allow other persons to utilize the registrant's abandoned facilities.

The obligations of the registrant hereunder shall survive the termination of a registration. 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.

I. Communications services tax in lieu of permit fee. A registrant that places or maintains communications facilities in the city's public rights-of-way and that pays communications services taxes shall not be required to pay a permit fee since the city has elected to collect the communications services tax pursuant to Ch. 202, Florida Statutes, as may be amended from time to time. Pass-through providers shall pay a fee pursuant to city code section 105-110 and section 337.401(5), Florida Statutes, as amended from time to time.

J. Permits required of registrants. In accordance with applicable city ordinances, codes or regulations, a permit may be required of a communications services provider, communications facilities provider or a pass-through provider that desires to place or maintain a communications facility in the city's public rights-of-way. An effective registration shall be a condition precedent to obtaining a permit. Notwithstanding an effective registration, permitting requirements shall also apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all applicable permitting requirements are met.

Sec. 105-30. - Permit requirements and conditions for work in rights-of-way.

A. Permit required. A registrant shall not commence to place or maintain a communications facility in a city public right-of-way until all applicable permits have been issued by the city. The registrant acknowledges that as a condition of granting such permits, the city may impose reasonable conditions governing the placement or maintenance of a communications facility in the city's public rights-of-way related to the public, health, safety and welfare as permitted and set forth in section 337.401, Florida Statutes, as may be amended from time to time; however, no such

imposed conditions shall prohibit the provision of communications services. Permits shall apply only to the areas of the city's public rights-of-way specifically identified in the permit. In determining whether to permit and reasonably limit, or impose conditions or prohibit a communications facility to be placed or located within the city's public rights-of-way, the city engineer shall consider the following standards and minimum requirements in the city engineer's review and consideration of a permit application and imposition of reasonable permit conditions:

- (1) *Sufficiency of space to accommodate present and pending applications for use of the city's public rights-of-way.* The sufficiency of space to accommodate all of the present and pending applications to place communications facilities and pending or planned applications to place and maintain facilities in that area of the city's public rights-of-way;
- (2) *Sufficiency of space to accommodate the city's need for projected public improvements.* The sufficiency of space to accommodate city plans for public improvements or projects adopted as part of its community investment capital improvements plan that the city determines in the best interest of the public;
- (3) *Impact on traffic and traffic safety.* The impact on traffic and traffic safety;
- (4) *Impact on existing facilities.* The impact upon existing facilities in the city's public rights-of-way;
- (5) *Distance separation from edge of pavement.* No new communications facility pole or wireless support structure shall be constructed, operated or maintained in the city's public rights-of-way in violation of the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Streets and Highways, Table 3-13 Minimum Width of Clear Zones. In accordance with Table 3-13, the city engineer shall have the authority to reduce the four (4) foot minimum offset identified in Table 3-13 where that offset cannot be reasonably obtained and other alternatives are deemed impractical;
- (6) *Distance separation from sidewalk.* No newly installed communications facility pole or wireless support structure shall be placed or maintained in the city's public rights-of-way within one (1) foot of a sidewalk or multi-purpose trail that is five (5) feet or less in width. Collocation on an existing structure is exempt from this requirement; and
- (7) *Installation at outermost boundary of City's Public Rights-of-way.* Where a superior site design results from placement of a communications facility pole or wireless support structure at or near the outermost boundary of the city's public right-of-way, the farthest distance practicable from the centerline thereof and edge of pavement is encouraged. To the extent that the location of the sidewalk or multi-purpose trail within the city's public right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this article, then the city engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk or multi-purpose trail at its own expense, in order to achieve such superior site design or otherwise meet other requirements of this article.

B. Permit applications. Except as otherwise provided by applicable law, permit applications to place a communications facility in the city's public rights-of-way shall contain the following:

- (1) Site plan. A site plan, in the form of signed and sealed plans from a Florida licensed professional engineer of record that show the location of the proposed facilities in the city's public rights-of-way, in a hard copy format or electronic format specified by the city engineer. The site plan shall also include:
 - i. a description of the facilities to be installed, where the facilities are to be located, and the size, dimensions and height of the proposed facilities that will be located in the city's public rights-of-way; and
 - ii. for new communications facility poles or wireless support structures, how many collocations the new poles or structures can support in terms of capacity; and
 - iii. sufficient specificity as to demonstrate compliance with the Florida Building Code, specifically in terms of compliance with ASCE-7-10, or latest edition for requirements of wind load; and
 - iv. for new communication facility poles, wireless support structures, or any excavation work, a geotechnical report for the existing soil conditions, or a soil statement by a Florida licensed professional engineer, attesting to the soil conditions.
- (2) Full color photo-simulation. A full color photo-simulation showing the proposed new communication facility poles and wireless support structures installed in accordance with the application from the point of view of properties adjacent to the proposed site.
- (3) Description of installation or construction.
 - i. a description of the type of facility and the manner in which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques); and
 - ii. a description of stealth design to be utilized. Additionally, each application for a permit to place a communications facility pole or a wireless support structure in the city's public rights-of-way shall include photographs showing the location and condition of the surrounding neighborhood, and a description of the stealth design techniques proposed to minimize the visual impact of the communications facility pole or wireless support structure and graphic depictions accurately representing the visual impact of the communications facility pole or wireless support structure when viewed from the street and from adjacent properties.
 - iii. alternatively, a signed and sealed statement from a Florida state licensed professional engineer that stealth design cannot be utilized on any particular facility and documentation demonstrating to the satisfaction of the city engineer that the proposed communications facility cannot employ stealth design and the proposed exterior

location and configuration of equipment are the minimum equipment necessary to achieve the needed function.

