

**ORDINANCE NO. 4774-18**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES TO AMEND AND RESTATE CHAPTER 78 – STREETS, SIDEWALKS AND PUBLIC PLACES, ARTICLE XI - “TELECOMMUNICATIONS AND WIRELESS COMMUNICATIONS” - SECTIONS 78-381 THROUGH 78-407; RENAMING ARTICLE XI “COMMUNICATIONS SERVICES FACILITIES IN THE PUBLIC RIGHT OF WAY”; PROVIDING A CONFLICTS CLAUSE, A CODIFICATION CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

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WHEREAS, the Legislature of the State of Florida has, in Chapter 166 – Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, Chapter 78, Article XI of the City Code of Ordinances regulates communication service facilities and wireless communication service facilities in the City rights-of-way. Communications service facilities include equipment such as fiber optic cables, conduits, antennas and poles, for the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised; and

WHEREAS, The Florida Legislature enacted Section 337.401(7), Florida Statutes, entitled the “Advanced Wireless Infrastructure Deployment Act” (the “Act”) which pre-empted some local regulations and dictated regulations regarding the placement of communications facilities in the public right of way; and

WHEREAS, the City recognizes the vital importance ensuring adequate wireless communications services to support the health, safety and welfare of its citizens while at the same time maintaining the safety and aesthetic integrity of its public rights of way; and

WHEREAS, the City of West Palm Beach desires to amend and replace the relevant Article XI of Chapter 78 in the City Code in order to reflect the changes in the Act; to ensure compliance with the Federal Telecommunications Act of 1996; and to ensure non-discriminatory treatment of all communications service providers.

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**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, that:**

**SECTION 1:** The City Commission hereby finds that amending Article XI to reflect the changes in the Act promotes the general welfare of the City and its citizens.

**SECTION 2:** The Code of Ordinances is hereby amended at Chapter 78 – “Streets, Sidewalks and Public Places”, to amend and restate Article XI, “Telecommunications and Wireless Communications”, in its entirety and rename the Article, as set forth below:

**ARTICLE XI. - COMMUNICATIONS SERVICES FACILITIES IN THE PUBLIC RIGHT OF WAY**

**DIVISION 1. - GENERALLY**

**Sec. 78-381. - Intent and purpose.**

It is the intent of the city to promote the public health, safety, and general welfare by providing regulations for the use of the public rights-of-way within the city, to adopt and administer reasonable regulations consistent with state and federal law, including F.S. §§ 337.401, 362.01, and 337.29(3), and the city's home-rule authority in accordance with the provisions of the Telecommunications Act of 1996, to provide for the payment of compensation and other consideration to the city for the cost of regulating and maintaining the public rights-of-way and for the privilege of using the public rights-of-way within the city for constructing and maintaining communications services facilities, and to establish reasonable regulations concerning the use of the public rights-of-way for such facilities; and minimizing disruption to the public rights-of-way.

**Sec. 78-382. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words not otherwise defined in this section shall be given the meaning set forth in sec. 94-341 of this code, and if not defined therein, as defined in the Communications Act of 1934, 47 USC 151 et seq., as amended by the Telecommunications Act of 1996 (collectively, the "Communications Act"), and, if not defined therein, as defined by Section 337.401, Fla. Stat. or another applicable state statute; and, if not defined therein, be construed to mean the common and ordinary meaning.

*Abandoned.* Any communications services facility not in continued use for a period of 12080 consecutive days.

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

*Antenna array.* A group of antennas and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting

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frame or common mounting support structure for a unified purpose of transmitting or receiving electromagnetic waves for a single wireless services provider, or if combined antennas, for the combined providers.

*Applicable codes.* Such codes shall include this code, uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons. The term includes objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the city upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request.

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

*Combined antenna.* An antenna or an antenna array designed and utilized to provide wireless services for more than one wireless provider, or a single wireless provider utilizing more than one frequency band or spectrum, for the same or similar type of services.

*Communications services.* The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. 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.

*Communications services facilities.* A structure or structures, equipment and/or antenna used to provide communication services. This term shall include wireless communications services facilities.

*Communications services facility provider.* An entity who provides communications services. The term shall include wireless communication services providers.

*Concealed.* A pole, antenna element or ancillary structure, or equipment box that is not readily identifiable as such, and is camouflaged and designed to be aesthetically compatible with the area so as to reduce or mitigate the facility's potential adverse visual impacts on the surrounding areas. Concealed poles (or stealth poles) are designed to conceal the equipment internally.

*Equipment cabinet.* Any structure, including: cabinets, shelters, pedestals, and other similar structures that are used exclusively or in combination with ancillary facilities, to contain

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radio or other equipment necessary for the transmission or reception of communication signals.

*Emergency.* A condition that affects the public's health, safety or welfare, which may include an unplanned out-of-service condition of a preexisting service.

*Law* means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued, including, but not limited to, the Communications Act of 1934, 47 USC 151 et seq., as amended by the Telecommunications Act of 1996, PL 104-104 § 101(a), 110 Stat. 70, and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto.

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

*Pass-through provider.* Any person who, upon registering with the city, places or maintains a communications services facility in the city's rights-of-way and that does not remit communications service taxes as imposed by the city pursuant to F.S. ch. 202 and F.S. § 337.401.

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

*Pole or utility pole.* A pole or similar structure located in a city right-of-way, that is used in whole or in part to provide communications services or for lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless the city grants a waiver for such pole.

*Pole height.* The vertical distance of a utility pole measured from the grade line to the highest point of the pole, including any antenna, lighting, lightning protection or other equipment affixed thereto.

*Public right-of-way.* Land used by the city as a public road, including land owned by fee, or land dedicated by plat or easement for use as a public road, and for which the city has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the government holds a property interest therein. Public rights-of-way shall not

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include private property. Public rights-of-way shall not include any real or personal government property except as described above and shall not include government buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

*Public safety communications equipment.* All communications equipment utilized by a public entity for the purpose of ensuring the safety of the public

*Registrant or facility owner* mean communications services facility provider or pass-through provider, or other person which seeks to use the public rights-of-way and has registered with the city in accordance with the provisions of this article.

*Registration and register* mean the process described in this article whereby a communications services facility provider, or a pass-through provider provides certain information to the city and the city accepts such information as legally sufficient to be registered.

*Replacement.* The removal of an existing structure for purposes of erecting a new structure of nearly equal dimensions usually for the purposes of improvement structural integrity.

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

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

*Stealth facility.* Any communications facility which is designed to conceal the true purpose of the structure which is done by blending the structure into the surrounding environment. Examples of stealth facilities include architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and utility poles designed to look like light poles, power poles, or trees.

*Structure.* Anything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground, including advertising signs.

*Substantial change.* Substantial change to existing communications facilities includes installation or excavation in an area not in immediate proximity to the existing facilities. For concealed or stealth facilities, a substantial change would defeat the concealment elements of

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the communication facility. Further, a substantial change occurs if the modification does not comply with other conditions imposed on the communications facilities or the limitations provided by law.

*Transmission.* The development of a radio signal from an antenna device for the purpose of communications or communication of data.

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

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

*Wireless infrastructure provider.* A person or entity who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

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

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

*Wireless services provider.* A person who provides wireless services.

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

### **Sec. 78-383. - Compliance with other laws; police power.**

A registrant or facility owner shall at all times be subject to and shall comply with all applicable federal, state and local laws. A registrant or facility owner shall at all times be subject to all lawful exercises of the police power of the city, to the extent not inconsistent with applicable laws.

