

ORDINANCE NO. C-07-108

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING CHAPTER 25, ENTITLED STREETS AND SIDEWALKS, ARTICLE III, ENTITLED RIGHTS OF WAY ADMINISTRATION BY CREATING A NEW SECTION 25-100.1, ENTITLED COMMUNICATIONS SERVICE FACILITY DEFINITIONS; BELOW-GRADE REGULATIONS; EXEMPTIONS FROM BELOW-GRADE REGULATIONS; AT-GRADE REGULATIONS; WAIVERS; PROVIDING FOR REGULATIONS RESPECTING THE PLACEMENT AND CONSTRUCTION OF COMMUNICATIONS SERVICE FACILITIES AS TO LOCATION, SIZE, HEIGHT, DISTANCE SEPARATIONS, MITIGATION OF VISUAL IMPACTS, MAINTENANCE AND GRAFFITI PLAN, PERMIT APPLICATIONS, AND NOTICE PROVISIONS; AND CREATING A NEW SECTION 25-100.2, ENTITLED PROCEDURE FOR APPEAL; CITY COMMISSION REQUEST FOR REVIEW; PROVIDING FOR SEVERABILITY, REPEAL OF ORDINANCES IN CONFLICT AND EFFECTIVE DATE.

WHEREAS, in anticipation of the adoption of the Consumer Choice Act of 2007 and of offering an expansion upon their telecommunications services to include a bundling of cable services, telecommunications services and internet services ("Lightspeed Project"), in the spring of 2007 BellSouth Telecommunications, Inc., d/b/a AT&T Florida ("AT&T") began installing a series of new generation communications service facilities at grade in the public rights-of-way; and

WHEREAS, in is anticipated that AT&T plans on constructing in excess of five hundred (500) communications service facilities throughout the rights-of-way in Fort Lauderdale in pursuit of its Lightspeed Project; and

WHEREAS, upon review by City staff, it was determined that a number of the Lightspeed facilities had been constructed or were proposed to be constructed and installed contrary to the City's Engineering standards concerning such issues as set-back from edge of vehicular travelways, sight triangle locations relative to the intersections of streets and driveways and lack of permits yielding significant health, safety and welfare issues; and

WHEREAS, in anticipation of the onslaught of new generation Lightspeed facilities it was determined to be in the public interest to promulgate regulations designed to address location, size, safety in the use of the rights-of-way and neighborhood aesthetics and compatibility in the distribution of communications service facilities throughout the City's rights-of-way and that such a regulatory scheme served a valid municipal purpose and was in the best interests of the public;

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

SECTION 1. That the Chapter 25, Streets and Sidewalks, Article III, Rights Of Way Administration of the Code of Ordinances of the City of Fort Lauderdale is hereby amended to create a new Section 25-100.1 entitled Communications Service Facility definitions; regulations; exemptions; waivers; appeals and review and notice to read as follows:

Sec. 25-100.1. Communications service facilities; definitions; below-grade regulations; exemptions; at-grade regulations; waivers; permit applications.

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

ADA means the Americans With Disabilities Act, 42 U.S.C. Sec. 12101, et seq., as same shall be amended from time to time and regulations promulgated thereunder:

Abut when used in conjunction with a lot or parcel of land means a lot or parcel of land that shares all or part of a common lot line with another lot or parcel of land or right of way.

Adjacent or Adjoining Properties means (i) those lots or parcels of land that abut another lot or parcel of land that is contiguous to an at-grade communications service facilities site or proposed at-grade communications facility site and (ii) the lots or parcels of land that would be contiguous to lots or parcels in (i), but for an intervening local or collector street or alley.

At-grade communications service facility means communications service facilities, the structure of which is affixed to the ground at grade with a portion of the structure extending vertically above grade. At-grade communications service facilities may also, but not necessarily, extend vertically below grade. Utility poles shall not be considered at-grade communications service facilities.

Communications service means the same as the term is defined in section 202.11(3), Florida Statutes.

Communications service facilities means any tangible thing affixed to the ground and located in any rights-of-way used to deliver communications services the combined height, width and depth dimensions of which are greater than ninety (90) inches, but do not include utility poles.

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

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

Corner yard means that portion of a corner lot, which abuts the street and is not the front yard.

Front yard means that portion of a lot or parcel of land, which is oriented in such a manner that its main entrance abuts the street, and includes the front yard setback as proscribed by the U.L.D.R.

Graffiti means any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any at grade communications service facility to the extent that the graffiti was not authorized in advance by the provider of such facility.

Grade means the natural elevation of the ground where a facility is constructed or proposed to be constructed.

