

ORDINANCE NO. 17-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, AMENDING THE CITY'S CODE OF ORDINANCES AT CHAPTER 25, STREETS AND SIDEWALKS, BY CREATING A NEW ARTICLE XII, ENTITLED "THE CITY OF FORT LAUDERDALE COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY ORDINANCE"; PROVIDING FINDINGS OF FACT, INTENT AND PURPOSE; PROVIDING DEFINITIONS FOR TERMS; PROVIDING FOR REGISTRATION OF COMMUNICATIONS FACILITY AND SERVICE PROVIDERS AS WELL AS PASS THROUGH PROVIDERS AS A CONDITION PRECEDENT TO USE OF CITY RIGHTS OF WAY BY SUCH PROVIDERS; PROVIDING FOR RENEWAL AS WELL AS TERMINATION OF REGISTRATIONS; PROVIDING FOR COMPLIANCE BY EXISTING BUT UNREGISTERED PROVIDERS; PROVIDING A PERMITTING PROCESS AND APPLICATION REQUIREMENTS FOR USE AND RESTORATION OF CITY RIGHTS OF WAY, INCLUDING BUT NOT LIMITED TO REASONABLE CONDITIONS RELATED TO THE PUBLIC HEALTH, SAFETY AND WELFARE, AESTHETICS, AND ACCESSIBILITY; PROVIDING UNIFORM, NON-DISCRIMINATORY 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 CO-LOCATION OF COMMUNICATIONS FACILITIES; PROVIDING A PUBLIC NOTICE REQUIREMENT; PROVIDING FOR REVIEW BY THE CITY ENGINEER; PROVIDING A WAIVER PROCESS; PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR COMPLIANCE WITH STATE AND FEDERAL APPLICATION PROCESSING TIMEFRAMES; PROVIDING FACILITY MAINTENANCE REQUIREMENTS; PROVIDING REGULATIONS FOR PASS THROUGH PROVIDERS IN ACCORDANCE WITH STATE LAW; PROVIDING INSURANCE, SECURITY FUND AND CONSTRUCTION BOND REQUIREMENTS; PROVIDING INDEMNIFICATION OBLIGATIONS; PROVIDING REGULATIONS FOR

ABANDONED COMMUNICATIONS FACILITIES; PROVIDING FOR ENFORCEMENT OF REMEDIES; REQUIRING REPORTS AND RECORDS, AND ALLOWING FOR INSPECTION THEREOF; PROVIDING A RESERVATION OF RIGHTS FOR THE CITY TO AMEND THIS ARTICLE; PROVIDING A LACK OF LIABILITY AND WARRANTY ON BEHALF OF THE CITY; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

WHEREAS, the provision of communications services to residents of and visitors to the City of Fort Lauderdale ("City") is both an important amenity and a necessity of public and private life in the City; and

WHEREAS, the demand for telecommunications services has grown in recent years and continues to grow exponentially, requiring the continual upgrading of telecommunications facilities and services to satisfy such growing demand; and

WHEREAS, Section 337.401, *Florida Statutes*, states that because Federal and State law require the nondiscriminatory treatment of providers of all communications services and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities treat providers of communication services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the City's rights-of-way; and

WHEREAS, rules and regulations imposed by a municipality relating to communications service providers that desire to place or maintain communications facilities in City rights-of-way must be generally nondiscriminatory and competitively neutral and, notwithstanding any other law, may not require providers of communications services to apply for or enter into an individual license, franchise, or other agreement with the City as a condition of placing or maintaining communications facilities in its rights-of-way; and

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

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

WHEREAS, it is the City's further intent to treat each such provider in a reasonable, nondiscriminatory and competitively neutral manner in exercising such authority, which authority is limited to only those matters necessary to manage the its 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 for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, it is the further intent of the City to exercise its authority to adopt reasonable rules and regulations to the fullest extent allowed by Federal and State law; and

WHEREAS, the City has reviewed its ordinances, and has received input from representatives of the communications service industry, and as a result of the foregoing has concluded that City code must be updated, in conformance with Federal and State laws and rules, in order to adequately regulate the placement and maintenance of existing, new and expanded communications facilities in the City's rights-of-way; and

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

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

SECTION 1. The City Code of Ordinances Chapter 25, Streets and Sidewalks, is hereby amended to create a new Article XII, "Communications Facilities in the Public Rights-of Way" which shall hereafter read as follows:

ARTICLE XII. COMMUNICATIONS FACILITIES IN THE  
PUBLIC RIGHTS-OF-WAY

## DIVISION 1. In General

## Sec. 25-300 Title.

This Article shall be known as "The City of Fort Lauderdale Communications Facilities in the Public Rights-of-Way Ordinance."

## Sec. 25-301. Intent and Purpose.

It is the intent of the City of Fort Lauderdale to promote the public health, safety and general welfare by: providing regulations governing the placement or maintenance of Communications Facilities in the City's Public Rights-of-way; adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, including Section 337.401, *Florida Statutes*, the Federal Communications Act of 1934, including without limitation Sections 332 and 253, Section 6409(a) of 47 USC § 1455(a) and Orders issued by the FCC, as each may be amended from time to time, and other federal and State law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of Communications Facilities in the City's Public Rights-of-way by all Communications Services Providers, including both wireless telecommunications providers and wireline communications providers as well as Pass-Through Providers; minimizing disruption to the City's Public Rights-of-way; promoting and encouraging co-location of Communications Facilities on existing, modified or replacement structures within the City's Public Rights-of-way as a primary option generally preferred over the construction of new Communications Facility support structures, including but necessarily limited to Communications Facility Poles; promoting and encouraging utilization of technology that will either eliminate or reduce the need for the erection of new Communications Facility support structures, including but necessarily limited to Communications Facility Poles; avoiding potential damage to the City's Public Rights-of-way caused by Communications Facilities by ensuring that such Facilities are soundly and carefully designed, constructed, modified and maintained; establishing reasonable rules and regulations necessary to manage the placement or maintenance of Communications Facilities in the City's Public Rights-of-way by Communications Services Providers, Communications Facility Providers and Pass-through Providers; and minimizing disruption to the City's 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.

Persons seeking to place or maintain Communications Facilities in the City's Public Rights-of-way shall comply with the provisions of this Article, which by reference may require compliance with other Articles of Chapter 25. Persons seeking to place or maintain Communications Facilities on private property or other property to which the City, Broward County, the School

District of Broward County, the South Florida Water Management District, the State of Florida or the federal government has a fee simple or leasehold interest in real property, exclusive of Public Rights-of-way, located within the municipal boundaries of the City shall comply with the provisions of the City's Unified Land Development Regulations ("U.L.D.R") to the extent it applies.

It is the further intent of the City for this ordinance to regulate the location and placement of Communications Facilities in the City's Public Rights-of-way, but not the installation of (i) below-grade communications service facilities, or (ii) at-grade communications service facilities as regulated under City Code Section 25-100.1, or (iii) Utility Poles, including aerial facilities located between Utility Poles with associated Pole Attachments which do not provide a Wireless Service other than Micro Wireless Facilities.