**Sec. 78-384. – Interference.**

(a) *Interference with city use.*

- (1) Any communications facilities placed upon, under, over, or along any public rights-of-way that are found by the city to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon written notice to the registrant or its agent, be removed or relocated, within 30 days of such notice, by such registrant at its own expense consistent with F.S. § 337.403. The mayor may extend the time within which a registrant shall remove or relocate a communications services facility for good cause shown.
- (2) Any communications facilities placed upon, under, over, or along any public rights-of-way that are found by the city to be unreasonably interfering in any way with the maintenance, repair, replacement, improvement, extension or expansion of public utility facilities located in the public rights-of-way, including but not limited to, water mains, sanitary sewer facilities, storm water facilities, shall, upon written notice to the registrant or its agent, be removed or relocated, within 30 days of such notice, by such registrant at its own expense, unless otherwise provided in F.S. § 337.403. The mayor may extend the time within which a registrant shall remove or relocate a communications services facility for good cause shown.
- (2) Subject to F.S. § 337.403, whenever an order of the city requires the removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or change the facility at its own expense to conform to the directive within the time stated in the notice, the city may proceed to cause the communications facility to be removed. The expense thereby incurred, except as provided in F.S. § 337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the owner of the telecommunications facility and levied, collected and paid to the city.
- (3) Subject to F.S. § 337.404, whenever it shall be necessary for the city to remove or relocate any communications services facility, the facility owner, or the owner's chief agent, shall be given written notice of such removal or relocation and requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than 20 nor more than 30 days in which to file an appeal with the city commission to contest the reasonableness of the order. Upon receipt of a written appeal, the city commission shall place the matter on the commission's agenda for consideration within 45 working days. Should the owner or the owner's representative not appear, the determination of the cost to the owner shall be final, in accordance with F.S. § 337.404.

(b) *Interference with other users.*

- (1) All communications services facilities shall be placed and maintained so as not to interfere unreasonably with the use of the public rights-of-way by the public and so as not to cause unreasonable interference with the rights and safety of property owners who adjoin any of the public rights-of-way.
- (2) All communications services facilities shall be placed and maintained so as not to interfere, displace, damage or destroy any other utilities or facilities, including but not

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limited to, water mains, sanitary sewer facilities, storm drains, electrical facilities; gas mains, pipes, cables or conduits of the city or any other utility's facilities lawfully occupying the public rights-of-way of the city. Any registrant that damages any other utilities or facilities while installing or maintaining its own facilities shall be responsible for the costs of repair of such other utilities or facilities.

- (3) All communications services facilities shall be placed and maintained so as not to create interference with the operations of public safety telecommunications services.

### **Sec. 78-385. - Conflicts.**

#### (a) *Insufficient space.*

- (1) To the extent not otherwise prohibited by state or federal law, the city shall have the authority to prohibit or limit the placement of new or additional communication services facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way. A determination of insufficient physical space may be made when: (i) necessary to protect existing facilities in the public rights-of-way; (ii) to accommodate city plans for public improvements or projects, including the replacement of city utility facilities; (iii) to the extent not prohibited by applicable law, to prevent interference with the operations of public safety communications services; or (iv) to accommodate traffic safety issues raised by the city, the county, FDOT or any other agency with regulatory authority over any right-of-way within the city.

- (2) Reservation of space on city utility poles for future public safety uses by the city may not preclude collocation of a small wireless facility. The registrant may, in accordance with the provisions of this article, apply for replacement of the city utility pole in order to accommodate the small wireless facility and the future public safety use.

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

(c) In case of conflict or interference between the facilities of different registrants, the registrant whose facilities were first permitted shall have priority over a competing registrant's use of the public rights-of-way. The resolution of any conflict or interference shall be made in a manner that is consistent with the nondiscrimination provisions of the Federal Telecommunications Act of 1996 and F.S. § 337.401(3), Florida Statutes.

(d) *Scheduling.* In the interest of the public's health, safety and welfare, upon request of the city, a registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public right-of-way. The city may require a registrant to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the

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public rights-of-way. The city may provide a more definite time frame based on specific city construction or maintenance schedules.

**Sec. 78-386. – City retention of rights and authority.**

- (a) Nothing in this article shall affect the city's authority to create, annex, vacate, or abandon city public rights-of-way, and the city makes no warranties or representations regarding the availability of any created, annexed, vacated or abandoned public rights-of-way for communications facilities.
- (b) Nothing in this article shall affect the city's authority over its rights of way and the city shall retain the right, without limitation, to alter, change, or cause to be changed, the grading, installation, location, relocation or width of the public rights-of-way within the limits of the city. Upon reasonable notice by the city, the registrant shall make any necessary removals, relaying and relocations of its communications services facilities at its own expense, in accordance with applicable law.
- (c) The city reserves the right to place and maintain, and permit to be placed or maintained, water, sewer, storm drainage, communications or other types of facilities, cables or conduits, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in the public rights-of-way occupied by the registrant.
- (d) The city retains the right, from time to time, to grant utility easements or otherwise place and maintain, or permit the placement and maintenance, of other utilities in the public rights-of-way, including but not limited to, water, sewer, electric, gas, storm drainage, communications, traffic, and other utilities and facilities, cables or conduit, and including underground and overhead installations or improvements that may be deemed necessary or proper by the city in the public rights-of-way occupied by the registrant. .
- (e) The city retains the right and authority to cut or remove any facilities located within the public rights-of-way as the mayor in his reasonable discretion may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall attempt to notify the owner of the facility, if known, prior to cutting or removing a facility and shall notify the owner of the facility, if known, after cutting or removing a facility.

**Sec. 78-387. – Registrant's responsibility and liability.**

- (a) The registrant shall not in any way displace, damage, or destroy any facilities, including, but not limited to, water main, sewer line, storm water facility, pipe, cable, conduit, fiber optic, or other pathway or any other facilities belonging to the city. The registrant shall immediately notify the city in the event that registrant caused any damage to city facilities. The registrant shall either repair such damage to the city's satisfaction or be liable to the city for the costs of any repairs made necessary by any such displacement, damage or destruction, of facilities belonging to the city, and the registrant shall pay such costs upon demand.
- (b) In nonemergency circumstances, the city shall provide the registrant written notice of the repairs to be made. The registrant must apply for all applicable permits in accordance with the city's permitting guidelines. If such repairs are not performed in a reasonable and satisfactory manner within the 30 calendar days after receiving notice, the city may cause the repairs to be made at the registrant's expense, utilizing city employees or contractors, and charge any and all

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costs to registrant. The registrant shall reimbursement the city within 30 days after the submission of the bill by the city to the registrant.

(c) In the case of an emergency, the registrant shall either immediately repair such damage to the city's satisfaction or be liable to the city for the costs of any repairs made necessary by any such displacement, damage or destruction, of facilities belonging to the city, and the registrant shall pay such costs upon demand. When work is performed on an emergency basis, the registrant must still apply for all applicable permits by the following business day in accordance with the city's permitting guidelines. In the case of an emergency, the city may commence repairs without any prior notice to the registrant. The term "emergency" shall mean a condition that may affect the public's health, safety or welfare. In the event of an emergency, the city may cause the repairs to be made at the registrant's expense, utilizing city employees or contractors, and charge any and all costs to such registrant. The registrant shall reimburse the city within 30 days after the submission of the bill by the city to the registrant.

(d) In all instances, the registrant shall restore all damaged property and indemnify the city from any and all damages caused by the registrant's work.

(e) All installations and methods of work in the public rights-of-way shall be in accordance with the city's, and any applicable utility service provider's, minimum standards for materials, specifications and construction.

### **Sec. 78-388. - No city rights in roadway or easement.**

There may be from time to time within the city, various roadways and easements regarding which the city does not have the unqualified right to authorize the registrant to use; therefore, the city does not warrant or represent as to any particular roadway, portion of roadway, right-of-way or easement that it has the right to authorize the registrant to install or maintain its facilities therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the registrant. The city shall not be required to assume any responsibility for the securing of any rights for the registrant which may be required for the installations of its facilities in such streets or easements, nor shall the city be responsible for securing any permits or agreements with third parties or utilities.

### **Sec. 78-389. - Private property.**

This article does not authorize any communications services facility provider to collocate or attach wireless facilities, including any antennae, micro wireless facility or small wireless facility, on a privately owned utility pole, a privately owned support structure, a private road or right-of-way, a private easement or other private property without the consent of the property owner.

(Reserved 78-390 – 78-391).