- (4) Temporary sidewalk or multi-purpose trail closure plan. A temporary sidewalk or multi-purpose trail closure plan, if appropriate given the facility proposed, to accommodate placement or maintenance of the communications facility.
- (5) Temporary modification of traffic (MOT) plan. A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate given the facility proposed, to accommodate installation and/or modification of the communications facility.
- (6) Capacity of abutting city public rights-of-way to accommodate the cumulative impact of the proposed facility and other facilities within the city's public rights-of-way. Information on the capacity of the city's public rights-of-way to accommodate the cumulative impact of (i) the proposed facility together with (ii) other existing and proposed facilities in the adjacent city public rights-of-way, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons).
- (7) Restoration plan and cost of restoration of the city's public right-of-way. Based on the facility proposed, a restoration plan and an estimate of the cost of restoration of the city's public rights-of-way.
- (8) Timetable for construction or installation and intended areas of service. The timetable for placement or maintenance of the proposed facility or each phase of the placement or maintenance thereof, and the intended areas of the city to be served by the communications facility.
- (9) Project Permits involving multiple collocations or attachments. For project permits that involve multiple collocations or attachments to existing structures, repurposed structures or installation of multiple new wireless support structures, the applicant shall only be required to provide a structural certification by a Florida licensed professional engineer as to each type of facility, not for each facility proposed as part of the overall project. No such certification is required with respect to wireline pole attachment installations made in the communications space of utility poles.
- (10) Certification as to removal of abandoned facilities or equipment. The applicant shall certify that any and all of its abandoned facilities within the city's public rights-of-way has or have been removed, indicating the prior location of such abandoned facilities.
- (11) Information regarding distance separation. In order to assess the impacts on the city's public rights-of-way resources and the potential for collocations or use of repurposed structures, identification of all communications facility poles and wireless support structures in the city's public rights-of-way within a five hundred (500) foot radius of the proposed new communications facility (such information may be produced without certification as to correctness to the extent obtained from other registrants with facilities in the city's public rights-of-way). No such identification is required with respect to

wireline pole attachment installations made in the communications space of utility poles or for small wireless facilities.

(12) Identification of all above-grade and below-grade structures within the city's public rights-of-way within a five hundred (500) foot radius. In order to assess the impacts on the city's public rights-of-way resources, the impact on surrounding neighborhoods and other properties within the permit area, and the potential for collocations or use of existing structures, identification of all above-grade structures in the city's public right-of-way within a five hundred (500) foot radius of the proposed new communications facility (including utility poles, equipment boxes, below-grade and above-grade communications service facilities and antennae) shall be provided (such information may be produced without certification as to correctness to the extent obtained from other registrants with facilities in the city's public rights-of-way). No such identification is required with respect to wireline pole attachment installations made in the communications space of utility poles or for small wireless facility installations.

(13) Affidavits.

(i) An application for a permit to install new communications facility pole(s) or new wireless support structures (as opposed to collocations, applications to use an existing structure, or wireline pole attachment installations made in the communication space of utility poles) shall include an affidavit from a Florida licensed professional engineer with a statement that it is not feasible to locate applicant's proposed facilities on existing poles along the proposed route and all the facts relied upon in the applicant's attempt to both collocate or attach the proposed new communications facilities on existing structures within the city's public rights-of-way, as well as on property outside the city's public rights-of-way, within a five hundred (500) foot radius of the proposed new communications facility.

(ii) An application for collocation shall include an affidavit from the owner of the facility or existing structure being collocated upon that the applicant has been granted permission to attach to the facility or existing structure being collocated upon or attached to.

(14) Public notice of new communications facility poles or new wireless support structures.

(i) Simultaneous with the filing of an application for a permit for the installation of a new communications facility pole or a new wireless support structure, the registrant shall submit an affidavit of mailing, attesting that notice of pending application has been mailed to all interested persons within three hundred (300) feet of the proposed permit area, as certified by the Broward County Property Appraiser's Office.

(ii) As to owners of condominium or cooperative units where the condominium or cooperative is within three hundred (300) feet of the proposed permit area, the registrant shall satisfy the requirements of this subsection by providing written notice to the respective condominium association or cooperative corporation in lieu of written notice to the individual property owners within such condominium or cooperative.

(iii) The notice of pending application shall notify the interested persons that an application for a new communications facility pole or wireless support structure has been filed with the city engineer.

(iv) The notice of pending application shall invite the interested persons to provide comments, inquiries or objections to the city engineer and registrant within fifteen (15) days of the date the notice was posted to the U.S. mail.

(v) The notice of pending application shall provide the name, mailing address, e-mail address and phone number of the city engineer to whom the interested persons should direct their comments, inquiries or objections. The contact information for the city engineer shall be in 14 point bold faced print.

(vi) The notice of pending application shall contain the following:

- a. a hard copy of the site plan submitted with the permit application;
- b. a description of the location of the proposed new communications facility poles or new wireless support structures by reference to the property street addresses abutting the proposed site of the new communications facility poles;
- c. a description of the new communications facility pole(s) or new wireless support structures to be installed, including the size, dimensions and height of the proposed new communications facility pole(s) or new wireless support structures;
- d. a full color photo-simulation showing the proposed new communications facility pole(s) or new wireless support structures installed in accordance with the application from the point of view the properties adjacent to the proposed site, together with depictions of any stealth design features to be utilized; and
- e. the location where the interested persons may go to examine any other materials relative to the pending application.

(15) Registrant agrees to indemnification. A statement shall be included within the application for a permit that by execution of the application and by applying for the permit, the registrant agrees to be bound to the city with respect to the indemnification provisions set forth in city code section 105-70(C) as though such indemnification provisions are set forth verbatim in the permit application.

- (16) Additional information as reasonably required for review of permit application. Such additional information as the city engineer finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application, which information may include, but is not necessarily limited to: (i) evidence satisfactory to the city engineer that the proposed facility will not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive or other dangerous chemicals; and (ii) a written statement from a qualified radio frequency engineer that the construction and placement of the proposed facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent properties.

C. Permit does not create a property right; program areas where overhead utilities are being placed underground. A permit from the city constitutes authorization to undertake only certain activities in the city's public rights-of-way in accordance with this article, and does not create a property right to continued occupation of the city's public rights-of-way or grant authority to impinge upon the rights of others who may have an interest in the city's public rights-of-way, nor does it create a property right to maintain collocated communications facilities or facilities hosting on repurposed structures or existing structures when such hosting structures are within a program where overhead distribution utilities are being placed underground pursuant to a city program to underground such overhead distribution facilities.