It is the further intent of the City that in the event and to the extent of a conflict between the terms and conditions of this Chapter 25 Article XII, and the terms and conditions of Chapter 25 Article III, then the terms and conditions of Chapter 25 Article XII shall prevail over and supersede the conflicting terms and conditions contained in Chapter 25 Article III.

Sec. 25-302. Definitions.

For purposes of this Article, the following terms, phrases, words and their 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 the word "may" is permissive. Words not otherwise defined shall be construed to have their common and ordinary meaning.

*Abandonment or Abandoned* means 90 or more consecutive days with the absence of any active Communications Service Provider on a Communications Facility. Abandoned Communications Facilities shall be removed or cured as required by this Article. This term shall not include cessation of all use of a Communications Facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the Communications Facility. For example, cessation of all use of a cable within a conduit, where the conduit continues to be used as referenced above, shall not be "Abandonment" of a Communications Facility. Notwithstanding the foregoing example, if the Communications Facility is attached to an Existing Structure that has an independent function, such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said Abandonment of the Communications Facility requires removal of the Communications Facility only and does not require the removal of the Existing Structure. The term shall also exclude the temporary

cessation of the provision of Communications Services where the Provider intends to re-establish the provision of Communications Services in the future. For example, cable drops to homes that are deactivated based on competitive alternatives, but are maintained for when the customer re-activates service shall not be "Abandonment" of a Communications Facility. The temporary cessation with intent to re-activate must be documented to the satisfaction of the City Engineer.

*Abut*, when used in conjunction with a Lot or Parcel of land or Public Right-of-way means a Lot or Parcel of land or Public Right-of-way that shares all or a part of a common lot line or boundary line with another Lot or Parcel of land or Public Right-of-way.

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

*Adjacent or Adjoining Properties* means (i) those Lots or Parcels of land that Abut another Lot or Parcel of land or Public Right-of-way that is contiguous to a Communications Facility site or proposed site and (ii) the Lots or Parcels of land or Public Right-of-way that would be contiguous to Lots or Parcels or Public Rights-of-way (i) but for an intervening Local or Collector street or alley.

*Applicable Codes* means the Florida Building Code, National Electric Safety Code, Florida Administrative Code and all applicable FCC, state and local regulations.

*Arterial Roadway* means a roadway route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance, and constitutes the largest proportion of total travel as per the Broward County Trafficways Plan maintained by Broward County, as such Plan may be amended from time to time. In addition, every United States numbered highway is an arterial roadway.

*City* means the City of Fort Lauderdale, Florida.

*City Commission* means the City Commission of the City of Fort Lauderdale, Florida, the governing body of the City.

*City Engineer* means a Professional Engineer, licensed to practice in the State of Florida, employed by the City and designated in writing by the City Manager as the City Engineer and is hereby vested with the authority to administer this Article XII and initiate enforcement action hereunder by issuance of a citation violation notice pursuant to City Code Sec. 11-17. For the purposes of this Article, the term City Engineer shall also include his or her designee.

*City Manager* means the chief executive officer of the City and the administrative head of the City, as provided under Section 4.05 of the City Charter. The term City Manager also includes his or her designee.

*Code* means the City of Fort Lauderdale Code of Municipal Ordinances.

*Collector Roadway* means a route providing service that is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. Such a route also collects and distributes traffic between local roads or arterial roads and serves as a linkage between land access and mobility needs as per the Broward County Trafficways Plan maintained by Broward County, as such Plan may be amended from time to time.

*Co-location* or *Co-locate* or *Attach* means the placement or attachment of a Communications Facility on any Existing Structure, regardless of whether or not there is an existing Communications Facility located upon the Existing Structure. Co-locating or Attaching a Wireless Communications Facility onto an Existing Structure does not automatically transform the Existing Structure into a Wireless Support Structure. The term *Co-location* includes the ground or platform installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and any other equipment association with the location and operation of the Communications Facility.

*Communications Facility or Facilities* means any tangible thing located in a Public Right-of-way that may be used to deliver Communications Services pursuant to Section 337.401, *Florida Statutes*, as same may be amended from time to time. Multiple cables, conduits, strands, or fibers located within same conduit shall be considered one Communications Facility. The term *Communications Facility* for the purposes of this Article XII shall not include:

- (a) below-grade communications service facilities as regulated under City Code Section 25-100.1; or
- (b) at-grade communications service facilities as regulated under City Code Section 25-100.1; or
- (c) Utility Poles, including aerial facilities located between Utility Poles with associated Pole Attachments which do not provide Communications Services other than Micro Wireless Facilities installed in compliance with Applicable Codes by a Registered Communications Services Provider or Communications Facilities Provider authorized to Place and Maintain Facilities in the Public Rights-of-way, and who is remitting taxes under Chapter 202, *Florida Statutes* as same may be amended from time to time. Any such device installed by a Pass-Through Provider is not a Micro Wireless Facility.

*Communications Facility Pole* means a pole-like structure either designed primarily as a Communications Facility or used as a Communications Facility.

*Communications Facility 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 conveyances in accordance with Section 202.11, *Florida Statutes* as same may be amended from time to time. 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. Notwithstanding the foregoing, the term does not include:

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



- (i) Communications Services transmitted by below-grade & at-grade communications service facilities regulated under City Code § 25-100.1, or
- (j) Services used exclusively for the internal communications of an electric utility or other person in the business of transmitting or distributing electric energy.

*Communications Services Provider* means any Person, including a municipality or county, providing Communications Services through the placement or maintenance of a Communications Facility in Public Rights-of-way but does not include, for purposes of this Article:

- (a) The provision of below-grade communications service facilities as regulated under City Code Section 25-100.1; or
- (b) The provision of at-grade communications service facilities as regulated under City Code Section 25-100.1.

*Communications Services Tax* means the local communications services tax authorized to be levied and collected by counties and municipalities upon chargers for Communications Services, pursuant to Section 202.20, *Florida Statutes* as same may be amended from time to time.

*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.

*County* means Broward County, Florida.

*Day(s)* means, for purposes of computing any period of time expressed in day(s) in this Article, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

*Distributed Antenna System* or *DAS* means a network of spatially separated antenna modes connected to a common source within a geographic areas or structure. A DAS is a Communications Facility.

*Eligible Facilities Request* means a request to place a Wireless Communications Facility in the City's Public Rights-of-way that, in accordance with the definitions contained in FCC regulations codified at 47 C.F.R. § 1.40001, does not substantially change the physical dimensions of the Existing Structure and is requesting:

- (i) Collocation of new transmission equipment;
- (ii) Removal of existing transmission equipment; or
- (iii) Replacement of existing transmission equipment.

*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;
- (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; or
- (iv) other facilities in compliance with applicable codes and laws.

The term Existing Structure does not include below-grade communications facilities and at-grade communications facilities as regulated by City Code Section 25-100.1.

*Facility or Facilities* means any tangible thing located in any Public Rights-of-way used to deliver Communications Services.

*FCC* means the Federal Communications Commission.

*Florida Building Code* means the Florida Building Code promulgated under Chapter 553, *Florida Statutes* and includes the Broward County Amendments thereto as both may be amended from time to time.