**DIVISION 2. – REGISTRATION AND FEES.**

**Sec. 78-392. - Registration.**

- (a) *Registration required.* Each communications services facility provider that desires to place, erect, construct, install, locate, maintain, repair, extend, expand, remove, or relocate any communications services facilities in, under, over or across any public right-of-way in the city shall be considered to be using the public rights-of-way and shall be required to register with the city in accordance with the terms of this section. Registration does not establish a right to place or maintain, or priority for the placement of, a communications facility in the rights-of-way.
- (b) *Registration information.* Any communications services facilities provider desiring to use the public right-of-way shall file a registration with the engineering services department on city-approved forms, and which shall include all of the following information:
  - (1) Identity of the registrant and name, address and telephone number of registrant's primary contact person in connection with the registration;
  - (2) Acknowledgment that the registrant has received and reviewed a copy of this article;
  - (3) A copy of federal and/or state certification authorizing the registrant to provide communications services;
  - (4) If the registrant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or by other means.
  - (5) Whether the registrant pays communication services taxes to the city pursuant to F. S. chapter 202;
  - (6) Whether the registrant is a pass-through provider.
- (c) *Changes.* Within 30 days of any change in the information required to be submitted pursuant to this section, the registrant shall provide updated information to the city.
- (d) *Renewal.* Registration shall be effective for two years. A registrant shall renew its registration with the city every other year between January 1 and March 31. Registration renewals shall include: (i) updates to registration information; (ii) an inventory of the registrant's newly installed facilities or abandoned facilities since the prior registration or registration renewal. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until compliance with the registration requirements of this article.
- (e) A registration shall not convey title, equitable or legal, in the public rights-of-way. Registrants may only occupy the public rights-of-way for communications facilities. Registration does not excuse a communications service provider from obtaining appropriate access or pole attachment consents before locating its facilities on another person's facilities. Registration does not excuse a telecommunications service provider from complying with all applicable city ordinances, including this article.
- (f) Registration with the city shall be nonexclusive. Registration does not establish any priority for the use of the public rights-of-way by a registrant or any other registrants. Registrations are expressly subject to any future amendment to or restatement of this

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article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted during the term of the registration.

### **Sec. 78-393. - Transfer of control; sale or assignment.**

- (a) If the registrant transfers or assigns its registration incident to a sale or other transfer of the registrant's assets, the transferee 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 30 days following the effective closing date of the transfer, sale or assignment. In order for the transfer of the registration to be effective, the transferee or assignee must submit the registration information and comply with the registration requirements under section 78-392.
- (b) Notwithstanding anything in this article, pledges in trust or mortgages or other hypothecations of the assets of the registrant to secure the construction, operation or repair of its communications services facilities may be made to any person without notice to the city. Any mortgage, pledge, lease or other encumbrance of the communications services facilities shall be subject and subordinate to the rights of the city by virtue of this article or other applicable law.

### **Sec. 78-394. - Termination of registration.**

- (a) The involuntary termination of a registration may only be accomplished by an action of the city commission. The city may declare the registration terminated and revoke and cancel all privileges granted under that registration if:
  - (1) A federal or state authority suspends, denies, or revokes a registrant's certification to provide communications service; or
  - (2) The registrant is adjudicated bankrupt by a United States District Court or through any legal proceeding of any kind, or a receiver is appointed to take possession of the assets of the registrant; or
  - (3) Misrepresentation or fraud by registrant in a registration application to the city;
  - (4) The registrant abandons all of its facilities; or
  - (5) Failure to cure a violation of this chapter after notice and expiration of the cure period;
  - (5) Failure to relocate or remove facilities as may be lawfully required by the city;
  - (6) Failure to restore the public right-of-way after working therein or creating a public safety hazard; or
- (b) *Notice and cure period.* Prior to termination by the city resulting from a violation of any of the provisions of this section, the registrant shall be notified by the city with a written notice setting forth all matters pertinent to such violation. The registrant shall have 60 days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the city, to accomplish the cure of a violation. In the event of an emergency, the city may take appropriate action in accordance with subsection 78-386 of this article.
- (c) *Removal of facilities.* In the event of a vote by the city commission to terminate, the registrant shall, within 90 days following such termination, remove its facilities and take

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such steps as are necessary to render every portion of the facilities remaining within the public right-of-way of the city safe.

- (d) If the registrant has abandoned its facilities or fails to timely remove its facilities, the city may either:
  - (1) Require that some or all of the facilities be removed and the public right-of-way restored to its proper condition at the registrant's expense, utilizing city employees or contractors, and charge any and all costs, and require reimbursement from the registrant or its bonding company or surety; or
  - (2) Require the registrant's bonding company to remove some or all of the facilities from the public right-of-way and restore the public right-of-way to its proper condition;
- (e) In the event of an emergency or public safety hazard, the city the city may take appropriate action and may restore the public right-of-way utilizing city employees or contractors, and charge any and all costs, and require reimbursement from the registrant or its bonding company or surety.
- (f) *Reimbursement of city costs.* If the city elects to restore the public right-of-way, the city may charge any and all such costs to the registrant, and the registrant shall be required to reimburse the city within 30 calendar days after the submission of the bill by the city to registrant. If the city incurred costs as described in this section, the registrant shall be required to reimburse the city for any and all such costs before the any termination of registration can be lifted. The mayor shall have the discretion to waive this requirement.
- (g) In the event of a termination of registration, this provision does not permit the city to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification with the governing federal and state telecommunications agencies and is properly registered with the city for such certificated service under this article.

### **Sec. 78-395. – Fees and charges.**

- (a) *Permit fees.*
  - (1) Fees for communication placement permits shall not exceed the reasonable cost of the regulatory activity of the city and shall be the maximum amount allowed by law. Such fees shall be established by resolution of the city commission.
  - (2) No communication placement permit fees shall be charged to communication services providers that remit taxes to the city imposed pursuant to chapter 202; or to any communications company which provides communications services as defined in F.S. § 203.012(3), for any services provided by such communications company.
  - (3) Communication placement permit fees shall be payable from all other users or occupants of the city's rights-of-way for communication services.
- (b) *Pass-through provider.* A registrant that does not directly serve a communications services customer at retail within the jurisdictional limits of the city at the time the entity makes physical use of the public rights-of-way shall pay to the city, annually, a fee of no less than \$500.00 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the public rights-of-way, or the maximum allowed by law.
- (c) *Collocation fees.* The rate to collocate small wireless facilities on city utility poles shall be \$150 per pole, or the maximum allowed by law, payable annually.

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- (e) *Lease payments.* Lease agreements for the use of city land and buildings on property outside the public rights-of-way will be established by separate instrument in accordance with the parameters set forth in F.S. §337.401(7).
- (f) Notwithstanding anything in this article to the contrary, the city shall at all times hereby require the maximum compensation allowed under applicable law.
- (g) *No fees.* No fees shall be charged by the city under this article for:
  - (1) Routine maintenance of small wireless facilities;
  - (2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size;
  - (3) Installation, placement, maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles by a registrant that remits taxes under F.S. chapter 202.

### **Sec. 78-396. Pass Through Providers.**

- (a) Pursuant to F.S. § 337.401(6), a registrant who is a pass through provider and makes physical use of the public rights-of-way but is not remitting taxes to the city imposed pursuant to chapter 202, shall pay to the city annually no less than \$500.00 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the public rights-of-way. The city may adopt additional fees as allowed by law.
- (b) Notwithstanding anything in this article to the contrary, the city shall at all times hereby require the maximum compensation allowed under applicable law.

(Reserved. 78-397-78-398).