Lot means the same as the term is defined in U.L.D.R. Section 47-35.1

Parcel means the same as the term is defined in U.L.D.R. Section 47-35.1

Surrounding neighborhood means that area within five hundred (500) feet, as measured along ordinary vehicular travelways, of the at-grade communications service facility site or proposed at-grade communications service facility site.

Surrounding Properties means those lots or parcels of land that either abut or are adjacent properties relative to the at-grade communications service facility site.

Residential block means that portion of a public right-of-way within the zoning districts specified in paragraph B.1 below, which portion lies between the two closest other intersecting public rights-of-way.

U.L.D.R. means the City's Unified Land Development Regulations, Chapter 47, City of Fort Lauderdale Code of Ordinances.

Utility pole means any pole that is used to support power, telephone or other communications service wires, including monopoles or antennas.

B. *Below-grade communications service facilities regulations.* Effective November 1, 2007 and thereafter, issuance of permits for construction of and constructions of communications service facilities in the right-of-way shall be governed by the following regulations:

1. ***Below-grade requirements.*** From and after the effective date hereof, all communications service facilities shall be constructed below grade if located within (a) any of the following zoning districts within the City: (i) City residential zoning districts, (ii) RO, ROA and ROC, or (iii) Broward County residential zoning districts or (b) rights-of-way that are contiguous to the boundaries of the aforementioned zoning districts.
2. ***Exemption from below grade requirement.*** The City Engineer may grant an exemption from the below-grade requirements of subparagraph B.1 of this section in the event the registrant can demonstrate by a preponderance of the evidence that a hardship would result from the imposition of these requirements. A hardship is demonstrated when the City Engineer determines from a review of all the evidence that placing the communications service facility below-grade is (i) technologically infeasible, or (ii) not available in the marketplace and (iii) all reasonable alternatives have been exhausted.
3. ***Application for exemption.*** In the event the registrant seeks an exemption from the below-grade requirements of subparagraph B.1 of this section, the registrant must provide the City Engineer with a report prepared by One Or More qualified experts in their respective field(s) certifying (i) the technological infeasibility of complying with the below-grade requirements or (ii) the financial infeasibility of complying with the below grade requirements, including factual support therefor. The registrant shall also provide evidence that all reasonable alternatives to construction of below-grade communications service facilities have been exhausted. The City Engineer shall process an application for an exemption within thirty (30) days of submission.

- C. *At-grade communications service facility regulations.* In the event an exemption is granted under Section 25-100.1.B.2 as to a permit application, then the permit shall be reviewed under at-grade communications service facility regulations under the provisions of Section 25-100.1.C. In such event, effective November 1, 2007 and thereafter, issuance of permits for construction of and the construction of at-grade communications service facilities in the right of way shall be governed by the following regulations:
1. *Size limitation in certain areas.* Except as may otherwise be provided in Section 25-100.1.C, an at-grade communications service facility with combined height, width and depth dimensions exceeding one hundred twenty-four (124) inches, as measured at- and above-grade, shall be not constructed in areas within (a) any of the following zoning districts within the City: (i) City residential zoning districts, (ii) RO, ROA and ROC, or (iii) Broward County residential zoning districts or (b) rights-of-way that are contiguous to the boundaries of the aforementioned zoning districts.
 2. *Height limitation in certain areas.* Any portion of an at-grade communications service facility with a height of five (5) feet, eight (8) inches or greater, as measured at- and above-grade, shall be constructed below-grade within the areas referenced in Section 25-100.1.C.1 above.
 3. *Prohibition against front yard location in certain areas.* No at-grade communications service facilities within the areas identified in Section 25-100.1.C.1 above shall be constructed within a right-of-way abutting the front yard of a lot or parcel within such areas.
 4. *Limitations on locations in corner yards in certain areas.* At-grade communications service facilities constructed within the right-of-way abutting the corner yard of a corner lot property within the areas identified in Section 25-100.1.C.1 above shall not be located any closer than ten (10) feet from the side property line of the lot or parcel abutting the corner lot.
 5. *Mitigation of visual impacts in certain areas.* The location and construction of at-grade communications service facilities located within the areas identified in Section 25-100.1.C.1 above shall incorporate features that are determined by the City Engineer to optimize, to the extent technically possible, mitigation of visual impacts to surrounding properties and the surrounding neighborhood by incorporating one or more of the following appurtenant features in the construction of the facility site:

- a. Screen plantings consisting of a combination of trees, shrubs and ground cover, with an emphasis on xeriscaping;
 - b. Shade trees that do not conflict with overhead utilities;
 - c. Architectural features such as neighborhood entryway features; or
 - d. Any other features or existing features that mitigates the visual impact of the at-grade communications service facility.
 - e. The at-grade communications service facility registrant shall be responsible for the proper maintenance and protection of any landscaping hereafter installed by registrant pursuant to the provisions of this Section 25-100.1.C.5. unless otherwise agreed upon by the relevant homeowner association or owner of the lot or parcel abutting the site. Maintenance shall include, to the extent necessary, watering, weeding, mowing, fertilizing, treating, mulching, trimming, removal or replacement of dead or diseased plants on a regular basis so as to continue a healthy growing condition and present a neat and well-kept appearance at all times.
6. *Distance separation requirements in certain areas.* Within the areas identified in Section 25-100.1.C.1 above,
- a. no at-grade communications service facility shall be constructed within two (2) feet of another at-grade communications service facility that was lawfully in existence before the effective date hereof; and
 - b. where two (2) such at-grade communications service facilities exist within the same residential block, no more than one (1) additional at-grade communications service facilities shall be constructed within the rights-of-way located along the same residential block.
7. *Renovation, replacement or modification.* Renovation, replacement or modification of an at-grade communications service facility lawfully constructed in accordance with the relevant regulations in existence at the time of permitting shall otherwise be exempt from the provisions of Section 25-100.1.C.1, C.2, C.3, C.4, C.5, C.6, C.8, C.10, C.11 and C.12 provided either (a) or (b) below apply and provided further that the nonconformity with C.8, C.10 or C.11 is not increased thereby:

- a. the dimensional limitations set forth in Section 25.100.1.C.1 are not exceeded in an amount equal to or greater than ten (10%) percent, or
- b. the proposed renovation or modification is limited to affixing two (2) side attachments each not exceeding six (6) inches in width.

If an at-grade communications service facility is no longer in use it shall be removed forthwith by the registrant.

8. *Sight triangles in all areas.* No at-grade communications service facilities nor features incorporated therewith pursuant to Section 25-100.1.C.5 above shall be constructed or installed within a triangular shaped area of land, know as a sight triangle, as defined in U.L.D.R. Section 47-35, Definition, and measured as follows:

- a. 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
- b. Fifteen (15) feet from the intersection point of the extended property lines at an alley and a street; or
- c. Twenty-five (25) feet from the intersection point of the extended property lines at a street and a street.
- d. The sight triangle requirements may be reduced to no less than ten (10) feet, when 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, street characteristics such as pavement width, width of swale (right-of-way line to curb or edge of pavement for vehicular travelway), the curvature of the street, speed limits, and other similar elements.

Sight triangles located at the intersection of a local street or driveway with a right-of-way under County, State or Federal jurisdictions, may be subject to the sight triangle requirements of those jurisdictions.

9. *ADA compliance in all areas.* No at-grade communications service facility shall be constructed, operated or maintained in such a manner that is in violation of the

ADA, as it shall be amended from time to time and regulations promulgated thereunder.

10. *Distance separation from edge of pavement in all areas.* No at-grade communications service facility shall be constructed, operated or maintained in violation of the State of Florida, Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, Table 3-12, Minimum Width of Clear Zone. In accordance with Table 3-12, the City Engineer shall have the authority to reduce the 4 foot minimum offset identified in Table 3-12 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 3-12.
11. *Distance separation from sidewalk in all areas.* No at-grade communications service facility shall be constructed within one (1) foot of a sidewalk.
12. *Prohibition of placement on certain collector streets in all areas.* No at-grade communications service facility shall be constructed in the swale area on the side of a collector street where the department plans to install sidewalk.
13. *Installation at outermost boundary of right-of-way in all areas.* Where a superior site design results from construction of at-grade communications service facilities at or near the outermost boundary of the right-of-way, the farthest distance practicable from the centerline of the right-of-way and edge of pavement is to be encouraged. To the extent that the location of the sidewalk within the right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of Section 25-100.1, then the City Engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet the other requirements of Section 25-100.1.
14. *Maintenance and graffiti plan in all areas.* Each at-grade communications service facility, including any appurtenant features incorporated therewith under Section 25-100.1.C.5 above, shall be maintained in a neat and clean condition at all times. Specifically, but without limiting the generality of the foregoing, each at-grade communications service facility and appurtenant features shall be regularly maintained so that:
 - a. They are free of graffiti visible from the right-of-way or from surrounding properties. All graffiti shall be removed within seven (7) working days from

receipt of notice thereof by the City that graffiti exists on the at-grade communications service facility or any features incorporated therewith.