*Front yard* means that portion of a Lot or parcel of land which is adjacent to and Abuts the street, which contains the Lot or parcel's main entrance, which extends the full width of the

Lot or parcel between the side property lines and includes the Front Yard setback as proscribed by the U.L.D.R.

*Grade* means the highest point in the Public Right-of-way adjacent to a Communications Facility site or proposed site.

*Graffiti* means any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any Communications Facility whether or not authorized by the Registrant of the Communications Facility.

*In Public Rights-of-way or in the Public Rights-of-way* means over, above, in, on or under the Public Rights-of-way within the City over which the City has jurisdiction, control and authority to regulate. The term also include those Rights-of-way over which the County or State has jurisdiction and authority under the Florida Transportation Code, Chapter 334, *Florida Statutes*, as same may be amended from time to time, but where the County or State or both have delegated to the City the authority to regulate the registration, permitting, placement, installation and maintenance of Communications Facilities in accordance with Article XII, Chapter 25 of the City Code of Ordinances.

*Interested Persons* means the property owners within the Surrounding Neighborhood within which a proposed site is located together with the President or Chairman of the City's recognized Neighborhood Organization within which the proposed site is located. The property owners within the Surrounding Neighborhood are those property owners who are listed on the most recent ad valorem tax records of the Broward County Property Appraiser's Office.

*Local Road* means a route providing service that is of relatively low average traffic volume, short average trip length or minimal through-traffic movements, and high land access for abutting property and is not included in the Broward County Trafficways Plan.

*Lot* means a parcel of land fronting on a street, and which is or may be occupied by a building and its accessory buildings, and including the open space required under the U.L.D.R and is a matter of record in the County.

*Micro Wireless Facility* means a Facility that provides wireless service that is not larger in dimension than 24 inches in length, 15 inches in width, 12 inches in height, that has an exterior antenna, if any, no longer than 11 inches, and that is hung or otherwise attached to existing wires adjacent to the pole that is holding such wires.

*Neighborhood Organization* means an organization, typically a neighborhood association, occupying and representing a geographically distinct specific area that does not overlap with any other Neighborhood Organization that is recognized by the City.

*Order*, as used in the definition of “Wireless Service Provider,” means:

(a) The following Orders and Rules of the FCC issued in FCC Docket No. 94-102:

- (i) Order adopted June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of 47 CFR § 20.03 and the creation of 47 CFR § 2018, adopted by the FCC pursuant to such Order;
- (ii) Memorandum and Order No. 97-402, adopted December 23, 1997;
- (iii) Order No. FCC DA 98-2323, adopted November 13, 1998;
- (iv) Order No. FCC 98-345, adopted December 31, 1998;
- (v) Order No. FCC 14-153, adopted October 17, 2014.

(b) Orders and Rules subsequently adopted by the FCC relating to the provision of 911 services, including Order Number FCC 05-116, adopted May 19, 2005.

*Parcel* means a development site made up of one or more Abutting Lots capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit, otherwise known as a development site.

*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. Depending upon how the Communications Facility is utilized, the person who places or maintains a particular Communications Facility may be either a Pass-Through Provider, or a Communications Service Provider as to that particular Communications Facility. A Utility as defined in 47 U.S.C. § 224 is not a Pass-Through Provider.

*Permit* means the Public Right-of-way permit that must be obtained before a Person may construct in the Public Right-of-way and shall include, but not be limited to City Right-of-Way engineering and construction permits issued by the City Engineer.

*Person* means any natural person or corporate, business association or other business entity, including, but not limited to a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, an utility, a successor or assign of any of the foregoing or any other legal entity and shall include the City to the extent the City acts as a Communications Services Provider.

*Place or Maintain or Placement or Maintenance or Placing or Maintaining* means to erect, construct, install, extend, expand, remove, occupy, locate, relocate, or significantly alter the configuration of a Communications Facility. A Person who owns or exercises physical control to maintain and repair is "placing or maintaining" the Facility. A Person providing service only through resale or only through use of a third Person's Facility is not "placing or maintaining" the Communications Facility through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-way does not constitute "placing or maintaining" a Communications Facility in the Public Rights-of-way. Routine and emergency maintenance does not constitute "Placing or Maintaining" a Communications Facility in the City's Public Rights-of-way for purposes of this definition.

*Pole Attachment* means any attachment of a Communications Facility by a provider of Communications Services to an Existing Structure within a Public Right-of-way.

*Project Permit* means a single Permit that would otherwise require individual Permits for two or more Communications Facilities that form a cluster or multiple clusters to serve a specified service area formed by an area within the boundaries of the Public Rights-of-way.

*Public Rights-of-way or Rights-of-way* means an Arterial Roadway, Collector Roadway, Local Road, highway, street, or bridge for which the City is the authority that has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. The term does not include platted utility easements that are not part of a dedicated public Right-of-way. The term shall also include those Rights-of-way within the corporate boundaries of the City over which the County or State has jurisdiction and authority under the Florida Transportation Code, Chapter 334, *Florida Statutes*, as same may be amended from time to time, but where the County or State or both have delegated to the City the authority to regulate the registration, permitting, placement, installation and maintenance of Communication Facilities in accordance with Chapter 25, Article XII of the City Code of Ordinances. "Public Rights-of-way" shall not include private property, nor shall the term include alleys. "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* means any Person who has or seeks to have its Facilities located in any City Public Right-of-way, or in any way occupies or uses, or seeks to occupy or use, the City's Public Rights-of-way or any Facilities located in the City's Public Rights-of-way.

*Registration* or *Register* means the process described in this Article XII whereby a Communications Services Provider, Communications Facility Provider or Pass-Through Provider provides certain information to the City by which it is determined whether the Person will be authorized to obtain Permits to Place or Maintain Facilities within the City's Public Rights-of-way.

*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. Unless stated otherwise, or as otherwise limited by applicable law, all requirements imposed on Communications Facilities shall also apply to Repurposed Structures. To "Repurpose an Existing Structure" shall mean the act of renovating, reconfiguring or replacing an Existing Structure as described above. The provider attaching its Communications Facilities to the 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.

*Residential Block* means the Lots that abut or are contiguous to a portion of a Public Right-of-way within (i) the City's residential districts as set forth in the City's U.L.D.R, (ii) RO, ROA and ROC zoning districts as set forth in the City's U.L.D.R or (iii) Broward County residential zoning districts, and includes Public Rights-of-way that are contiguous to the aforementioned zoning districts.

*Signage* means any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. Signage shall not include identification of wires, cables, etc. necessary to aid in safety or hazard work, or maintenance or repair work of the Communications Facility to which it is attached.

*Small Cell* means a low powered access node used to provide wireless telecommunications services. Small Cells typically operate with a range generally between 10 meters and 2 kilometers. A Small Cell is a Communications Facility.

*State* means the State of Florida.

*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.

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

*Utility* means any Person or entity that is a local exchange carrier or an electric, gas, water, steam or other public utility, and who owns or operates appurtenant facilities or equipment that are situated with the Public Rights-of-way for transmission of such Utility's goods, commodities or services.