## **DIVISION 3. – PERMITS.**

### **Sec. 78-399. – Permits required.**

- (a) No communications services facilities provider shall construct or install any facility over, under or within any public right-of-way without first: 1) being registered with the city in accordance with sec. 78-392, 2) obtaining from the city a communications placement permit in accordance with this division; 3) obtaining from the city a permit for the temporary obstruction of city public right of way in accordance with sec. 78-431 and 78-432; 4) obtaining from the city any required building permits for electrical or other work pursuant to applicable permitting requirements of the city, and other applicable code requirements, except as otherwise provided in this article; and 5) paying any and all required fees allowed by law.
- (b) If the registrant desires to use its existing facilities or to construct new facilities for the purpose of providing any services other than the provision of communications services, the registrant shall seek such additional and separate authorization from city for such activities as may be required by applicable law.
- (c) *Exceptions.* As provided in F.S. § 337.401(7), a communications facility right-of-way placement permit shall not be required for: (1) routine maintenance, (2) replacement of

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existing facilities with facilities that are substantially the same size or smaller, or (3) the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting communications services tax under F.S. chapter 202.

**Sec. 78-400. – Suspended micro wireless facilities.**

- (a) A registrant that installs or replaces micro wireless facilities that are suspended on cables strung between existing utility poles, shall not be required to obtain a communications facility right-of-way placement permit and shall provide the following information to the city within 15 days of installation of such facilities, or replacement of such facilities if the replacement facilities are significantly different or re-located, so that the city can identify the specific facilities in its rights-of-way and the owner of such facilities:
  - 1. Drawings or other documents showing the location of the micro wireless facilities;
  - the height of the facilities;
  - 3. the method of mounting such facilities;
  - 4. the specific location on the cables.
- (b) A registrant that installs or replaces micro wireless facilities that are suspended on cables strung between existing utility poles may be required to obtain a right-of-way use permit for work that involves closure of a vehicle land or sidewalk.

**Sec. 78-401. - Communications facilities placement permit application.**

- (a) *Permit application.* Any registered communications services facilities provider desiring to construct, install or replace a new or existing communications services facility within the city public right-of-way, except exempt micro wireless facilities that are suspended on cables strung between existing utility poles, shall apply for a communication facilities placement permit on city-approved forms, submitted to development services department customer service, and which shall include all of the following information:
  - (1) An engineering plan signed and sealed by a Florida registered professional engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in public rights-of-way. Such plans shall be 10 ft, 20 ft. or 40 ft. scale; not architectural scale;
  - (2) A description of the manner in which the facility will be installed (i.e. anticipated construction methods and/or techniques), identifying any deviation from the city's engineering standards. Plans shall show the limits of milling and resurfacing and sidewalk/paver restoration.
  - (3) For installation or replacement of facilities located underground, a survey that identifies existing underground communication and utility facilities, including water, sewer, storm water, electric, telephone, gas, etc., existing

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in the areas to which the permit application applies, and extending 50 feet beyond said areas within the city if available (such information may be provided without certification as to correctness, to the extent obtained from other persons with facilities in the public rights-of-way). Such survey must show valve box locations and water meter locations. Pot holes are required if proposed conduit is within ten feet of existing water, sewer or storm water facilities.

- (4) For installation or replacement of facilities located above ground, a survey that identifies all above-ground communication facilities and utilities currently existing in the areas to which the permit application applies, and extending 50 feet beyond said areas within the city if available (such information may be provided without certification as to correctness, to the extent obtained from other persons with facilities in the public rights-of-way). Information regarding existing utility poles shall include the pole height and base diameter;
  - (5) Describing the concealment methods to be used, including the type and colors of concealment methods, including foliage, as applicable;
  - (6) The estimated timetable for construction of the project or each phase thereof, and the areas of the city which will be affected;
  - (7) If replacement of a city utility pole is requested, indicate the city function to be replaced, the proposed type of lighting or replacement facility proposed, the electric metering proposed, and provide evidence of compliance with city standards; and any make ready estimate in accordance with sec. 78-411;
  - (8) If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way. Any road resurfacing constitutes an alteration which triggers the obligation to provide ADA compliant curb ramps;
  - (9) A statement that the registrant's proposed facilities will not cause radio frequency interference with the city's public safety communications equipment;
  - (10) Evidence of the insurance coverage required under sec. 78-406;
  - (11) An attestation from the communications facilities service provider that communications services facilities will be installed and operational on the proposed structure no later than nine months after the date the application is approved;
  - (12) Such additional information requested by the city that the city finds reasonably necessary to demonstrate compliance with applicable codes for the placement of the facilities in the locations identified in the permit application;
  - (13) Proof of mailing of notice to owners in accordance with subsection (b).
- (b) *Notice to owners.* The registrant shall mail written notice of the intended work in the public right-of-way to property owners within 250 feet who adjoin such rights-of-way, as well as provide notification to any affected home owners' association or neighborhood

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association (the “notification area”). Registrant shall provide proof of such mailing to the city with its permit application.

- (c) *Public information meeting.* If any person within the notification area, within 15 days of the date of mailing of the notice required under subsection (b), requests a public information meeting, the registrant shall conduct such meeting within 10 days of the request to discuss the concerns of such person. The registrant shall provide evidence of such public information meeting, if applicable, to the city within ten days of the meeting, or within 50 days of submittal of its permit application, whichever first occurs.

### **Sec. 78-402 - Application review timeframes.**

#### (a) *Small wireless facilities.*

- 1) An application is deemed submitted or resubmitted on the date the application is received by the engineering services department. The city shall notify the registrant via e-mail within 14 days after the date the application is initially submitted or additional information resubmitted, whether the application is completed in compliance with the city's requirements. An application is deemed complete if the city fails to provide notification of deficiency to the registrant within 14 days.
- 2) If the application is not completed in compliance with the city's requirements, within 14 days of receipt, the city shall so notify the registrant in writing via e-mail indicating with specificity any deficiencies which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the development services department shall notify the registrant, in writing, no later than 14 days after the additional information is submitted, of any remaining deficiencies that must be cured. If a specified deficiency is not properly cured when the registrant resubmits its application to comply with the notice of deficiencies, the city may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed.
- 3) The city shall grant or deny such application within 60 days or, as required by federal and state law. The city and registrant may mutually agree, in writing, to extend the application review period. If the review period is not extended, a complete application shall be deemed approved if the city fails to approve or deny the application within 60 days after receipt. The city shall notify the approval or denial by electronic mail. If the permit application is denied, the notification must specify the basis for the denial, including the specific code provisions on which the denial was based.

#### (b) *Small wireless facilities relocation request.*

- 1) Within 14 days after receipt of an application, the city may request the registrant via e-mail that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative utility pole or on a new utility pole to be installed within the right of way.

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- 2) The city and registrant shall negotiate the alternative location, including any design and spacing requirements for ground-based equipment for 30 days after the date of the request. At the conclusion of the negotiation period, the registrant shall either accept the proposed modification which will thereafter be approved by the city or reject the proposed modification in which event the city shall process the original application for a decision to be made within 90 days of original submission.
  - 3) The final decision regarding acceptance or rejection shall be made within 90 days of original submission and must be in writing provided by electronic mail. If an application is denied, the registrant may cure the deficiencies identified in the denial notice and re-submit its application within 30 days after notice of the denial is sent to the registrant.
  - 4) The city's review of the re-submitted application shall be limited to the deficiencies cited in the denial. The city shall approve or deny the revised application within 30 days after receipt or the application is deemed approved.
  - 5) A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.
- (c) *Consolidated application for small wireless facilities.* A registrant may file a consolidated application and receive a permit for the collocation of up to 30 small wireless facilities. The city may separately address collocations for which incomplete information has been received or which are denied.
- (d) *Section 6409 collocation.*
- 1) A collocation application entitled to expedited streamlined processing pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 and shall be deemed complete unless the city provides written notice to the registrant that the submission is incomplete (a "notice of incompleteness") within 30 calendar days of application submission (or within some other mutually agreed upon timeframe). Notice of incompleteness shall be in writing and shall identify specifically the deficiencies in the application which, if cured, would make the application complete. Upon notice of incompleteness, the timeline for a decision shall be tolled until the applicant re-submits to correct such deficiency.
  - 2) The city shall, within ten calendar days of re-submission, notify the applicant of continuing deficiencies or the application will be deemed complete. The timeline for a decision shall be likewise tolled during the additional re-submission deficiency period until the second resubmission.
  - 3) A complete application shall be approved or denied in writing, and shall be postmarked to the applicant by the 60th calendar day after the initial submission, excluding any tolling period.
- (e) *Other expedited collocations.*
- 1) Other collocation applications entitled to expedited streamlined process review pursuant to F.S. § 365.172(13) shall be deemed complete unless the city provides a written notice of incompleteness to the applicant within 30 calendar days of submission (or within some other mutually agreed upon timeframe). Notice of incompleteness shall identify specifically the deficiencies in the

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application which, if cured, would make the application complete. Upon notice of incompleteness, the timeline for a decision shall be tolled until the applicant re-submits to correct such deficiency.