- b. 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 right-of-way or from surrounding properties. All such conditions shall be remedied within fifteen (15) days from receipt of notice thereof by the City.
- c. The exterior of any at-grade communications service facility shall not be used for advertising purposes.

In conjunction with the permitting and construction of at-grade communications service facilities after November 1, 2007, the color of the at-grade communications service facilities shall be harmonious with the surrounding landscape. The registrant shall submit a Graffiti Mitigation Plan ("Plan") outlining how the registrant will maintain the at-grade communications service facility free from graffiti. The Plan shall require the registrant to inspect the facilities no less frequently than every ninety (90) days. The Plan shall include the name, mailing address, phone number, facsimile number and e-mail address for a single point of contact responsible to resolve graffiti issues.

D. *Waiver by City Engineer.*

1. Under the conditions set forth below, the City Engineer may grant a waiver or waivers to the strict requirements of Sections 25-100.1.C.1, C.2, C.3, C.4, C.6, C.7 and C.12 above upon presentation by the registrant of alternative construction features for the at-grade communications service facilities which meet the following conditions:
 - a. Strict compliance with the requirements of Section 25-100.1.C.1, C.2, C.4, C.6, C.7 and C.12 are either (i) technologically infeasible or (ii) substantially interfere with other utility facilities and their ability to perform their intended function or (iii) strict compliance is unnecessary because of the unique characteristics of the site; and
 - b. The alternative construction features are compatible with and preserve the character and integrity of the adjoining properties and surrounding neighborhood; and
 - c. Such alternative construction features mitigate adverse impacts from the at-grade communications service facilities relative to the surrounding

properties and surrounding neighborhood, such adverse impacts being noise, mass, scale, and visual obstructions that are not harmonious with the character and integrity of the adjoining properties and surrounding neighborhood, and similar adverse impacts.

2. The burden shall be upon the registrant to demonstrate by a preponderance of the evidence that the alternative construction features for the at-grade communications service facilities for which waivers are sought meet the foregoing conditions.
- E. *Permit application.* Upon receipt of a permit application for a communications service facility, the City Engineer shall provide notice thereof to the City Commission. In addition to the permit requirements set forth in Section 25-100, the permit application for at-grade communications service facilities shall include the following:
1. Site plan and sketch of the landscaping or other plan of optimizing mitigation of visual impacts under Section 25-100.1.C.5; a set of five (5) photographs from differing perspectives and one (1) aerial photograph showing the relationship of the proposed site to the abutting property and adjoining properties; renderings of the proposed facility with appurtenances and power meter boxes; and such other specifications, dimensions and details necessary to determine compliance with the requirements of Section 25-100.1.
 2. Identification of structures, cabinets, electric meters, or any other appurtenances proposed to be installed above the existing surrounding grade.
 3. Any revisions to the Graffiti Mitigation Plan previously supplied under Section 25-100.1.C.14.
 4. The detailed visual mitigation plan does not need to be submitted until the City Engineer has notified the registrant of conceptual approval of the site plan.
 5. Certification under oath on the permit application that:
 - a. Written notice of the pending application has been provided by the registrant to all property owners abutting public rights-of-way within one hundred fifty (150) feet of the proposed site of the at-grade communications service facility, such distance to be measured from the proposed site along the centerline of public rights-of-way by the shortest route of ordinary vehicular travelways.

- i. Property owners to whom notice should be provided are those who are found on the most recent Broward County Property Appraiser's records.
 - ii. As to owners of condominium or cooperative units within the proscribed distance of the proposed site, the applicant/registrant shall satisfy the requirements hereof 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.
- b. Written notice of the pending application has been provided by the registrant to the relevant homeowner association within whose boundaries the proposed site of the at-grade communication service facility is located.
 - c. The written notice shall include a schematic identification of the proposed location of the at-grade communications service facility that is the subject of the permit application, such schematic identification shall include identification of the lot or parcel abutting the proposed locations together with identification of the public right-of-way. The written notice shall also identify the location where interested parties may examine the pending application.

SECTION 2. That the Chapter 25, Streets and Sidewalks, Article III, Rights Of Way Administration of the Code of Ordinances of the City of Fort Lauderdale is hereby amended to create a new Section 25-100.2 entitled Procedure for appeal; City Commission request for review to read as follows:

Sec. 25-100.2. Procedure for appeal; City Commission request for review.