*Utility Pole* means a structure owned and/or operated by a public utility, or public utility district, electric membership corporation, or rural electric cooperative that is designed to, or used for the purpose of, carrying lines, cables, or wires for telecommunications, cable services, or electricity. A Utility Pole is not transformed into a Communications Facility by the Collocation or Attachment of a Communications Facility.

*Video Service* means a Communications Service as defined at Section 202.11 (24), *Florida Statutes*, as same may be amended from time to time.

*Wireless Communications Facility* ("WCF") means any Communications Facility used for the transmission of radiofrequency waves pursuant to an FCC license or other FCC authorization. Unless stated otherwise, WCF means equipment or Facilities located within a City Public Right-of-way, used to provide Wireless Service and may include, but is not limited to, antennae, wireless support structures, equipment enclosures, cabling, antenna brackets and other such appurtenant equipment. WCF within a City Public Right-of-way may be comprised of

Distributed Antenna Systems or Small Cell Systems and shall include equipment used to provide Wireless Service, as the phrase “WCF” is further defined in Section 365.172, *Florida Statutes* as same may be amended from time to time. Placing a WCF on an Existing Structure does not cause the Existing Structure to become a WCF. For purposes of this Article, The term WCF shall not include below-grade communications service facilities nor shall it include at-grade communications service facilities as regulated under City Code § 25-100.1.

*Wireless Service* means “Communication Service” provided by means of radiofrequency signals pursuant to an FCC license or other FCC authorization. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. A Wireless Service is a Communications Service. The term does not include dispatch service in a more localized, non-cellular configuration; data only, one-way or stored-voice services on an interconnected basis; air-to-ground services; or public coast stations.

*Wireless Service Provider* means a person duly authorized and licensed by the FCC to deliver Wireless Service or elects to provide wireless 911 service or E911 service in Florida. A Wireless Service Provider is a type of Communications Services Provider.

*Wireless Support Structure* means a vertical structure placed in the City’s Public Right-of-way for the sole or primary purpose of supporting a Wireless Communications Facility and shall not include for example: Repurposed Structure Utility Poles, light poles, pedestrian signalized poles or signalized intersection poles, masts, or similar vertical structures that have a primary purpose or function independent of supporting a Wireless Communications Facility. A Wireless Support Structure would typically be used to support DAS or Small Cell Systems, when Co-location, or an Existing Structure is not utilized.

*Wrap* means an aesthetic covering depicting scenic imagery such as vegetation, which blends with the surrounding area. Imagery in a wrap may not contain any advertising.

## DIVISION 2. Registration

Sec. 25-303. Registration for Placing or Maintaining Communications Facilities in the City’s Public Rights-of-Way.



(a) *Registration.* A Communications Services Provider, Communications Facility Provider or a Pass-Through Provider that desires to place or maintain a Communications Facility in the City's Public Rights-of-way shall first register with the Office of the City Engineer in accordance with this Article. Registration shall consist of providing the registration information set forth below. Subject to the terms and conditions prescribed in this Article, a Registrant may place or maintain a Communications Facility in the City's Public Rights-of-way upon complying with all permitting and other applicable requirements. The City may allow Registration pursuant to this Division to be combined with related Registration required by City Code, Chapter 25, Article III, Rights of Way Administration. To the extent that a Registrant has registered with the City pursuant to Chapter 25 Article III and such Registration includes all information required by this section, no additional Registration is required, except as may be necessary for required updates and renewals set forth herein below.

(b) *No property right arises from Registration.* A Registration shall not convey any title, equitable or legal, to the Registrant in the City's Public Rights-of-way. Registration under this Article governs only the Placement or Maintenance of Communications Facilities in the City's Public Rights-of-Way. Other ordinances, codes or regulations may also apply to Placement or Maintenance in the City's Public Rights-of-way of other facilities that are not Communications Facilities. Registration does not excuse a Communications Services Provider, Communications Facility Provider or Pass-Through Provider from obtaining necessary access or Pole Attachment Agreements before locating its Facilities in the City's Public Rights-of-way. Registration does not excuse a Communications Services Provider, Communications Facility Provider or Pass-Through Provider from complying with all applicable City ordinances, codes or regulations, including this Article, laws or federal or state codes, regulations or Orders.

(c) *Registration is non-exclusive.* Registration does not in and of itself establish a right to Place or Maintain, or establish priority for the Placement or Maintenance of a Communications Facility in the City's Public Rights-of-way, but shall establish for the Registrant a right to apply for a Permit, if permitting is required by the City. Registrations are expressly subject to any further amendment to or replacement of this Article and further subject to any additional City ordinances or regulations, as well as any State or federal laws that may be enacted.

(d) *Content of Registration.* Each Communications Services Provider, Communications Facility Provider or Pass-Through Provider that desires to place or maintain a Communications Facility in the City's Public Rights-of-way shall file a single Registration with the City which shall include all information required by Article III, Sec. 25-99 (c) of the City Code, except that the certificate of insurance shall verify that insurance coverage has been obtained by the Registrant pursuant to City Code Section 25-311.

(e) *City Engineer review and approval.* The City Engineer shall review the information submitted by the applicant. If the applicant submits information in accordance with subsection (d) 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 (d) above, the City shall notify the applicant of the deficiency and the non-effectiveness of the Registration, in writing. The City shall so reply to an applicant within thirty (30) days after receipt of Registration information from the applicant. The applicant shall have one (1) thirty (30) day period after receipt of such notice within which to cure the deficiency via re-submittal. The re-submittal shall be reviewed by the City Engineer who shall notify the applicant of the effectiveness of Registration in writing. If the City determines again that the information has not been submitted in accordance with subsection (d) above, the City shall notify the applicant of the final non-effectiveness of the Registration. The City shall so reply to an applicant within thirty (30) days after receipt of re-submittal. An applicant has thirty (30) days after receipt of a final notice of non-effectiveness of Registration to appeal the decision as provided in City Code Section 25-310. Final non-effectiveness of Registration shall not preclude an applicant from filing subsequent applications for Registration under the provisions of this Article.

(f) *Cancellation.* A Registrant may cancel a Registration upon written notice to the City stating that it will no longer Place or Maintain any Communications Facilities in the City's Public Rights-of-way and will no longer need to obtain permits to perform work in the City's Public Rights-of-way. A Registrant cannot cancel a Registration if the Registrant continues to Place or Maintain any Communications Facilities in the City's Public Rights-of-way.

(g) *Registration updates.* Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (d), a Registrant shall provide updated information to the City.

(h) *Registration Renewal.*

- (i) Each Registrant shall renew its Registration no later than October 1 of each odd numbered year in accordance with the registration requirements of this Article.
- (ii) 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.

- (iii) Failure to renew a Registration may result in the City restricting the issuance of additional Permits until the Communications Services Provider, Communications Facility Provider or a Pass-Through Provider has complied with the Registration requirements of this Article.

(i) *Permits Required of Registrants.* In accordance with applicable City ordinances, Codes or regulations, a Permit may be required of a Communications Services Provider, Communications Facility 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 or of 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 Permitting requirements are met.