- 2) The city shall, within ten days of re-submission, notify the applicant of continuing deficiencies or the application will be deemed complete. The timeline for a decision shall be likewise tolled during the additional re-submission deficiency period until the second resubmission.
  - 3) Such complete application shall be reviewed by the city's plans and plats review committee (PPRC) within 45 business days of submission, (or within some other mutually agreed upon timeframe) after the date the application is deemed complete.
- (f) *All other applications.*
- 1) Within 20 business days of receipt of an application for a communications facility in the right-of-way, the city shall determine if the application form has been completed and if all required items have been submitted.
  - 2) The city shall review and grant or deny each complete application within 90 business days from the date the application is determined to be complete. The timeline for a decision shall be tolled by a notice of incompleteness until resubmittal, and until the second resubmission.
- (g) If the city does not grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this section, the application shall be deemed automatically approved and the applicant may proceed with the next level of review or, if no additional levels of review, with submittal for a building permit.
- (h) The timeframes in this section may be waived if a waiver is voluntarily agreed to by the applicant and the city. A one-time waiver may be required by the city, without the applicant's consent, in the case of a declared local, state, or federal emergency which directly affects the permitting activities of the city, for the length of that emergency.

### **Sec. 78-403 - Approval Process.**

- (a) The approval of a communications placement permit is subject to administrative review as provided in this section and shall be governed by the following process:
- 1) The city shall review the complete application, and submitted documents for compliance with all requirements of this article, including the criteria contained in sec. 78-404. The city may, at its discretion, obtain additional third party technical assistance to review and assess the technical merits of the documents.
  - 2) If the city determines that the application meets all of the requirements of this article, the city shall approve the application package and the applicant may proceed to request a permit for work in the right-of way and/or a building permit, pursuant to sec. 78-410, 78-431 and 78-432.
  - 3) If the city determines the application and documentation fails to meet the intent and requirements of this article, the city may deny the application. All such denials shall be in writing and shall specify the deficiencies resulting in denial.

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4) Denial of a permit may be appealed in accordance with sec. 78-420.

**Sec. 78-404 – Review criteria.**

- (a) *Small wireless facilities.* An application for small wireless facilities may be denied if the proposed facility:
- (1) Materially interferes with the safe operation of traffic control equipment.
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, as may be amended or updated.
  - (5) Fails to comply with height limitations.
  - (5) Fails to comply with stealth design or concealment requirements.
  - (6) New utility poles fail to comply with requirements for style aesthetics and curb line placement. Replacement city utility poles fail to meet city standards, lighting type or meter requirements.
  - (7) Fails to comply with requirements for historic districts, if applicable
  - (8) Fails to comply with applicable codes.
  - (9) Exceeds the space available in the right-of-way due to existing facilities in the public rights-of-way or for city plans for public improvements which have been determined by the city to be in the public interest.
- (b) *Section 6409 collocation.* Applications for collocation entitled to streamlined processes pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 shall be approved provided they meet the requirements of this article and the following requirements, as applicable:
- (i) A collocation on an existing antenna-supporting structure within a public right of way shall not increase the overall height of the antenna-supporting structure, antenna and/or antenna array more than 10% or 10 feet, whichever is greater.
  - (ii) A collocation on a structure within a public right of way, protrude from the antenna-supporting structure more than 6 feet.
  - (iii) Any collocation on an existing antenna-supporting structure shall meet current building code requirements (including wind loading).
  - (iv) A collocation shall not add more than four additional equipment cabinets to be eligible as a collocation.
  - (v) A collocation shall not require excavation outside of the right-of-way.
  - (vi) A collocation shall not defeat any existing concealment elements of the antenna-supporting structure.

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(vii) Fails to comply with applicable stealth design or concealment requirements or historic district requirements imposed upon the original facility.

(c) *Other expedited collocations.* Applications entitled to the streamlined processes described in F.S. § 365.172(13) shall meet all the following requirements:

- i. The additional antenna array, transmission lines, and related ancillary equipment including the base station shall not exceed the number of same items previously approved for such support structure when originally approved, and the collocated facility is in complete conformance with the original conditions imposed on the support structure upon which it is being attached.
- ii. The proposed collocation shall not increase the overall height and width of the support structure to which the proposed infrastructure is to be attached.
- iii. The collocation shall not increase the ground space area for equipment enclosures and ancillary facilities.
- iv. The existing support structure shall comply with all applicable regulations.
- v. The proposed additional collocation and support structure shall comply with all federal, State and local safety requirements.
- vi. The proposed collocation and ancillary equipment shall not exceed the applicable structural capacity limits for the support structure, as evidenced by a sealed statement from a structural engineer licensed in the state of Florida.
- vii. Fails to comply with stealth design or concealment requirements or historic district requirements imposed upon the original facility.

(b) *Other wireless communication facilities.* Applications for other wireless communication facilities shall be evaluated based on the requirements of this article and the following criteria:

- 1. The placement of antennas on structures is encouraged and preferred over the installation of new poles. Where feasible, co-location of facilities and minimum number of antennas shall be evaluated to determine the proposed facility has been designed carefully.
- 2. Equipment shelters or cabinets shall be consistent with the general character of the neighborhood and historic character, if applicable.
- 3. Equipment shelters or cabinets shall be screened from the public view by using landscaping, or materials and colors consistent with the surrounding backdrop, or wrapping cabinets with site appropriate graphics.
- 4. Lighting. Lighting of these facilities is not allowed.
- 5. Fails to comply with stealth design or concealment requirements.

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6. New utility poles fail to comply with requirements for style aesthetics and curb line placement. Replacement city utility poles fail to meet city standards, lighting type or meter requirements.
- 7 Fails to comply with requirements for historic districts, if applicable.

**Sec. 78-405 – Communications placement permit.**

- (a) *Duration of permit.* All work authorized by a communications placement permit shall be completed within one year from issuance, unless extended in writing by the city.
- (b) *Effect of permit.*
  - a. A registrant that has obtained a communications facility right-of-way placement permit and is in compliance with this article, authorizes the registrant to undertake only the activities in the public right-of-way specified in the application and permit, and in accordance with this article, this code and applicable law, and any general conditions included in the permit. A permit does not authorize attachment to or use of existing poles or structures in the rights-of-way owned by third parties and the registrant must obtain all necessary approvals from the non-city owner of any pole or structure prior to any attachment or use. A permit does not create a property right in the right-of-way and does not grant authority to the registrant to interfere with other existing uses of the public right-of-way.
  - b. A registrant that has obtained a communications facility right-of-way placement permit and is in compliance with this article, shall be allowed to perform (i) emergency maintenance, (ii) routine maintenance, (iii) replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size, or (iv) installation, placement, maintenance or replacement of exempt micro wireless facilities that are suspended on cables strung between existing utility poles, within the public rights-of-way without first obtaining another communications facility right-of-way placement permit; however, a right-of way permit for obstruction or excavation of the public right of way may still be required pursuant to sec. 78-410 and 78-431. In the event of emergency maintenance, the registrant shall still be required to provide notice of such work as soon as is practicable after the emergency event. When work is performed on an emergency basis, the registrant must still apply for all applicable permits by the following business day in accordance with the city's permitting guidelines. In all instances, the registrant shall restore all damaged property and indemnify the city from any and all damages caused by the registrant's emergency work.
  - c. A registrant that has obtained a communications placement permit shall be responsible for any damage resulting from the issuance of the permit.
  - d. The approval of a communications placement permit for a small wireless facility does not authorize the provision of any voice, data or video communication services or the installation, placement, maintenance or operation of any communication facilities other than small wireless facilities in the right-of-way.
- (c) *Coordination.* Notwithstanding the issuance of a communications placement permit, a registrant may be required by the city to coordinate the placement or maintenance of facilities to be performed with other work, construction, installation or repairs that may be

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occurring or scheduled to occur within a reasonably near time frame in the subject public rights-of-way by city or a third party, and the registrant may be required to reasonably alter its placement or schedule as necessary so as to minimize disruptions and disturbances in the public rights-of-way.