D. Avoidance of interference with city public rights-of-way.

- (1) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of the property owners who adjoin the city's public rights-of-way. The registrant shall endeavor to install all communications facilities underground wherever feasible.
- (2) All construction or maintenance of communications facilities shall be accomplished in the manner that will result in the least amount of damage and disruption to the rights-of-way.
- (3) The use of trenchless technology (i.e. directional bore method) for the installation of facilities in the city's public rights-of-way as well as joint trenching for the collocation of facilities in existing conduit is strongly encouraged, and the city may require such methods wherever feasible and not inconsistent with applicable law.

E. Avoidance of interference, displacement, damage or destruction or destruction of other facilities. A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to sewers, gas or water mains, storm drains, storm drainage lines, pipes, cables or conduits of the city or any other person's facilities lawfully occupying the city's public rights-of-way. 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 city manager or designee 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. *Coordination with other work in city public rights-of-way.* Upon request of the city, and as notified by the city of other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject city public right-of-way, and the registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the city's public rights-of-way and minimize any interference with the existing communications facilities.

G. *Temporary raising and lowering of communications facilities as accommodation.* 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 within the city's public rights-of-way. The expense of such temporary support, protection, raising or lowering of facilities shall be paid by the person requesting it, and the registrant shall have the authority to require such payment in advance. To the extent possible, the registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary support, protection or relocation. 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.

H. *Restoration of city public rights-of-way.* After the completion of any placement or maintenance work involving a communications facility in a city public right-of-way or each phase thereof, a registrant shall, at its own expense, restore the city public right-of-way to its existing condition prior to such work. If the registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance work, the city may perform restoration and charge the costs of the restoration against the registrant in accordance with section 337.402, Florida Statutes, as may be amended from time to time. For twelve (12) months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense.

I. *Removal or relocation governed by Florida law; conversion of overhead distribution facilities to underground distribution facilities.*

- (1) Removal or relocation at the direction of the city of a registrant's communications facilities in a city public right-of-way shall be governed by the provisions of sections 337.402, 337.403 and 337.404, Florida Statutes, as amended from time to time.
- (2) Subject to sections 337.402, 337.403 and 337.404, Florida Statutes, as amended from time to time, and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground distribution facilities, any registrant having communications facilities located on a communications facility pole or utility pole which is to be removed as a result of said underground conversion shall arrange at their sole

expense for the conversion to underground facilities (for wired facilities) or above ground relocation (for wireless facilities) on the same terms and conditions as the other utility distribution facilities that are being converted to underground distribution facilities.

J. Maintenance in accordance with industry standards and applicable law. A registrant shall maintain its communications facilities in good condition, order and repair in a manner consistent with accepted industry practice and applicable law.

- (1) Owners of communications facilities located in city public rights-of-way shall install and maintain communications facilities and other appurtenant equipment in compliance with the requirements of all applicable laws and codes, and in such a manner that will not interfere with the use of other property or facilities within the city's public rights-of-way.
- (2) All communications facilities and other appurtenant equipment shall, at all times, be kept and maintained in good condition, order and repair so that the same shall not endanger the life or property of any person or other facilities in the city's public rights-of-way.

K. Maintenance of graffiti plan. Each communications facility within the city's public rights-of-way, including any appurtenant features incorporated therewith under this article, shall be maintained in a neat and clean condition at all times. Specifically, but not without limiting the generality of the foregoing, each communications facility in the city's public rights-of-way shall be regularly maintained so that:

- (1) it is free of graffiti visible from the city's public rights-of-way or surrounding neighborhood at grade. All graffiti shall be removed within ten (10) working days from receipt of notice thereof by the city that graffiti exists on the communications facility or any portion thereof. a fine of \$50.00 per day shall be imposed for each and every day of non-compliance after receipt of notice by the city; and
- (2) it is reasonably free of dirt and grease, rust and corrosion in visible metal areas, chipped, faded, peeling and cracked paint that is visible from the city's public right-of-way at grade. All such conditions shall be remedied within ten (10) working days from receipt of notice thereof from the city.

L. Safety practices; encourage strengthening utility infrastructure and infrastructure hardening plan. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities. The city's policies strongly favor strengthening utility infrastructure and in particular as it relates to flooding and hurricane related events, and applicants are encouraged to implement an infrastructure hardening plan for any communications facilities within the city's public rights-of-way.

M. Underground facility damage prevention and safety act. In connection with excavation in the city's public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes, as may be amended from time to time.

N. Use of due caution. Registrants shall use and exercise due caution, care and skill in performing work in the city's public rights-of-way and shall take all reasonable steps to safeguard work site areas, including, but not limited to those safeguards set forth in chapter 33 of the Florida Building Code. 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. No warranties or representations regarding fitness, suitability or availability of city public rights-of-way. The city makes no warranties or representations regarding the fitness, suitability, or availability of the city's public rights-of-way for the registrant's communications facilities. Any performance of work, costs incurred or services provided by the registrant shall be at the registrant's sole risk. Nothing in this article shall affect the city's authority to add, vacate or abandon its public rights-of-way, and the city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

P. Right of inspection. The city shall have the right to make such inspections of communications facilities placed or maintained in its public rights-of-way as it finds necessary and upon reasonable notice to ensure compliance with this article.

- (1) Upon completion of work authorized by any permit, in the event that field work resulted in changes from the permit plans, the applicant shall furnish to the city, at no cost to the city, one complete set of sealed "as-built" plans, or in the case of any underground utility facilities, a sealed survey showing the exact location of such facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be) of facilities as the city engineer may approve.
- (2) The "as-built" plans shall be in an electronic format specified by the city engineer and shall be provided to the city at no cost to the city.
- (3) This requirement shall be in addition to, and not in lieu of, any filings the registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes, as may be amended from time to time.
- (4) The fact that such "as-built" plans or survey is on file with the city shall in no way abrogate the duty of any person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the city's public rights-of-way.
- (5) Any proprietary confidential business information obtained from a registrant in connection with a permit application shall be held confidential by the city to the extent required by section 202.195, Florida Statutes, as may be amended from time to time, provided the registrant so notifies the city which information is confidential in accordance with Florida's public records laws.