(j) *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 same may be amended from time to time. Pass-Through Providers shall pay a fee pursuant to Section 337.401 (5), *Florida Statutes* as same may be amended from time to time and City Code Section 25-321.

(k) *Compliance required.* A Registrant shall at all times comply with and abide by all applicable provisions of State and Federal law and City ordinances, codes and regulations in placing or maintaining a Communications Facility in the City's Public-Rights-of-way.

Sec. 25-304. Notice of Transfer, Sale or Assignment of Assets in Public Rights-of-Way.

(a) If a Registrant transfers or assigns its Registration incident to a sale or other transfer 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 transfer, sale or assignment shall be provided to the City within thirty (30) days of the effective date of the transfer, sale or assignment. Further, any such Person to whom such transfer has been made, must register with the City in accordance with this Article and shall provide proof of insurance coverage in accordance with City Code Section 25-311.

(b) If Permit applications are pending in the Registrant's name, the transferee, buyer or assignee shall notify the City Engineer that the transferee, buyer or assignee is the new applicant.

(c) A violation of the requirements of this Section 25-304 shall be a violation of this Code and the Registrant who is alleged to have violated any of the provisions of this Section 25-304 may be subject to the enforcement remedies set forth in City Code Sections 1-6, 25-309 and 25-315.

Sec. 25-305. Involuntary Termination of Registration.

(a) *Termination Events.* The City Manager may terminate a Registration if:

(1) A federal or state authority suspends, denies, revokes a Registrant's certification or license required to provide Communications Services;

(2) The Registrant's Placement or Maintenance of a Communications Facility in the City's Public Rights-of-way presents an extraordinary danger to the general public or other users of the City's Public Rights-of-way and the Registrant fails to remedy the danger promptly after receipt of written notice;

(3) The Registrant violates Section 843.025, *Florida Statutes*, as same may be amended from time to time;

(4) The Registrant violates Section 843.165, *Florida Statutes*, as same may be amended from time to time;

(5) The Abandonment by the Registrant of all of its Communications Facilities in the City's Public Rights-of-way and noncompliance with City Code Section 25-316 hereof; or

(6) Substantive and material repetitive violations of any of the provisions of this Article.

(b) *Notice of Intent to Terminate.* Prior to termination, the Registrant shall be notified by the City Manager, with a written notice setting forth all matters pertinent to the proposed termination action, including which of subsections (a)(1) through (a)(6) above is applicable and the reason therefore, and describing the proposed action of the City with respect thereto. The Registrant shall have fifteen (15) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City Manager to accomplish the same. If the plan is rejected by the City Manager, the City Manager shall provide written notice within seven (7) days of such rejection to the Registrant and shall make a recommendation to the City Commission regarding a decision as to termination of Registration.

Within thirty (30) days after the City Manager makes his recommendation to the City Commission, but no sooner than ten (10) days after the City Manager makes his recommendation to the City Commission, the City Commission shall hear appeals from the Registrant and the City Manager. The City Commission shall make a final determination as to termination of the Registration and the terms and conditions relative thereto. Any person aggrieved by any decision of the City Commission on an appeal regarding termination of a Registration shall be entitled to apply to the Circuit Court for a review thereof by Petition for Writ of Certiorari in accordance with the applicable court rules. Any such aggrieved person shall also be entitled to pursue any other remedy available to them at law or in equity.

(c) *Post Termination Action; Appeal.* In the event of termination, the former Registrant shall: (1) in accordance with the provisions of this Article and as may otherwise be provided under state law, notify the City of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Communications Facilities in the City's Public Rights-of-way; or (2) provide the City with an acceptable plan for disposition of its Communications Facilities in the City's Public Rights-of-way. If a Registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in City Code Section 25-310 hereof, the City may exercise any remedies or rights it has at law or in equity, including, but not limited to requiring the Registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the Registrant and the City Manager, to remove some or all of the Communications Facilities from the City's Public Rights-of-way and restore the City's Public Rights-of-way to their original condition before the initial installation of the Facilities. In any event, a terminated Registrant shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the City's Public Rights-of-way.

(d) *When Removal Not Authorized or Required.* In the event of termination of a Registration, this section does not authorize the City to cause the removal of Facilities used to provide another service for which the Registrant or another person who owns or exercises physical control over the Facilities holds a valid certification or license with the governing federal or State agency, if required for provision of such service, and is registered with the City, if required.

#### Sec. 25-306. Unregistered Providers.

To the extent that a Communications Services Provider, Communication Facilities Provider or Pass-Through Provider is not Registered consistent with City Code Section 25-303, said Person shall Register with the City pursuant to City Code Sec. 25-303 within one hundred eighty (180) days from the effective date of this Ordinance. A Communications Services Provider, Communications Facilities Provider or Pass-Through Provider with an existing

Communications Facility in the City's Public Rights-of-way who fails to so comply shall be in violation of City Code as provided in City Code Sec. 1-6 and City Code Chapter 11.

### DIVISION 3. Permitting

#### Sec. 25-307. Permit Requirements and Conditions.

(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, if required, have been issued by the City, except in the case of routine maintenance or an emergency as provided for in City Code Section 25-307(t) herein. 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 same may be amended from time to time; however, no such imposed conditions shall prohibit or otherwise adversely impact 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 his 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; and

(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; and

(3) *Impact on traffic and traffic safety.* The impact on traffic and traffic safety; and

(4) *Impact on Existing Facilities.* The impact upon existing Facilities in the City's Public Rights-of-way; and

(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; and

(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 that is five (5) feet or less in width. Co-location on an Existing Structures 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 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 at its own expense, in order to achieve such superior site design or otherwise meet other requirement of this Article.

(b) *Permit Applications.* 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 Co-locations 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, see City Code Section 25-308 (b). 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 providing 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 proposed are the minimum equipment necessary to achieve the needed function.

(4) *Temporary sidewalk closure plan.* A temporary sidewalk 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.* Given 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 Co-locations or attachments.* For Project Permits that involve multiple Co-locations 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 Co-locations 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 three hundred fifty (350) 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.

(12) *Identification of all above-grade and below-grade structures within the City's Public Rights-of-way within a three hundred fifty (350) 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 Co-locations or use of Existing Structures, identification of all above-grade structures as regulated under City Code Section 25-100.1 in the City's Public Right-of-way within a three hundred fifty (350) 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). For below-grade structures, the City's maps and atlases shall be relied upon for provision of this information. No such identification is required with respect to wireline Pole Attachment installations made in the communications space of Utility Poles.

(13) *Affidavits.*

(i) An application for a Permit to install new Communications Facility Pole(s) or new Wireless Support Structures (as opposed to Co-locations, 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 setting forth all the facts relied upon in the applicant's attempt to both Co-locate 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 three hundred fifty (350) foot radius of the proposed new Communications Facility.

(ii) An application for Co-location shall include an affidavit from the owner of the Facility or Existing Structure being Co-located upon that the applicant has been granted permission to attach to the Facility or Existing Structure being Co-located 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 the Surrounding Neighborhood of the Permit area, as certified by the Broward County Property Appraiser's Office.