- (d) *Cancellation.* A registrant may cancel a communications placement permit upon written notice to the director of engineering services stating that it will no longer maintain facilities in the public rights-of-way and will no longer need to pull permits to perform work in public rights-of-way.

### **Sec. 78-406. - Insurance; indemnification.**

- (a) *Required insurance.* A facility owner shall at all times maintain the following liability insurance coverage insuring the registrant and naming the city, its commissioners, officers, employees and agents, as additional insureds:
  - 1) worker's compensation and employer liability insurance to meet all requirements of state law; and
  - 2) comprehensive general liability insurance with respect to the construction, operation and maintenance of the communications services facilities, of not less than one million dollars combined single limit per occurrence and two million dollars in the aggregate.
- (b) All insurance policies shall be with insurers qualified to do business in the state.
- (c) A registrant may provide a portion of the insurance coverage required by subsection (a) of this section through excess or umbrella policies of insurance and where such policies are in a form acceptable to the city's risk manager.
- (d) *Certificates.* A registrant shall keep on file with the city its current certificates of insurance which evidences current insurance coverages. The certificates of insurance for the comprehensive general liability insurance shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days' prior written notice thereof has been given to the city. A registrant shall not cancel any required insurance policy without submission of proof that the registrant has obtained alternative insurance satisfactory to the city which complies with this article.
- (e) In the event of a potential claim such that the city claims insurance coverage, the facility owner shall immediately respond to all reasonable requests by the city for information with respect to the scope of the insurance coverage.
- (f) A registrant shall, at its sole cost and expense, release, indemnify, hold harmless, and defend the city, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, sustained by the city, in connection with each such claim, suit, cause of action or proceeding, including, but not limited to, reasonable attorney's fees, arising out of the construction, maintenance or operation of its communications system or facilities in the public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article; provided, however, that a facility owner's obligation under this subsection shall not extend to any claims caused by the negligence or willful acts of the city. This indemnity shall survive and continue in full force and effect as to the registrant's responsibility to

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indemnify. 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. Nothing contained in this provision shall be construed or interpreted (i) as denying to either party any remedy or defense available to such party under the laws of the state and (ii) as a waiver of sovereign immunity beyond the waiver or limitations provided in F.S. § 768.28.

### **Sec. 78-407. - Construction bond.**

- (a) Except in the case of an emergency, prior to performing any work in the public rights-of-way, a registrant may be required to establish in the city's favor a construction bond, or other form of surety acceptable to city, in an amount equal to at least one hundred percent of the estimated cost of the work within the public right-of-way to ensure the registrant's completion of the construction and restoration of the public right-of-way, in accordance with applicable sections of this code. The amount of the construction bond may be modified in the city administrator's reasonable discretion, based on the estimated cost of the restoration of the public right-of-way, and any previous history of the registrant concerning restoration within the public rights-of-way of the city. The city administrator, in his discretion, may request a certified estimate of the cost of restoration by a state registered professional civil engineer or certified by a person who is exempt from such requirements as provided in F.S. § 471.003. The construction bond shall be valid for twelve months from completion of the work in the right-of-way.
- (b) If a registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permits, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal of any property of the registrant, or the cost of completing the restoration of the right-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.
- (c) Twelve months after completion of the construction and restoration of the right-of-way, and satisfaction of all obligations in accordance with the bond, the city shall release the bond. Notwithstanding, the city may require a new bond for any subsequent work performed in the public right-of-way.
- (d) The construction bond shall be issued by a surety acceptable to the city.
- (e) The construction bond shall include a provision which provides that: "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (f) The city rights with respect to the construction bond are in addition to all other rights and remedies the city may have under this article, or at law or equity. No action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.

**Sec. 78-408. - Force majeure.**

If 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 thereof; provided, however, that such owner uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article, causes or events not within a facility owner's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, terrorists, 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, a 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. 78-409 - Modification of wireless communication facilities.**

- (a) *Small wireless facilities.* The following modifications to small wireless facilities shall be allowed without an application for a modification to the existing communications placement permit:
- (1) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size;
  - (2) Installation, placement, maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles by a registrant that remits taxes under F.S. chapter 202.
- (b) *Other conforming facilities.* Other conforming existing wireless communication facilities, or conforming portions of such facility, that are not small wireless facilities, may be modified, improved, or altered, collocated, removed or replaced, with applicable building permits, provided: (i) the facilities will continue to meet the requirements of this article and the communications placement permit; (ii) the modification is not a substantial change or does not change the physical dimensions of such support structure or equipment beyond that allowed by this article and by law.; and (iii) no nonconformity is created.
- (c) *Non-conforming facilities.* Non-conforming existing wireless communication facilities, or conforming portions of such facility, that are not small wireless facilities may be modified, improved, or altered (without enlargement), with applicable building permits, provided no new nonconformity is created and/or an existing nonconformity is not increased.
- 1) If a new nonconformity would be created or an existing nonconformity increased, an application for modification of the communications placement permit must be submitted for review and approval.
  - 2) A collocation or addition of a new antenna with ancillary facilities will not be deemed to create a new or to increase an existing nonconformity, if they comply with all other applicable provisions of this article and the existing communication placement permits.

**Sec. 78-410. – Right-of-way use permit.**

(a) Any registered communications services facilities provider desiring to construct, install or replace a new or existing communications services facility within the city public right-of-way and such work will involve excavation, closure of a sidewalk, or closure of a vehicle lane, shall be required to obtain a permit for right-of-way use in accordance with article XV of this chapter of the code. The city may waive the permit requirement in cases where there will be no disruption of the public rights-of-way.

(b) All work in the city right-of-way shall be done in compliance with city standards and permit requirements, FDOT standard details, MUTCD, ADA and OSHA requirements.

(c) Permitted work shall not be complete until all inspections, tests and restorations are complete and approved by the city, any impacted other registrant or utility and any other regulatory agency with jurisdiction.

**DIVISION 3. – PLACEMENT IN RIGHTS-OF-WAY**

**Sec. 78-411. - Placement or maintenance of a communications services facility in public rights-of-way.**

(a) *Permits.* A registrant shall not commence to place or maintain a communications services facility in public rights-of-way until all applicable permits have been issued by the city or other appropriate authority.

(b) *Location.*

(1) Wireless facilities, except small wireless facilities, shall not be located in rights-of-way designated as primary pedestrian street arterial rights-of-way and shall be located in other rights-of way, whenever possible.

(2) *Location in residential areas.* Whenever wireless facilities must be placed in a right-of-way with residential uses on one or both sides, neither poles, equipment, antennas or other structures shall be placed directly in front of a residential structure. If a right-of-way has residential structures on only one side, the wireless facilities shall be located on the opposite side of the right-of-way whenever possible. All wireless facilities shall be located such that views from residential structures are not significantly impaired.

(3) *Location in arterial rights-of-way.* Excepting small wireless facilities, communications facilities shall be located in arterial rights-of-way whenever feasible. Placement of communications facilities in rights-of-way other than arterial rights-of-way shall be justified by an engineering analysis from the registrant to the satisfaction of the city engineer prior to the issuance of any permit.

(4) *Small wireless facilities; alternative location.* Within 14 days after the date of filing the application, the city may notify the registrant seeking to install small wireless facilities and request the proposed location of a small wireless facility be moved to another location and placed on an alternative utility pole or structure or a new pole in accordance with sec. 78-402.

(5) To the extent practical, conduits and poles should be located a minimum of 3 ft. from existing water, sewer and storm water facilities and 5 ft. from tree pits.