Q. Florida Building Code; high velocity hurricane zone. In addition to the requirements of this article, all permitted facilities shall comply with the applicable provisions of the Florida Building Code. Communications facilities shall be considered to be structures under building risk category IV, structures, Chapter 16, section 1620 - 1621, high velocity hurricane zone area. Signed and sealed design and wind load calculation shall be provided by a Florida licensed professional engineer and a permit under the Florida Building Code shall be required.

R. Permit processing timeframes; "shot clock". The city's action on proposals to place or maintain communications facilities shall be subject to the applicable standards and time frames set out in Section 365.172, Florida Statutes, as may be amended from time to time; and 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same may be amended from time to time. All Federal and State "shot clock" timeframe guidelines that apply to any particular permit are hereby recognized by the city, and the city will make all reasonable efforts to comply therewith.

S. Project permit.

- (1) General. The city may issue a single project permit that would otherwise require individual permits for two or more collocations, existing structures, repurposed structures or pole attachments that form a cluster or multiple clusters to serve a specified service area. New communication facility poles or wireless support structures may not be included in any project permit. The process will start with a preliminary review meeting. After completion of this meeting, a project plan shall be submitted with project permit application.
- (2) Preliminary review meeting. A meeting with city engineer shall occur to discuss code concerns prior to submitting project plans. For purposes of the master project plan, this meeting is the forum in which the design team describes their intentions for the completion sequence. This is a crucial step that designates how to permit the entire project in order to realize these intentions. From information gathered at the meeting, a project plan shall be created and submitted with a permit application. At the city engineer's sole discretion, upon a determination that a proposed project permit is too large to be processed and completed as such, said proposed project permit may be broken into multiple individual permits or smaller project permits, in any combination.
- (3) Project plan. An organization chart that breaks down the phases of the project shall be included. The organization is arranged to reflect the dependency that exist between sub-projects. The purpose of the preliminary project plan is to show the sequence of completion for the project. The entire project contained in a project permit must be completely constructed within 90 days from permit issuance.

T. Routine maintenance and emergency notices and permits. In the case of routine maintenance, a registrant shall provide at least three (3) days' advance written notice to the city identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. In the case of an emergency, a registrant may restore its damaged facilities in the city's public rights-of-way to their pre-emergency condition or replace its destroyed facilities in

the city's public rights-of-way with facilities of the same size, character and quality, all without first applying for or receiving a permit.

- (1) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.
- (2) A registrant shall provide prompt notice to the city of the emergency repair or replacement of a communications facility in the city's public right-of-way, and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in connection with the emergency.

U. Issuance of permit in violation of city code or construction in violation of city code.

- (1) The issuance of a permit for a communications facility shall not be construed as a right to placement or maintenance of the communications facility that fails to meet the requirements of this article.
- (2) The issuance of a permit for a communications facility shall not be deemed or construed to be a permit for or approval of any violation of any of the provisions of this article. A permit presuming to give authority to violate or cancel the provisions of the city code shall be void and invalid except insofar as the work or use that it authorizes is lawful.

V. Permit required. Notwithstanding any other provision to the contrary, a right-of-way permit from the city is required for any work that involves excavation, closure of a sidewalk or multi-purpose trail or closure of a vehicular lane.

W. No permit fees for work under this article. Pursuant to section 337.401(3)(c)(1)(b), Florida Statutes, as amended from time to time, and other applicable provisions of law, the city has elected not to charge permit fees to any registrant for permits to do work under this article in the city public rights-of-way. Notwithstanding the foregoing, pass-through providers shall be subject to the fees set forth in city code section 105-110.

X. Repurposed structures. Unless stated otherwise, or as otherwise limited by applicable law, all requirements imposed on communications facilities shall also apply to repurposed structures. The provider attaching its communications facilities to a repurposed structure shall be responsible for registration and permitting requirements of this article to the extent they were exempted prior to the act of repurposing the existing structure. The provider that later removes a repurposed structure (other than a utility pole) shall reinstall a replacement communications facility pole in the city's public right-of-way, at the direction of the city.

~~A. Permit required. In accordance with applicable city ordinances, codes or regulations and this section, a right-of-way permit issued by city engineer 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.

B. Fee for use. 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.

C. Compliance with laws and requirements. Registrant, by virtue of its use of city rights of way, 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.

D. Emergency installation. 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" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide 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. 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.

E. Construction plans. 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 Florida 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. 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 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;
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 or obstruction 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;~~

~~7. Such additional information requested by the city that the city finds reasonably necessary to review the permit application;~~

~~8. Notwithstanding the requirements of section 134-100, plans, specifications and requirements, plans may be submitted on sheets twenty four (24) by thirty six (36) inches or smaller.~~

~~F. *Notice of work.* Prior to the commencement of any work by the registrant pertaining to the placement and maintenance of communication facilities within the public rights of way, the city manager may require the registrant to issue notice of the work to property owners who adjoin such rights of way (the "notification area"). The notification area may be expanded at the city's discretion and notice shall be effected in a manner deemed appropriate by the city manager or designee.~~

~~G. *Permit limitations.* 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.~~

~~H. *Suspension of permits.* Subject to provisions set forth below and to providing reasonable notice and an opportunity to cure, the city manager 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 (1) or more of the following:~~

~~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;~~

~~5. After the suspension or denial of a permit pursuant to this section, the city shall provide written notice of the reason to the registrant.~~

~~I. *Appeals.* Final, written decisions of the city manager suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the city within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The city shall hear or appoint a hearing officer to consider the appeal. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (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.~~

Sec. 105-40. – Standards for compatibility with surrounding neighborhood; prevention of pole proliferation and saturation of city public rights-of-way.

A. *In general.* Above-ground communications facilities, including wireless communications facilities and support structures, shall be designed in such a manner that the facilities and structures are compatible with the surrounding neighborhood and minimize any negative visual impact on the surrounding neighborhood. In order to achieve compatibility with the surrounding neighborhood and to minimize the negative visual impact on the surrounding neighborhood, the regulations in this section 105-40 shall apply, unless otherwise provided pursuant to this section.