(ii) As to owners of condominium or cooperative units within the Surrounding Neighborhood, 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; and

- 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; and
- 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 25-312 hereof 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 XII, and does not create a property right 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 Co-located 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 unreasonable 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 City's 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.

(2) *Trenchless technology and joint trenching.* 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 Co-location of Facilities in existing conduit is strongly encouraged and should be employed wherever feasible.

(e) *Avoidance of interference, displacement, damage 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.

(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 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 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.

(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 same 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 XII 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 same may be amended from time to time.

(2) Subject to the aforementioned Sections 337.402, 337.403 and 337.404, *Florida Statutes*, as same may be 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 shall arrange at their sole expense for the conversion to underground Facilities or relocation 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 Applicable Codes, and in such a manner that will not interfere with the use of other property or other 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 XII 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 same 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.

(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 XII 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 XII.

(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 same 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 same 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 XII, 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 standards and time frames set out in Section 365.172, *Florida Statutes* as same 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 Co-locations, 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 will be submitted with Project Permit application.

(2) *Preliminary Review Meeting.* A meeting with City Engineer 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 will 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 which breaks down the phases of the Project. 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 XII.

(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 XII. A Permit presuming to give authority to violate or cancel the provisions of City Code Chapter 25 shall be void and invalid except insofar as the work or use which it authorizes is lawful.

(v) *Permit errors.* The issuance of a Permit shall not prevent the City Engineer from thereafter requiring the correction of errors when in violation of City Code Chapter 25, or this Article XII.

(w) *No Permit fees for work under this Article.* Pursuant to Section 337.401(3) (c) (1) (b), *Florida Statutes*, as same may be amended from time to time, and other applicable provisions of law, and notwithstanding any other provisions of City Code, the City hereby elects not to charge Permit fees to any Registrant for Permits to do work under this Article in the City Public Rights-of-way. Pass-Through Providers shall be subject to the fees set forth at City Code Section 25-321.

Sec. 25-308. *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 following regulations shall apply, unless waived 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. Stealth Design features may 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, 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 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.

(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.

(7) Replication of trees or other natural objects is prohibited.

(8) 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

(9) 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 same 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 which 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) *Arterial Roadways, Collector Roadways and Local Roadways.* The top of the uppermost antenna array, Co-located or attached equipment on a new Communications Facility Pole or a new Wireless Support Structure shall not exceed the height of the closest light pole on that same Roadway.

(2) 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) For each Co-location 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) All antennas shall be no less than eight (8) feet above Grade.

(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; 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 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. 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.

(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.* 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. Co-location 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 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 XII, 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 other requirements of this Article XII. 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.

(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 three hundred fifty (350) linear feet apart from each other, along the line of general vehicular travel, except that no distance requirement shall apply to Co-locations 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" as defined in the U.L.D.R, City Code Section 47-35, Definitions, 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, 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. See subparagraph (h) above for certain restrictions. 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 XII 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 Blocks.* 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 Residential Blocks.

(p) *Limitation on Placement in Corner Yards within Residential Blocks.* 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 Block 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 Blocks.* All Communications Facility Poles or a Wireless Support Structures shall be located such that views from principal structures within Residential Blocks 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 Blocks. 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 Application of the Requirements of this Section by Board of Adjustment.*



(1) Nothing in this section 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.

(2) The Board of Adjustment is established, and operates pursuant to City Code Section 47-33.1. It shall have the expanded duties and jurisdiction to grant or deny waivers as set forth herein.

(3) 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 neutral use of City Public Rights-of-way is impaired by strict application of the requirements of this Section 25-308.

(4) A request for a waiver shall be filed with the Board of Adjustment contemporaneously with the Permit application.

(5) The request for waiver shall contain each subsection within Sections 25-308 for which a waiver is sought. A request for a waiver shall include all information described in this subsection (s) and any other reasonable information the City may reasonably require to process the waiver request.

(6) The Board of Adjustment may deny the request for a waiver if it does not comply with the requirements of this Section 25-308(r).

(7) The following provisions shall govern the granting or denying of a request for a waiver under the requirements of this Section 25-308(r):

(8) The Board of Adjustment shall consider the following factors 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 this Section 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 Co-location 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.

(9) In granting any waiver, the Board of Adjustment may impose conditions to the extent the Board 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.

(10) The Board shall have authority to grant a waiver upon a vote of a majority plus one 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 which prevent compliance with the subsections for which a waiver is being sought; and
- (ii) The proposed waiver, if granted, results in a superior site plan; and
- (iii) The proposed waiver, if granted, will not be incompatible with Adjoining properties or the Surrounding Neighborhood; and
- (iv) The proposed waiver, if granted, is ADA compliant; and
- (v) The proposed waiver, if granted, complies with FCC regulations; and
- (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.

(11) The Board shall have jurisdiction to grant waivers as to the following provisions of Article XII:

- (i) 25-308 (f) *Maximum Height Restrictions.*
- (ii) 25-308 (g) *Equipment and Antenna Volume.*
- (iii) 25-308 (h) Prohibition against placement on certain Collector and Local Roadways where City has plans for sidewalks; preference for Arterial Roadways.
- (iv) 25-308 (i) Minimum distance separation from edge of pavement.
- (v) 25-308 (j) *Minimum distance separation from existing sidewalk.*
- (vi) 25-308 (k) *Installation at outermost boundary of City Public Rights-of-way.*
- (vii) 25-308 (l) *Distance separation between Communications Facility Poles and Wireless Support Structures in City Public Rights-of-way.*
- (viii) 25-308 (o) Prohibition against placement in Front Yard within Residential Blocks.
- (ix) 25-308 (p) Limitation on placement in Corner Yards within Residential Blocks.

#### DIVISION 4. Administration and Enforcement

Sec. 25-309. Enforcement of Permit Obligations; Suspension and Revocation of Permits.

(a) The City Engineer may order the suspension of Placement and Maintenance work under a Permit and ultimately may revoke any Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or

regulation or any condition of the Permit. The types of substantial breach by Permittee may include, but are not limited to:

- (1) The violation of any material provision of the Permit;
- (2) An evasion or attempt to evade any material provision of the Permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- (3) Any material misrepresentation of fact in the process of Permittee's request for a Permit or Registration;
- (4) The failure to maintain the required performance bond or insurance;
- (5) The failure to properly restore the City's Public Rights-of-way;
- (6) The failure to correct within the specified time an order issued by the City Engineer;
- (7) The failure to Register, Re-Register, or provide notice of any transfer in accordance with this Article;
- (8) The failure to relocate or remove Facilities pursuant to this Article and Sections 337.402, 337.403 and 337.404, *Florida Statutes* (2016) as same may be amended from time to time.

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

(c) Within thirty (30) calendar days of receiving notification of the breach, the Permittee shall contact the City Engineer with a plan, acceptable to the City Engineer, for its correction. The City shall provide additional time as reasonably necessary for a Permittee to establish a plan acceptable to the City Engineer taking into account the nature and scope of the alleged breach. The Permittee's failure to so contact the City Engineer, or the Permittee's failure to submit an acceptable plan, or the Permittee's failure to reasonably implement the approved plan, shall be cause for revocation of the Permit. Further, the Permittee's failure to contact the

City Engineer, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to implement the approved plan, shall be cause for the Permittee to be placed on probation for one full year.