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(c) *Collocation.*

- (1) Applications for collocation entitled to streamlined processes pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 shall be approved provided the collocation on an existing antenna-supporting structure within a public right-of-way shall not increase the overall height of the structure more than ten percent or ten feet, whichever is greater. A collocation shall not, for towers within a public right of way, protrude from the antenna-supporting structure more than 6 feet.
- (3) Excepting small wireless facilities or as otherwise provided by law, collocation of equipment shall not increase the overall height and width of the pole to which the proposed equipment is to be attached, except where expressly permitted by and in accordance with 47 USC Section 1455(a) and in conformity with applicable health and safety regulations collocation shall not increase the ground space area currently occupied by wireless telecommunication facilities.
- (4) Non-concealed attachments shall only be allowed on electrical transmission poles and existing light poles subject to approval by the utility company or owner of said tower or stanchions. The attachments must be contained within canisters.
- (5) Excepting small wireless facilities, a registrant must first seek to place its wireless facilities by collocation on existing utility poles.
- (6) The city shall not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.
- (7) To the extent not inconsistent with law or public service commission regulations, the city may require the collocation of facilities in existing conduit. In making such requests, the city shall take into consideration the following factors: the economic and technical feasibility of such requests; interference with the use of the public rights-of-way by the public.
- (8) *Make-ready.* If a small wireless facilities registrant desires to collocate on an existing city utility pole that does not support the communication services facilities, the registrant shall provide a make-ready estimate, at the registrant's expense, of the work necessary for such pole to support the small wireless facility. Registrant shall be required to perform such work at registrant's expense. Such pole must be metered separately for electric power to the communications equipment and any city streetlights or other facility. The city's engineering services division shall approve the work for compliance with this section and applicable codes. The pole and any installed support work shall be the property of the city. If the registrant requests a new pole, subsection (f) shall be applicable.

(e) *Stealth facility design or concealment.* Stealth facility design or concealment is required for wireless facilities located in a right-of-way to minimize the visual impact of wireless facilities.

(f) *New utility poles.*

- (1) *Style.* New utility poles must be comparable in style, material, color and configuration to existing or planned streetlight fixtures and any wireless facility equipment must be concealed within the pole structure. This does not require the new utility pole to include a streetlight, but requires it to be aesthetically comparable. If a new utility

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pole is to be installed in an historic district, a certificate of appropriateness is required pursuant to section 94-49.

- (2) *Location.* Poles shall be located so as to align with existing poles in the right-of-way and have equal setback distances with existing poles from the curblineline of the right-of-way.
- (3) *Request for pole replacement or new pole.* A registrant may request the replacement of an existing pole with a pole capable of accommodating the registrant's needs and also continuing to serve its original city function or the installation of a new city utility pole to support the collocation of small wireless facilities. The registrant's permit application shall include an attestation that the small wireless facilities will be collocated on the new utility pole and will be used by a wireless services provider to provide services within nine months after the date the application is approved. The replacement pole shall meet all of the requirements of this section and shall not exceed the height of the existing pole, plus ten feet. Additionally, if the replacement city utility pole will also function as a streetlight: (i) the pole and light fixture must meet city standards for structural integrity and lighting, (ii) must be a lighting type approved by the city's engineering services division (generally LED), and (iii) must be metered separately for electric power to the streetlight and the communications equipment. The registrant shall provide the city with a make-ready estimate, at the registrant's expense for the design, fabrication and installation of a utility pole that is substantially similar in color and composition. The city's engineering services division shall approve the replacement pole for compliance with applicable codes and this section. The registrant shall be responsible for installation of the replacement pole and all associated costs. The registrant shall be responsible for maintenance of such pole, with the city responsible for the cost of replacement or repair of the light fixture. The pole shall be the property of the city.

(g) *Height.*

- 1) Except as otherwise provided in this article, the height of new poles to be utilized for wireless facilities shall be compatible in height to other utility poles located in the same right-of-way or neighborhood within the city. Newly installed poles for wireless communications facilities should, to the extent practical, be located in areas with existing foliage or other aesthetic features in order to obscure the view of the pole.
- 2) Excepting small wireless facilities, the collocation on an existing antenna-supporting structure within a public right-of-way shall not increase the overall height of the structure more than ten percent or ten feet, whichever is greater.
- 3) Poles for small wireless facilities shall not exceed the height of existing poles or structures in the public rights-of-way within 500 feet of such proposed new wireless facility pole. If no existing poles are present in the public rights-of-way within 500 feet of such proposed new wireless facility, the new pole for the wireless facility shall not exceed a height of 50 feet. The height of the small wireless facility shall not exceed ten feet above the utility pole or structure upon which the small wireless facility is to be located.

(h) *Equipment Boxes.* Excepting small wireless facilities, the location of equipment boxes shall be subject to approval of the city's engineering services division to ensure the

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public safety and coordination with other utilities and facilities in the rights-of-way. In order to avoid the clustering of multiple items of ground equipment in a single area, a maximum of two ground equipment boxes may be grouped together in any single location. In addition, such locations must be spaced a minimum of 500 linear feet apart from each other, where feasible. Individual ground equipment boxes shall not exceed 28 cubic feet in-size. Equipment boxes shall be concealed to obscure the view of the equipment box by the use of foliage or other aesthetic features, such as wrapping. The use of foliage and vegetation around ground equipment is preferred. Equipment boxes may only be located on poles in those limited circumstances where the mayor determines that such location is the better option for the aesthetics and visual character of the area. No generators to support equipment boxes may be placed in the public right-of-way except temporarily, in case of emergency, and approved in advance by the city's engineering services division.

- (i) *Installation or placement.*
  - (1) To the extent not inconsistent with applicable law or public service commission regulations, the city may require the use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the collocation of facilities in existing conduit. In making such requests, the city shall take into consideration including the economic and technical feasibility of such requests and the inconvenience to the public and other users of rights-of-way. All directional bores shall be in accordance with the FDOT standard specification for road and bridge construction.
  - (2) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act, F.S. ch. 556, as amended.
- (j) *As-built.* If the facility location plans provided by registrant require revision based upon actual installation, the registrant shall provide a complete set of as-built plans, including, but not limited to, horizontal and typical vertical profiles, to the city within 60 days of completion of any installation or construction, so that the city has documents from registrant showing the exact location of its facilities and structures. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the city's geographical database, or other format acceptable to the city and in conformance with the city's engineering standards. The registrant shall provide such plans at no cost to the city. The city shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended, or other applicable law.
- (r) *Restoration.* A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition as existed before registrant performed work in the public right-of-way, in accordance with the city's engineering services standard details, subject to the city's satisfaction upon inspection. Registrant shall warrant its restoration for a period of twelve months after completion of such restoration and permit closures. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. If the registrant fails to make such restoration within ten calendar days after written notice by the city, or such other time as may be required by the city, the city may after written notice to the registrant, perform such restoration using

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city employees, agents or contractors, and charge all costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended, and require reimbursement within 30 days after the submission of the bill by the city to the registrant. At the sole discretion of the city, the city may seek to recover expenses, costs and loss from restoring the right-of-way, against the registrant's construction bond pursuant to section 78-407; however, registrant shall remain liable to the city for any such amounts not recovered through the construction bond.