B. *Stealth design.* Stealth design for above-ground communications facilities, and in particular, communications facility poles and wireless support structures, shall be utilized wherever possible in order to minimize the visual impact of communications facilities on, and preserve compatibility with, surrounding neighborhoods, and in order to eliminate the need to locate any ground or elevated equipment on the exterior of a communications facility or existing structure. Stealth design is not required with respect to wireline pole attachment installations made in the communication space of utility poles. To the extent reasonably practicable for the site, stealth design features shall include, but are not limited to, the following:

- (1) For new communications facility poles and new wireless support structures, as well as existing structures in the city's public rights-of-way, (i) top mounted antennas within enclosures that do not extend the diameter of the supporting communications facility pole, wireless support structure, existing structure or other support structure at the level of antenna attachment, or (ii) side mounted antennas within enclosures that extend no more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment shall be utilized. For purposes of calculating the above, the dimensions of the supporting communications facility pole, wireless support structure, existing structure or other support structure do not include any platform, rack, mount or other hardware used to attach an antenna or antenna enclosure to the supporting structure. Nothing contained in this subparagraph (1) shall be construed to limit stealth design as specified in other subparagraphs below.

- (2) The use of foliage and vegetation based on conditions of the specific area where the facility is to be located. Trees shall be determined and approved by the city's landscape plans examiner under separate permit.
- (3) Equipment wraps (the imagery in a wrap shall not contain any advertising).
- (4) Flag poles.
- (5) Street light fixtures.
- (6) Other stealth design proposed by an applicant and approved by the city based on unique circumstances applicable to the facility or the location or both.

All stealth designed communications facilities components, including associated hardware, shall be designed and constructed in accordance with the high velocity zone criteria specified in the Florida Building Code, Chapter 16 and considered as structures under building risk category II. Design and wind load calculations shall be provided per ASCE 7 - 10 (170 MPH). Calculations should be accompanied by Miami-Dade County Notice of Acceptance (NOA)/Product Approvals.

C. *No Signage.* Registrants shall not place or maintain signage on communications facilities in city public rights-of-way, unless otherwise required by federal or state law, provided; however, that existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law or city code, as may be amended from time to time.

D. *Exterior finish.* Communications facilities not requiring FAA painting or marking shall have an exterior hard durable finish that enhances compatibility with adjacent uses, as approved by the city engineer.

E. *Lighting.* A communications facility shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, State, or local rule, regulation, the FAA or law; provided, however, the city may require the installation of an LED street light on a new communications facility pole or wireless support structure or an existing structure functioning as a light pole.

F. *Maximum height restrictions.* Subject to the equipment volume and antenna volume limitations, a communications facility, including any attached antennas, shall not exceed the following height:

- (1) *Poles along roadways.* The height of a new communications facility pole or wireless support structure within the public rights-of-way shall only be as high as reasonably necessary to achieve its intended purpose and shall not exceed the height of existing poles or structures in the public rights-of-way within 100 feet of the proposed new communications facility pole or wireless support structure. If no such existing poles are present in the public rights-of-way within 100 feet, the new communications facility pole or a new wireless support structure shall not exceed a height of 30 feet. Height shall be measured from the crown of the road of the nearest public street.

- (2) Top mounted Antennas. Top mounted antennas may extend an additional four (4) feet in height in excess of the height limitations set forth in (F)(1), above.
- (3) Colocations and repurposed structures. For each collocation or repurposed structure, top mounted antennas may extend an additional six (6) feet in height in excess of the height limitations set forth in (F)(1), above.
- (4) Above grade requirement. All antennas shall be no less than eight (8) feet above grade.
- (5) Small wireless facilities. See section 105-120(B).

G. Equipment and antenna volume.

- (1) Subject to height limits and antenna volume limits, equipment that may be associated with communications facilities attached to an existing structure or a new communications facility pole or a new wireless support structure or located in the city's public right-of-way at grade, not including associated antenna(s), electric meter, telecom demarcation box, battery-back up power systems, grounding equipment, or power transfer switch, shall not exceed seventeen (17) cubic feet.
- (2) Antenna volume. Subject to height limits and equipment volume limits, each antenna that may be associated with the installation of a communications facility shall not exceed more than three (3) cubic feet in volume. Each antenna that is exposed and not concealed within a concealment enclosure shall fit within an imaginary enclosure that does not exceed three (3) cubic feet.

H. Prohibition against placement on certain roadways where the city has plans for sidewalks or multi-purpose trails; preference for arterial or collector roadways. No communications facility shall be placed or maintained in the swale area on the side of a collector roadway or local roadway where the city has plans to install a sidewalk or multi-purpose trail of five (5) feet in width or more, nor shall such communications facility be located in such a manner that would preclude a five (5) foot clear pathway for the planned sidewalk or multi-purpose trail. Otherwise, communications facilities shall generally be placed in arterial or collector roadways whenever possible. Placement of communications facilities in rights-of-way other than arterial or collector roadways shall be justified by the applicant to the satisfaction of the city engineer prior to the issuance of any permit. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these areas, subject to any future relocation of the existing structure or repurposed structure to accommodate the sidewalk or multi-purpose trail.

I. Minimum distance separation from edge of pavement. No communications facility shall be placed or maintained in the city's public rights-of-way in violation of minimum distance separation from edge of pavement in accordance the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, Table 3-13, Minimum Width of Clear Zones. In accordance with Table 3-13, the city engineer shall have the authority to reduce the four (4) foot minimum offset identified in Table 3-13 where that offset cannot be reasonably obtained and other alternatives are deemed impractical.

the city engineer shall have the authority to decide reductions in the clear zone in accordance with the above referenced Table 3-13. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these areas.

J. *Minimum distance separation from existing sidewalk or multi-purpose trail.* No communications facility pole or wireless support structure shall be placed or maintained in the city's public rights-of-way within one (1) foot of an existing sidewalk or multi-purpose trail. Collocation and use of repurposed structures are exempt from this requirement.

K. *Installation at outermost boundary of city public rights-of-way.* Where a superior site design results from placement of a communications facility at or near the outermost boundary of the city's public right-of-way, the farthest distance practicable from the centerline of the public right-of-way and edge of pavement is encouraged. To the extent that the location of the sidewalk or multi-purpose trail within the city's public right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this article, then the city engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk or multi-purpose trail at its own expense, in order to achieve such superior site design or otherwise meet other requirements of this article. Communications facilities otherwise prohibited by this section shall be permitted if installed on an existing structure or repurposed structure located in these restricted areas, subject to any future relocation of the existing structure or repurposed structure to accommodate the sidewalk or multi-purpose trail.