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

(e) If a Permittee, while on probation, commits a breach as outlined above, the Permittee's Permit may be revoked and the Permittee may not be allowed to obtain further Permits for one full year, except for emergency repairs and service requirements as mandated by State or federal regulations.

(f) If a Permit is revoked, the Permittee shall reimburse the City for the City's reasonable costs, including restoration costs and the cost of collection and reasonable attorneys' fees incurred in connection with such revocation.

(g) The City Engineer may cause an immediate stop work order where the Permittee's construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

#### Sec. 25-310. Appeals.

(a) *Appeal of decision of City Engineer.* A Registrant aggrieved by any action or decision of the City Engineer with regard to any aspect of Registration, or the issuance of or suspension of a Permit under this Article may appeal to the City Manager by filing with the City Manager, within thirty (30) calendar days after issuance of a written decision by the City Engineer, a Notice of Appeal, which shall set forth concisely the action or decision appealed from and the reasons or ground for the appeal. Any such appeal is voluntary, and in the absence of taking such appeal, the decision of the City Engineer shall be deemed to be final. If an appeal is taken, however, the decision of the City Engineer is no longer deemed to be final but instead is tolled pending the appeal. No request for extension of time for filing an appeal will be permitted; provided, however, the right of appeal of any action or decision of the City Engineer with regard to an aspect of Registration or issuance of or suspension of a Permit under this Article shall not be available in the event a citation violation notice has been given pursuant to the terms of Code Section 11-17, et seq.; the right of appeal under a citation violation notice procedure being provided for under Code Section 11-14.

(1) The appeal shall consist of the record compiled by the City Engineer and the Registrant in the application. The decision of the City shall be forwarded to the City Manager for review. The City Manager shall hold a public meeting on the record and shall determine if:

(i) There was a departure from the essential requirements of the law in the proceedings appealed; or

(ii) Competent, substantial evidence does not exist to support the decision.

(2) If the City Manager 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 City Engineer, then the decision of the City Engineer shall be upheld.

(3) If the City Manager finds that the conditions of either subparagraph (1) (i) or (1) (ii) of this section has occurred, then the City Manager shall conduct a de novo hearing which may be immediately held or shall be set by the City Manager to be no later than thirty (30) days from the date the City Manager makes a finding under (1) (i) or (1) (ii) above. At the conclusion of the hearing the City Manager may reject, approve or amend the decision of the City Engineer, or may remand the matter to the City Engineer 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 the City Engineer.

(5) In proceedings before the City Manager under 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 City Engineer.

(6) Appeal from a decision by the City Manager shall be to the City Commission by filing with the City Clerk, within thirty (30) calendar days after issuance of a written decision by the City Manager, a Notice of Appeal, which shall set forth concisely the action or decision appealed from and the reasons or ground for the appeal. Any such appeal is voluntary, and in the absence of taking such appeal, the decision of the City Manager shall be deemed to be final. If an appeal is taken, however, the decision of the City Manager is no longer deemed to be final but instead is tolled pending the appeal.

(7) The appeal shall consist of the record compiled by the City Manager and the Registrant in the proceedings before the City Manager. The decision of the City Manager shall be forwarded to the City Commission for review. The City Commission shall hold a public meeting on the record and shall determine if:

- (i) There was a departure from the essential requirements of the law in the proceedings appealed; or
- (ii) Competent, substantial evidence does not exist to support the decision.

(8) 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 City Manager, then the decision of the City Manager shall be upheld.

(9) If the City Commission finds that the conditions of either subparagraph (7) (i) or (7) (ii) of this section has occurred, then the City Commission shall conduct a de novo hearing which may be immediately held or shall be set by the City Commission to be no later than thirty (30) days from the date the City Commission makes a finding under (7) (i) or (7) (ii) above. At the conclusion of the hearing the City Commission may reject, approve or amend the decision of the City Manager or may remand the matter to the City Manager for further proceedings.

(10) 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, pursuant to court rules. Any such appeal is voluntary, and in the absence of taking such appeal, the decision of the City Commission shall be deemed to be final. If an appeal is taken, however, the decision of the City Commission is no longer deemed to be final but instead is tolled pending the appeal.

(b) *Appeal of decision of the Board of Adjustment* Appeal from a final decision by the Board of Adjustment shall be to the Circuit Court by filing a writ of certiorari within thirty (30) days of the decision, pursuant to court rules. Any such appeal is voluntary, and in the absence of taking such appeal, the decision of the Board of Adjustment shall be deemed to be final. If an appeal is taken, however, the decision of the Board of Adjustment is no longer deemed to be final but instead is tolled pending the appeal.

Sec. 25-311. Insurance.

(a) *General.* 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 an A.M. Best A-VII or better rating. All liability policies shall provide that the City is an additional insured as to the activities under this Article. 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, certified or regular mail or facsimile as determined by the City must be given to the City's Risk Manager 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.

(b) *Insurance Coverage and Limits of Insurance Coverage.* The insurance coverage and limits of coverage of insurance required shall be not less than the following:

(1) Worker's compensation and employer's liability insurance. Florida statutory requirements.

(2) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits of no less than one million dollars (\$1,000,000) per occurrence, combined single limit and two million dollars (\$2,000,000) in the aggregate.

(3) Commercial Automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this Article XII for limits of no less than one million dollars (\$1,000,000) per occurrence combined single limit each accident.

(4) Commercial excess or umbrella liability. Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

(c) Upon the effective date of the Registration, the Registrant shall submit to the City proof that it has obtained the insurance required under this Section 25-311, including a certificate of insurance signed by the insurance agent.

(d) The City shall have the authority to increase or decrease the policy limits set forth above and shall provide each Registrant with at least thirty (30) days advance written notice of such change. Within thirty (30) days from receipt of a notice to increase its policy limits, the Registrant shall submit to the City proof of such increased coverage.



(e) *Duration.* The coverage provided herein shall be for a period not less than the period for which the indemnification obligations under City Code Section 25-312 hereof are imposed.

(f) *Failure to maintain required coverage shall be deemed an Abandonment.* Failure to maintain all the required insurance coverage shall be deemed an Abandonment of all of the Communications Facilities of the Registrant.

Sec. 25-312. Indemnification.

(a) By reason of the acceptance of a Registration under this Article XII or the grant of a Permit under this Article XII, the City does not assume any liability:

(1) For injuries to persons, damage to property, or loss of service claims by parties other than the Registrant or the City;

(2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Registrants or activities of Registrants.

(b) By registering with the City Engineer a Registrant agrees, or by applying for and accepting a Permit under this Article XII, a Permittee is required, to defend, indemnify, and hold the City whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Communications Facilities, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit, inspection of plans or work by the City. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Registrant or to the City; and the Registrant, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Nothing herein shall be construed as a waiver of the protections, limitations and immunities provided in Section 768.28, *Florida Statutes* (2016), as same may be amended from time to time. The provisions of this Section 25-312 include, but are not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding(s).