- (t) *Underground facilities.*
  - (1) A registrant shall install its facilities underground in areas where communications service facilities are uniformly placed underground and except to the extent that the transmitting radio and/or antenna portion of any facility is not placed underground, to the extent that this obligation is not prohibited by federal law, state law or applicable state public service commission rules and regulations.
  - (2) To the extent not inconsistent with law or public service commission regulations, the city may require the collocation of facilities in existing conduit. In making such requests, the city shall take into consideration the following factors: the economic and technical feasibility of such requests; interference with the use of the public rights-of-way by the public.
  - (3) Every registrant that places or constructs communications service facilities underground shall maintain appropriate participation in the regional notification center for subsurface installations.
- (s) *Maintenance.* A registrant shall maintain its communications services facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (u) *Inspection.* The city shall have the right to make such inspections of communication services facilities placed or maintained in public rights-of-way as it finds reasonably necessary to ensure compliance with this article. Such inspections shall be non-intrusive as to the communications equipment and facilities. In the event the city determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide registrant no less than three days written notice setting forth the violation and requesting correction. Following the completion of construction of a communication services facility within a public right of way, the owner shall submit a report to the development services department certifying "as-built" compliance with the permitted structural and electrical parameters. The city shall conduct a post-construction inspection to verify the submitted report and confirm the constructed facility does not present a public safety hazard to vehicular and pedestrian traffic. Any fee for the post-construction inspection shall be as allowed by law and authorized by resolution of the city commission.
- (v) *Registrant's risk.* City makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications services facilities and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk.
- (h) All safety practices required by applicable law or accepted industry practices and standards shall be used during construction, maintenance, and repair of the communications services facilities. Registrant's work, while in progress, shall be properly

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protected at all times with suitable barricades, flags, lights, flares or other devices as are required by the FDOT Manual on Uniform Traffic Control Devices and/or any requirements of the city to protect all members of the public having occasion to use the portion of the streets involved or adjacent property.

### **Sec. 78-412. -Cooperation.**

Subject to applicable law, a registrant shall, on the request of any person or entity holding a permit issued by the city, temporarily support, protect, raise or lower its communications services facilities to permit the work authorized by the permit. The expense of such temporary support, protection, raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 calendar days advance written notice to arrange for such temporary relocation. If the city requests the temporary support, protection, raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary support, protection, raising or lowering of the facility.

### **Sec. 78-414. - Abandonment.**

- (a) Upon a registrant's abandonment of a communications services facility in the city public rights-of-way, the registrant shall notify the city of such abandonment within 90 calendar days. The city may direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the city makes one or more of the following determinations regarding the abandoned facilities:
  - (1) The facilities compromise safety for any public rights-of-way user or during construction or maintenance in public rights-of-way;
  - (2) The facilities prevent or will prevent another registrant from locating facilities in the area of public rights-of-way where the abandoned facility is located; or
  - (3) The facilities create a maintenance condition that is disruptive to the public rights-of-way's use.
- (b) In the event that the city does not direct the removal of the abandoned facilities, 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. Abandonment shall be deemed to include the failure of a wireless facility to be installed and operational by a wireless service provider within nine (9) months of its approval.
- (c) If the registrant fails to remove all or any portion of an abandoned communications services 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.

(Reserved. 78-415)

**DIVISION 4. – ENFORCEMENT.**

**Sec. 78-416. - Enforcement.**

- (a) Violations of this article shall be enforceable pursuant to any of the following:
- (1) Section 1-13;
  - (2) Chapter 26;
  - (3) Section 78-394;
  - (4) Section 78-417;
  - (5) Section 78-418;
  - (6) Section 78-419;
  - (7) F.S. ch. 162.

**Sec. 78-417. - Revocation of permit.**

- (a) *Permit revocation.* In addition to any other remedies available to the city under this article, failure of a registrant to comply with the regulations set forth in this article may result in the city instituting proceedings to revoke or suspend the communications placement permit for use of the city rights-of-way and require the removal of registrant's communications services facilities from the city's rights-of-way. Such failure shall include, but is not limited to:
- (1) Violation of permit conditions, including conditions set forth in this division or other applicable provisions of this code or regulations governing use of public rights-of-way;
  - (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
  - (3) Failure to relocate or remove facilities as may be lawfully required by the city; or
  - (4) Failure of the registrant, in connection with the subject permit, to:
    - i) Place barricades or signs around the work area;
    - ii) Take reasonable safety precautions to alert the public of work at the work site; or
    - iii) Repair, replace and restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature.
- (b) The city shall provide written notice of the permit revocation, which notice shall contain a description of the violation. Excepting violations of fraud, upon correction by the registrant of any violation that gave rise to a suspension or revocation of permit, the suspension or denial shall be lifted. The suspension or termination of a permit is subject to appeal in accordance with sec. 78-420.

**Sec. 78-418. – Right-of-way restoration and safety measures.**

In the event of failure of a registrant to take applicable or required safety measures or to restore the right-of-way, including any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, the city may perform the work utilizing city employees contractors, and charge any and all costs to the registrant, and the registrant shall be required to reimburse the city within 30 calendar days after the submission of the bill by the city to registrant. If the city incurred costs as described in this section, the registrant shall be required to reimburse the city for any and all such costs before the suspension or revocation can be lifted. The mayor shall have the discretion to waive this requirement.

**Sec. 78-419. – Remedies and enforcement.**

(a) *Fines.*

- (1) In any proceedings in a court of law or before a special magistrate, a registrant's failure to obtain a permit before commencing work, except in cases of an emergency, may result in imposition of penalties to be paid to the city in an amount of not less than \$500.00 per day or part thereof that the violation continues.
- (2) In any proceedings in a court of law or before a special magistrate, a registrant's failure to comply with the provisions of this article, or law applicable to users and/or occupants of the public rights-of-way, including but not limited to maintenance of traffic, restoration and safety requirements, may result in imposition of penalties to be paid by the registrant to the city in an amount of not less than \$500.00 per day or part thereof that the violation continues.

(b) *Judicial remedies.* In addition to any other remedies provided by this chapter or any other city ordinance, the city shall have judicial remedies available to it for violations of this chapter or any other lawful rule or regulation promulgated hereunder as enumerated below but not limited to:

- (1) The city may institute a civil action in a court of competent jurisdiction to establish liability and to recover damage for any costs incurred by it in conjunction with the abatement of any condition prohibited by the provisions of this chapter.
  - (2) The city may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with the terms of F.S. § 337.401 or § 120.69, this article or any rule or regulation promulgated hereunder, to enjoin and prohibit said violation or to compel the performance of actions which will result in compliance with the terms of this chapter.
- (c) These remedies are cumulative and the use of any appropriate remedy shall not constitute an election of other remedies by the city. The use of one remedy shall not preclude the use of any others. The city shall have all rights and remedies available under law or equity.

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**Sec. 78-420. – Appeal.**

(a) Appeal of any decision made administratively by city staff shall be addressed in writing to the city administrator within 20 calendar days of the denial. Such appeal shall be reviewed by city administration and a decision provided to the registrant in writing within 20 calendar days of receipt of the appeal.

(b) Appeal of any decision of the city administrator may be made to the city commission by filing a written notice of appeal to the city administrator, with a copy to the city clerk and city attorney, within ten days of the city administrator's written decision. Upon receipt of a written appeal, the matter shall be placed on the commission's agenda for consideration within 45 business days. Should the registrant not appear, the determination of the city administrator shall be final. The decision of the city commission shall be the final decision of the city.

(c) Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, all final written decisions of the city may be appealed to the circuit court in and for the county, or applicable federal or district court. Any appeal not timely filed shall be waived. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the city commission. The city may charge a reasonable fee for preparation of the record for purposes of making the appeal. No communication placement permit shall be issued by the city to such registrant until all appeal proceedings have been completed.

**SECTION 3:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4** Should any section or provision of this Ordinance or any portion, paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

**SECTION 5:** Authority is hereby granted to codify the text amendments set forth in Section 2 of this Ordinance.

**SECTION 6:** This Ordinance shall take effect November 19, 2018.

[SIGNATURES ON FOLLOWING PAGE]

FIRST READING THIS 4TH DAY OF JUNE, 2018.  
SECOND READING AND PASSAGE THIS 22ND DAY OF OCTOBER, 2018.



**ATTEST:**

X *Hazeline F. Carson*

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CITY CLERK  
Signed by: Hazeline F Carson

**CITY OF WEST PALM BEACH BY  
ITS CITY COMMISSION:**

X *Geraldine Muoio*

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PRESIDING OFFICER  
Signed by: Geraldine Muoio

**APPROVED AS TO FORM AND  
LEGALITY:**

10/22/2018

X *Nancy Urcheck*

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CITY ATTORNEY  
Signed by: Nancy DeSimone Urcheck