L. *Distance separation between communications facility poles and wireless support structures in city public rights-of-way.* Communications facility poles and wireless support structures in the city's public rights-of-way must be spaced a minimum of five hundred (500) linear feet apart from each other, along the line of general vehicular travel, except that no distance requirement shall apply to collocations or existing structures.

M. *Site Triangles.* Except on existing structures, no new communications facility shall be constructed or installed within a triangular shaped area of land, known as a "site triangle", and measured as follows:

- (1) Ten (10) feet from the intersection point of the edge of a driveway and curb, or in the event that there is no curb, the edge of the alley or street pavement; or
- (2) Fifteen (15) feet from the intersection point of the extended property lines at an alley and a street; or
- (3) Twenty-five (25) feet from the intersection point of the extended property lines at a street and a street.
- (4) The foregoing site triangles may be reduced to no less than ten (10) feet, if the city engineer, on a case-by-case basis, finds that the proposed reduction complies with all city engineering standards and the city engineer shall take into consideration neighborhood characteristics such as the location of schools, parks and other community facilities, pedestrian facilities such as adequate sidewalks and multi-purpose trails, street

characteristics such as pavement width, width of swale (right-of-way line to curb or edge of pavement for vehicular travel-ways) the curvature of the street, speed limits and other similar elements.

- (5) Site triangles located at the intersection of a local street or driveway within a right-of-way under county, state or federal jurisdictions, may be subject to the site triangle requirements of those jurisdictions.

N. *Emphasis on arterial or collector roadways.* Registrants seeking to place or maintain a communications facility pole or a wireless support structure in the city's public rights-of-way shall locate their facilities in arterial or collector roadways, whenever possible. An application for a permit to place a communications facility pole or a wireless support structure in a city public right-of-way other than arterial or collector roadways shall explain why the applicant is unable to locate the facilities in an arterial or collector roadway and shall demonstrate to the satisfaction of the city engineer the need to locate the facilities in the areas proposed in the application. Upon delegation to the city of the regulatory authorities in this article by the county, state or U.S. Department of Transportation or all of the foregoing entities, then the city may enforce such regulations in this article within the corporate boundaries of the city to the extent such authority has been delegated to the city as stated above.

O. *Prohibition against placement in a front yard within residential zoned districts; distance from residential structures.* No communications facility pole or a wireless support structure shall be placed within a city public right-of-way that abuts any front yard in a residential zoned district. No antenna attached to a freestanding pole in the public rights-of way, other than as a collocation with an existing power, light or other utility pole, or unless installed as a stealth facility, shall be permitted within 50 feet of any principal residential structure.

P. *Limitation on placement in corner yards within residential zoned districts.* A communications facility pole or a wireless support structure within the city public rights-of-way abutting a corner yard of a corner lot within a residential zoned district shall not be placed any closer than ten (10) feet from the side property line of the lot abutting and adjacent to the corner lot.

Q. *Not significantly impair view from principal structures within residential zoned districts.* All communications facility poles or a wireless support structures shall be located such that views from principal structures within residential zoned districts are not significantly impaired. Where possible, newly installed communications facility poles or wireless support structures should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the communications facility pole or wireless support structure within residential zoned districts. The requirements of this subparagraph shall not apply to existing structures, when there is a one-to-one use or repurposing of an existing structure.

R. Waiver of the requirements of this section by city commission. Nothing in section 105-40 shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of city public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law. The waiver provisions listed in this subsection apply in those circumstances where a communications service provider, communications facility provider or pass-through provider's competitively use of city public rights-of-way is impaired by strict application of the requirements of this section 105-40. The city commission shall have the jurisdiction to grant or deny waivers as set forth in this subsection. The following provisions shall govern the granting or denying of a request for a waiver under the requirements of this section 105-40(R):

- (1) Filing of request. A request for a waiver shall be filed with the city contemporaneously with the permit application.
- (2) Contents. The request for waiver shall contain each subsection within section 105-40 for which a waiver is sought. A request for a waiver shall include all information described in this subsection (R) and any other information the city may reasonably require to process the waiver request. The city commission may deny the request for a waiver if it does not comply with the requirements of this section 105-40 (R).
- (3) Factors. The city commission shall consider the following factors and information, which shall be supplied by the applicant in the waiver request, in determining whether to grant a waiver:
 - (i) a detailed explanation, with supporting engineering or other data, as to why a waiver from the requirements of section 105-40 is required in order to allow the registrant/applicant to have nondiscriminatory and competitively neutral use of the city's public rights-of-way;
 - (ii) availability of collocation opportunities;
 - (iii) size and height of the proposed facilities;
 - (iv) location and separation distances of the proposed facilities;
 - (v) nature and characteristics of surrounding neighborhood;
 - (vi) adjacent and nearby topography, tree coverage and foliage of surrounding neighborhood;
 - (vii) design of the proposed facilities with particular reference to achieving compatibility with the surrounding neighborhood and elimination of adverse visual impacts of such facilities on the surrounding neighborhood;
 - (viii) any other factors the city determines to be relevant and that may be considered under applicable law.

- (4) Conditions. In granting any waiver, the city commission may impose conditions to the extent the city commission concludes 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 city and its residents.
- (5) Four-fifths vote required; criteria. The city commission shall have authority to grant a waiver upon a four-fifths vote of the city commission if the applicant proves by a preponderance of the evidence that each of the below criteria have been met in the application for a waiver:
- (i) there are special conditions and circumstance affecting the proposed site that prevent compliance with the subsections for which a waiver is being sought;
 - (ii) the proposed waiver, if granted, results in a superior site plan;
 - (iii) the proposed waiver, if granted, will not be incompatible with adjoining properties or the surrounding neighborhood;
 - (iv) the proposed waiver, if granted, is ADA compliant;
 - (v) the proposed waiver, if granted, complies with FCC regulations;
 - (vi) the proposed waiver, if granted, preserves to the city optimum flexibility in its management of its public rights-of-way; and
 - (vii) the applicant for the waiver demonstrates that the subsection for which the waiver is being sought would unreasonably discriminate against the applicant in favor of another communications service provider or would otherwise violate applicable law.