- A. *Appeal.* In the event an application for registration, a right-of-way permit, application for exemption under Section 25-100.1.B.2, waiver of conditions under Section 25-100.1.D. or exception under Section 25-106 is denied or is approved by the department or City Engineer with conditions unacceptable to the registrant, the registrant may, within thirty (30) calendar days of rendering of the written decision, file an appeal to the City Commission. The appeal shall be made by letter to the City Clerk and a copy to the department within the times set forth above. The denial of an application for registration, right-of-way permit, application for exemption under Section 25-100.1.b.2, waiver of conditions under Section 25-100.1.D or exception under Section 25-106 or approval with

conditions unacceptable to the registrant shall be deemed a recommendation by the department and the application for appeal shall be placed on the City Commission agenda and will be considered in a de novo proceeding.

1. The appeal shall consist of the record compiled by the department or City Engineer and the registrant in the application and decision by the department or City Engineer and shall be forwarded to the City Commission for review. The City Commission shall hold a public meeting on the record and shall determine if:
 - a. There was a departure from the essential requirements of the law in the proceedings appealed; or
 - b. Competent substantial evidence does not exist to support the decision.
2. If the City Commission determines that there was not a departure from the essential requirements of the law or that competent substantial evidence exists to support the decision of the department, then the decision shall be upheld.
3. If the City Commission finds either subparagraph A.1.a or A.1.b of this Section, then the City Commission shall conduct a *de novo* hearing which may be immediately held or shall be set by Resolution no later than thirty (30) days from the date of adoption of the resolution. At the conclusion of the hearing the City Commission may reject, approve or amend the decision of the department or remand to the department for further proceedings.
4. The time frames provided herein may be extended or shortened by the City Manager upon written request of the applicant or department.
5. In proceedings before the City Commission under subsection A.2 or A.3 of this Section, argument may be made and public input may be heard during the meeting limited solely to whether the record supports the decision of the department or City Engineer.
6. Appeal from a final decision by the City Commission shall be to the circuit court by filing a writ of certiorari within thirty (30) days of the decision.

B. *City Commission request for review.*

1. If the City Engineer grants or denies a waiver under Section 25-100-1.D or an application for an exemption under Section 25-100.1.B.2 the City Commission may adopt a motion to set a hearing to review the application for a waiver or exemption

if it is found that the proposed site for the at-grade communications service facilities is in an area which, due to the characteristics of the proposed site relative to the characteristics of the surrounding properties and surrounding neighborhood visually impacted by the facility, requires additional review in order to ensure that criteria under Sections 25-100.1.D or 25-100.1.B.2 have been met. This process shall be known as City Commission request for review ("CRR").

2. The process for CRR may be initiated by a statement of intent filed by any member of the City Commission with the City Clerk with a copy to the City Engineer and a copy to the registrant, at the address reflected on the permit application. Except as provided herein, the motion shall be made within fifteen (15) days of the decision by the City Engineer.
3. The motion shall be considered by the Commission within thirty (30) days of the decision by the department. If no City Commission meeting is to be held within the time frames provided herein, the motion shall be considered at the next regularly scheduled City Commission meeting. A motion for City Commission request for review shall supersede an application for appeal.
4. The motion approving a CRR shall set a date for consideration of the application no later than thirty (30) days from the date the motion is adopted. Notice of the hearing shall be given to the public by posting a sign at least ten (10) days before the hearing in accordance with Section 47-27, Notice Procedures for Public Hearing.
5. Review by the city commission shall be by *de novo* hearing supplemented by the record before the department below and the same standards and criteria applicable to the application for waiver shall be applied. At the conclusion of the hearing the city commission shall take action either approving, approving with conditions or denying the application.
6. The time frames for setting a hearing provided herein may be extended by written request of the applicant.
7. Appeal from a final decision by the city commission shall be to the circuit court by filing a petition for writ of certiorari within thirty (30) days of the decision.

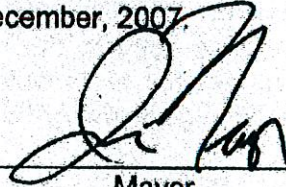
SECTION 3. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 4. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 5. That upon final passage this Ordinance shall be in full force and effect retroactive to November 1, 2007.

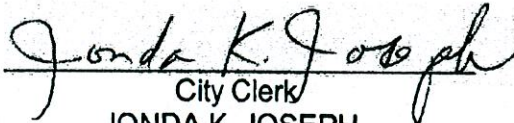
PASSED FIRST READING this the 20th day of November, 2007.

PASSED SECOND READING this the 4th day of December, 2007.



Mayor
JIM NAUGLE

ATTEST:



City Clerk
JONDA K. JOSEPH

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