(c) The City agrees to notify the Registrant, in writing, within a reasonable time of the City receiving 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. City shall not settle or compromise any matter for

which a Registrant is obligated to indemnify without the prior written consent of the Registrant, such consent shall not be unreasonably withheld.

(d) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the registrant under workers' compensation, disability or other employee benefit acts, or the acceptance of insurance certificates required under this article, or the terms, applicability or limitations of any insurance held by the Registrant.

(e) The Registrant shall investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and shall bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, the Registrant shall assume and defend not only itself but also the City in connection with any such claims and any such defenses shall be at no cost or expense whatsoever to the City provided that the City (exercisable by the City Attorney), shall retain the right to select counsel of its own choosing.

(f) The City does not and shall not waive any rights against the Registrant which it may have by reason of this indemnification, or because of the acceptance by, or the Registrant's deposit with the City of any of the insurance policies required by this Article for Registration.

(g) This indemnification by the Registrant shall apply to all damages and claims for damages of any kind suffered regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(h) 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; or

(2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, *Florida Statutes* as same may be amended from time to time.

(i) The indemnification requirements under this Section 25-312 and this Article XII shall survive and be in full force and effect for a period of five (5) years after the termination or cancellation of a Registration.

## Sec. 25-313. Performance Bond.

(a) Prior to issuing a Permit under this Article XII where the work under the Permit will require restoration of the City's Public Rights-of-way, the City Engineer shall require a performance bond by a surety duly authorized to do business in the State of Florida and having an A.M. Best A-VII rating or better. The bond shall be in the amount of 125 % of the restoration cost estimate of the City's Public Rights-of-way, as certified by a professional engineer licensed in the State of Florida, to secure proper performance under the requirements of any Permits and the restoration of the City's Public Rights-of-way. Twelve (12) months after the completion of the restoration of the City's Public Rights-of-way in accordance with the bond, the Registrant may eliminate the bond. However, the City Engineer may subsequently require a new bond for any subsequent work by the same Registrant in the City's Public Rights-of-way. The performance bond shall provide that: "For twenty-four (24) months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

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

## Sec. 25-314. Security fund.

At the time of Registration under this Article XII, the Registrant shall be required to file with the City, for City approval, a bond, cash deposit or irrevocable letter of credit in the sum of \$25,000.00, having as a surety a company qualified to do business in the State of Florida having an A. M. Best A-VII rating or better, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of: (a) transfer, sale, assignment or removal of all of the Registrant's Communications Facilities in the City's Public Rights-of-way; or (b) twenty-four (24) months after the termination or cancellation of any Registration. The security fund shall be conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon the Registrant by the provisions of this Article XII. The security fund shall be furnished as frequently as necessary to provide a continuing guarantee of the Registrant's full and faithful performance at all times. In the event a Registrant fails to perform its duties and obligations imposed upon the Registrant by the provisions of this Article XII, subject to City Code Section 25-313 of this Article XII there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the City as a result, including the full amount of any compensation,

indemnification or cost of removal, relocation or Abandonment of any Facilities of the Registrant in the City's Public Rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund.

Sec. 25-315. General Enforcement Remedies.

(a) A Registrant's failure to comply with provisions of this Article XII shall constitute a violation of this Code and shall subject the Registrant to the penalties provided by City Code Section 1-6, termination of Registration in accordance with the provisions of City Code Section 25-305, suspension of Permit under the provisions of City Code Section 25-309 and a Registrant who is alleged to have violated any provisions of this Article may be further subject to a civil penalty in accordance with the provisions of City Code Section 11-25 and the procedures promulgated under City Code Section 11-17, et seq. or injunctive relief as otherwise provided by law.

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

Sec. 25-316. Abandonment of a Communications Facility.

(a) Upon determination by a Registrant that one or more of its Communications Facilities in a City Public Right-of-way is to be abandoned, the Registrant shall notify the City no later than 90 days from such determination, or no later than 30 days following such abandonment, whichever is sooner.

(b) 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: (a) compromises safety at any time for any City Public Right-of-way user or during construction or maintenance in the City's Public Rights-of-way; (b) prevents a third Person from locating Facilities in the area of the City's Public Rights-of-way where the Abandoned Facility is located when other alternative locations are not reasonably available; or (c) creates a Maintenance condition that is disruptive to the City's Public Rights-of-way's use. In the event of (b), 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.

(e) In the event the Abandoned Facility is subject to a pole attachment agreement, then the obligation to remove the Abandoned Facility shall be in compliance with the federal Pole Attachment Act (47 USC Section 224), as same may be amended from time to time.

Sec. 25-317. Reports and records.

(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 reasonable necessary for the City to protect its interests under this Article.

(2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

(b) Nothing in this section shall affect the remedies a Registrant has available under applicable law.

(c) The City shall keep any documentation, books and records of the Registrant confidential to the extent required or permitted under State law.

Sec. 25-318. Force Majeure.

In the event a Registrant's performance of or compliance with any of the provisions of this Article is prevented by a cause or event not within the Registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such Registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For the purposes of this Section, cause

or events not within a Registrant's control shall include, but not be limited to, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court.

Causes or events within a Registrant's control, and thus not falling within this Section shall include without limitation, Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors or agents.

Sec. 25-319. Reservation of Rights and Remedies.

(a) The provisions of this Article XII shall be applicable to all Communications Facilities placed in the City's Public Rights-of-way on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities placed in the City's Public Rights-of-way prior to the effective date of this Ordinance to the full extent permitted by federal and State law, except that any provision of this Article regarding the size, composition, or location of Communications Facilities shall not apply to Communications Facilities lawfully Placed within any City Public Right-of-way prior to the effective date of this Ordinance.

(b) The adoption of this Article XII is not intended to affect any rights or defenses of the City or a Communications Service Provider, Communications Facility Provider or Pass-Through Provider under any existing franchise, license or other agreements with a Communications Service Provider, Communications Facility Provider or Pass-Through Provider.

(c) Nothing in this Article shall affect the remedies the City or the Registrant has available under applicable law.

Sec. 25-320. No liability or warranty.

Nothing contained in this Article XII shall be construed to make or hold the City responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the Registrant's Communications Facilities by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any Permit or the approval or disapproval of any Placement or Maintenance of the Registrant's Communications Facilities as authorized herein constitute any representation, guarantee or warranty of any kind by, or create any liability upon the City or any official, agent or employee thereof. Additionally, the City shall not be responsible

for any relocation costs incurred by any Registrant due to the City's or any other Person's work in the City's Public Rights-of-way.

Sec. 25-321. 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* (2016) as same 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 Engineer may withhold the issuance of any Permits to the Registrant until the amount past due is paid in full.

SECTION 2. 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 3. That all Ordinances or parts of Ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 4. That this Ordinance shall be in full force and effect upon final passage.

PASSED FIRST READING this the \_\_\_\_ day of \_\_\_\_\_, 2017.

PASSED SECOND READING this the \_\_\_\_ day of \_\_\_\_\_, 2017.

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Mayor  
JOHN P. "JACK" SEILER

ATTEST:

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City Clerk  
JEFFREY A. MODARELLI