~~A. Established standards. All telephone, cable television, or other signal transmission systems constructed in the public rights of way shall be in accordance with the applicable provisions of the following standards and regulations. All installations shall be in strict accordance with the manufacturer's recommendations as modified by these standards:~~

- ~~1. National Electrical Safety Code.~~
- ~~2. Federal Communications Commission.~~
- ~~3. State of Florida Public Service Commission.~~
- ~~4. United States Department of Transportation "Manual on Uniform Traffic Control Devices."~~
- ~~5. FDOT "Utility Accommodation Guide."~~

~~B. Conduits. Conduits shall be in accordance with this section 135-2050, Conduits.~~

~~C. Cover. Telephone, television cable, or other signal-carrying cable installed in an existing or planned paved area in any public right-of-way, excluding single-family driveway connections and other swale-paved areas as approved by the city engineer, shall be carried in approved steel, concrete, or plastic conduits and shall have a minimum of thirty (30) inches of cover unless otherwise approved by the city engineer.~~

~~D. Location. In general, all underground telephone, cable television, or other signal-carrying cable installations shall be in accordance with section 135-100, plans, specifications and requirements.~~

~~E. Crossings. All underground crossings of paved roadways shall be made by the jack and bore method, unless otherwise approved by the city engineer. Underground crossing of paved roadways shall not be accomplished by jetting or the use of air or water in direct contact with the earth. Pipe driving shall leave no voids in the underlying earth. This does not prohibit the use of air hammers for driving.~~

~~F. Extraction of pipe from bore. The extraction of pipe from beneath any roadway is prohibited unless approved by the city engineer. In extreme situations where pipe must be removed, the roadway must be trenched and later restored in accordance with section 135-1060, underground facilities; utility easements.~~

~~G. Testing. Testing of telephone, cable television, or other signal-carrying facilities will not be required by the city engineer. Testing of backfill, compaction and roadway restoration, however, shall be as per this document.~~

~~H. Record drawings and certification. The provisions of section 135-100, plans, specifications and requirements, notwithstanding, one (1) set of record drawing blueprints may be required for electric power work performed by or for corporations regulated by the Florida Public Service Commission unless specifically directed otherwise by the city engineer. Such drawings shall show the construction variations, if any, from the design plans.~~

~~I. Safety. All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.~~

~~J. Restoration of right-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way, subject to the city's satisfaction upon inspection. Registrant shall warrant its restoration for a period of twelve (12) months after completion of such restoration. If the registrant fails to make such restoration within ten (10) calendar days after completion of construction, or such other time as may be required by the city, the city may after written notice to the registrant, perform such restoration using city employees, agents or contractors, and charge all costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within thirty (30) days after the submission of the bill by the city to the registrant.~~

~~K. Removal or relocation. 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.~~

~~L. Maintenance. A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.~~

~~M. Excavation. 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.~~

~~N. Compliance with laws. 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. 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.~~

~~O. Scheduling of work in right-of-way. In the interest of the public's 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 time frame based on specific city construction or maintenance schedules.~~

Sec. 105-50. - General provisions; reservation of rights.

A. *Nonexclusivity.* 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. Registrant may allow city facilities to be collocated within city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.

~~B. *Temporary displacement.* Subject to applicable law, 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 thirty (30) days advance written notice to arrange for such temporary relocation. 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.~~

EB. *Remedies*. Nothing in this article shall affect or limit the remedies the city has available under applicable law.

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

ED. *Lawful exercise of city's rights*. 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, but not limited to, 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.

EE. *Reservation of rights*.

1. The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
2. This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this article and shall apply to all existing communications facilities placed in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law.

EF. *Capacity for new facilities*. 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.

~~H. *Non-interference*. 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.~~

~~I. *Due care.* 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.~~

~~J. *Work to be done at registrant's risk.* 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.~~

~~K. *Right of inspections.* 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 registrant no less than three (3) days' written notice setting forth the violation and requesting correction.~~

Sec. 105-60. - Transfer, control, sale or assignment of assets.

If a registrant transfers, sells or assigns its registration or its facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article. Written notice of any such transfer, sale or assignment shall be provided to the city within twenty (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 herein within sixty (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. 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. 105-70. - Insurance, indemnification, fees and bonds.

A. Insurance.

1. 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. Thirty (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. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.

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

- a. Worker's compensation and employer's liability insurance.
- b. Employer's liability—Five hundred thousand dollar (\$500,000.00) limit each accident; five hundred thousand dollars (\$500,000.00) limit per each employee.
- c. Comprehensive general liability.
- d. Bodily injury and property damage—Three million dollars (\$3,000,000.00) combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations or independent contractors.
- e. Business automobile liability.
- f. Bodily injury and property damage—Three million dollars (\$3,000,000.00) combined single limit each accident.
- g. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The city shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
- h. *Self-insurance*. Registrant may satisfy the insurance requirements and conditions of this section under a self-insurance plan and/or retention. Registrant agrees to notify the city, and/or indicate on the certificate of insurance, when self-insurance is relied upon or when a self-insured retention exceeds one hundred thousand dollars (\$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.

3. *Right to review.* The city, ~~by and through its risk management department,~~ reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this 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.

B. *No waiver of rights; insurance requirement.* 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 right-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.~~

C. *Indemnification.* By virtue of its use of city rights-of-way, 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, provided, however, that a registrant's obligation hereunder shall not extend to any damages caused solely by the negligence, gross negligence or wanton or willful acts of the city. 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 written notice, of any issue it determines may require indemnification. 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 of Florida;
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.

D. *Bond.*

1. 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 the city ~~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~~

~~herein~~. 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.

2. No less than twelve (12) months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the public works/utilities director or designee to remove the requirement to continue the construction bond and the city shall release the bond within ten (10) days. Notwithstanding, the city may require a new bond for any subsequent work performed in the public rights-of-way.

3. 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 ~~sixty~~ thirty (~~60~~30) 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."

4. 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.

E. Fees, costs and bond amounts. To the extent permitted by law, the registrant shall reimburse the city for all costs of consultants, contractors, or legal counsel incurred in the registration process and any reviews and inspections and legal documents required as part of this process. The city may also impose a reasonable fee, adopted by resolution, to the extent permitted by law. Permit fees and bonds shall be calculated in accordance with article 145, permits, fees and bonds.

Sec. 105-80. - Enforcement remedies.

A. *Remedies.* 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 two hundred fifty dollars (\$250.00) 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.

3. In determining which remedy or remedies are appropriate, the city shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.

B. *No waiver of rights.* Failure of the city 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.

C. *Registrant's opportunity to respond.* 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 (1) or combination of the remedies otherwise authorized by this article.

D. *Administrative official.* The city manager or designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law.

Sec. 105-90. - 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 subsection shall affect the remedies 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~~ if the registrant informs the city in writing of such confidential material, and only to the extent required under Florida Statutes.

Sec. 105-100. - Abandonment of a communications facility.

A. Upon abandonment of a communications facility owned by a registrant in the public rights-of-way, the registrant shall notify the city of such abandonment within ninety (90) days. The city may direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the city determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:

1. Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way.
2. Prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available.
3. Creates a maintenance condition that is disruptive to the public rights-of-way's use.

B. In the event of paragraph 2., above, the city may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

C. In the event that the city does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city or another person at such third party's cost.

D. If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.

Sec. 105-110. – Pass-through provider fees and charges.

A. Pass-through providers shall pay to the city on an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the city's public rights-of-way.

B. The amounts charged pursuant to this section shall be based on the linear miles of city rights-of-way where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.

C. Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits taxes imposed by the city pursuant to chapter 202, florida statutes, as may be amended from time to time.

D. Annual payments shall be due and payable on March 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the 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 (1) percent per month until the date payment is made.

E. If the payments required by this section are not made within ninety (90) days after the due date, the city may withhold the issuance of any permits to the registrant until the amount past due is paid in full.

Sec. 105-120. – Small Wireless Facilities.

A. *Location; alternative location procedure.* Small wireless facilities shall not be subject to the minimum separation distances set forth in section 105-40 of the city code, except as expressly permitted by law. Within 14 days after the date of filing a complete application for a small wireless facility, 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. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the city of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the city of such non-agreement and the city shall grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

B. *Height.* The height of a small wireless facility shall not exceed 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. The height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the height of the utility pole upon which the small wireless facility is to be collocated shall not exceed 50 feet and shall only be as high as reasonably necessary to achieve its intended purpose.

C. Collocation application process. Within 14 days after receiving an application for a permit to collocate a small wireless facility, the city shall determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the city shall specifically identify the missing information. An application is deemed complete if the city fails to provide notification to the applicant within 14 days. Pursuant to Section 337.401(7), Fla. Stat., as amended from time to time, a complete application to collocate a small wireless facility is deemed approved if the city fails to approve or deny the application within 60 days after receipt of the application. If the city does not use the 30-day negotiation period provided in subsection (A) above, the parties may mutually agree to extend the 60-day application review period. The city shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved collocation application shall remain effective for 1 year unless extended by the city.

D. Written approval or denial. The city shall notify the applicant of approval or denial by electronic mail. The city shall approve a complete application unless it does not meet the applicable codes. If the application is denied, the city shall specify in writing the basis for denial, including the specific code provision(s) on which the denial was based, and send the documentation to the applicant by electronic mail on the day the city denies the application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days after notice of the denial is sent to the applicant. The city shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

E. Consolidated application. An applicant seeking to collocate small wireless facilities within the city may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless facilities, the city may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

F. Basis for denial. The city may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

- (1) Materially interferes with the safe operation of traffic control equipment;
- (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
- (5) Fails to comply with applicable codes.

G. Collocation on city utility poles.

- (1) The rate to collocate a small wireless facility on a city utility pole shall be \$150 per pole annually.

(2) The city may reserve space on city utility poles for future public safety uses. If replacement of the city utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.

(3) For a city utility pole that supports an aerial facility used to provide communication services or electrical service, the city and applicant shall comply with the process for make-ready work under 47 U.S.C. s. 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 will include pole replacement, if necessary.

(4) For a city utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the city may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition.

(5) The make-ready work specified in subsections (3) and (4) above shall be subject to the city's usual construction restoration standards for work in the right-of-way. The replaced or altered city utility pole shall remain the property of the city.

H. *Design standards.* The city's design standards set forth in the applicable codes may be waived by the city commission upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense for a small wireless facility. The waiver shall be granted or denied within 45 days after the date of the request.

I. *Permitting.* An applicant for installation of a small wireless facility shall obtain a right-of-way permit from the city for any work that involves excavation, closure of a sidewalk or multi-purpose trail or closure of a vehicular lane.

J. *Airport airspace.* A structure granted a permit and installed pursuant to this section shall comply with chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protections.

K. *No authorization to collocate on city utility poles; no application to HOA restricted pole.* This section does not authorize a person to collocate small wireless facilities or micro wireless facilities on a city utility pole, unless otherwise permitted by applicable law, or erect a wireless support structure in a location subject to covenants, conditions, restrictions articles of incorporation, and bylaws of a homeowners' association.

Sec. 105-130. – Preemption

In the event any provision of this ordinance is specifically preempted, or judicially determined to be preempted by state or federal law, then the preempted provision shall automatically be deemed null and void and the superseding provision of state or federal law shall prevail.

SECTION 4. It is the intention of the City Commission and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Parkland, and that the sections of this ordinance may be renumbered to accomplish such intent.

SECTION 5. Should any section or provision of this ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

SECTION 6. This ordinance shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED ON FIRST READING THIS ____ DAY OF _____, 2017.

PASSED AND ADOPTED ON SECOND READING THIS ____ DAY OF _____, 2017.

CHRISTINE HUNCHOFSKY, MAYOR

ATTEST:

JENNIFER JOHNSON, CITY CLERK

Attachment: Parkland Telecom ROW Ordinance 2017-07 (1639 : Parkland Telecom Right of Way Ordinance)