

## Telecommunications Update Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART A, ENTITLED, "GENERAL ORDINANCES" BY AMENDING CHAPTER 104, ENTITLED, "TELECOMMUNICATIONS," ARTICLE I, ENTITLED "COMMUNICATIONS RIGHTS OF WAY," BY AMENDING CHAPTER 104, TO BE CONSISTENT WITH STATE LAW, SECTION 337.401, FLORIDA STATUTES RELATING TO THE USE OF RIGHTS-OF-WAY FOR UTILITIES SUBJECT TO REGULATION; PERMITS; AND FEES; PROVIDING FOR REGULATIONS RELATING TO SMALL CELL COMMUNICATIONS CONSISTENT WITH STATE LAW; REQUIRING DESIGN AND APPROPRIATENESS REVIEW AND APPROVAL BY PLANNING STAFF; REMOVING REVIEW BY THE DESIGN REVIEW BOARD BY MODIFYING SECTION 118-71, ENTITLED, "POWERS AND DUTIES," AND SECTION 118-252, ENTITLED, "APPLICABILITY AND EXEMPTIONS"; AND CONTINUING HISTORIC PRESERVATION BOARD REVIEW UNDER THE CERTIFICATE OF APPROPRIATENESS CRITERIA FOUND AT SECTION 118-102, ENTITLED, "POWERS AND DUTIES," SECTION 118-251, ENTITLED "DESIGN REVIEW CRITERIA," AND SECTION 118-564, ENTITLED, "DECISIONS ON CERTIFICATES OF APPROPRIATENESS"; WHICH HISTORIC DISTRICT REVIEW IS CONSISTENT WITH STATE LAW; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the provision of telecommunications services to residents of and visitors to the City of Miami Beach ("City") is both an important amenity and often necessity of public and private life in the City; and

**WHEREAS**, the demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand; and

**WHEREAS**, in 2017, the Florida State Legislature modified Florida Statutes Section 337.401, entitled "Use of right-of-way for utilities subject to regulation; permit; fees;" and

**WHEREAS**, the state legislature has preempted municipal authority, to a great extent, as it relates to telecommunications use of rights-of-way, by, amongst other things: allowing communications services providers, pass through providers and wireless infrastructure providers to be permitted in municipal rights-of-way; limiting municipal review time for most wireless facility proposals to a 14 day application completeness review and a 60 day application compliance review; authorizing antennas located on utility poles to extend 10 feet higher than utility pole height authorized by a municipality (and the FCC's interpretation of the Communications Act may authorize further modification up to an additional 10 feet); and limiting the permitting and fees a municipality may charge (\$100);<sup>1</sup> and

**WHEREAS**, the state has precluded the City from negotiating and entering into franchise agreements, soliciting or requiring in-kind contributions, or obtaining certain other consideration as a condition of communications services providers' use of the public rights-of-way, all as more fully set out in Florida Statutes Section 202.24;<sup>2</sup> and

**WHEREAS**, state law has limited the City's zoning authority relating to distance requirements,<sup>3</sup> height,<sup>4</sup> and other design elements with respect to small wireless facilities occupying the rights-of-way, but has not precluded all zoning regulations by a City; and

**WHEREAS**, the City categorizes utility poles, the equipment enclosures, and other structures placed in the rights-of-way for telecommunications and other utility uses as "street furniture;"

**WHEREAS**, although the state legislature has limited the City's authority as to the placement of telecommunications equipment and poles (street furniture) in the public rights-of-way, the City needs to modify its code in order to comply with state law, ensure the demand for telecommunications services is satisfied, but, to also protect the health, safety and welfare of all who drive over, or walk over the City's public rights-of-way, to prevent possible tampering or other interference with City Police and Transportation equipment located on utility poles, and to avoid sidewalk obstructions, ADA compliance issues, visibility issues, etc. due to obstruction of the public rights-of-way by street furniture; and

**WHEREAS**, the City has design concerns, particularly for our Historic Districts, and the City is concerned about the placement of street furniture, particularly as to the height of poles in the rights of way, the size of the associated equipment, the color of the equipment, colocation ability of the telecommunications equipment; and

**WHEREAS**, the City has reviewed its ordinances and has concluded that they must be updated the provisions consistent with state law; and

**WHEREAS**, adoption of the following amendments to Chapter 104 are necessary to satisfy the above objectives.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.**

**SECTION 1.** City Code Chapter 104, "Telecommunications," Article I, "Communications Rights-of-Way," is hereby amended as follows:

## **ARTICLE I. COMMUNICATIONS RIGHTS-OF-WAY**

### **Sec. 104-1. Title.**

This Article shall be known and may be cited as the "City of Miami Beach Communications Rights-of-Way Ordinance."

### **Sec. 104-2. Intent and purpose.**

It is the intent of the City to promote the public health, safety and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the City; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including, but not limited to, Florida Statutes Section 337.401, 47 USC Section 1455(a), the policies and rules of the Federal Communications Commission (FCC), as they

amended from time to time, the City's home-rule authority, and in accordance with the provisions of the Communications Act of 1934, as amended, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by communications services providers, wireless infrastructure providers and pass-through providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City shall be governed by and shall comply with all applicable federal and state laws.

Persons seeking to place or maintain communications facilities on private property or property owned, leased or controlled by the City, including rights-of-way shall comply with the applicable provisions of Subpart B, Land Development Regulations, of the Code of the City of Miami Beach. Persons seeking to place or maintain communications facilities in the public rights-of-way also shall comply with the provisions of this Chapter.

Consistent with the requirements of Florida Statutes Section 337.401(3)(b), the City shall not discriminate and shall provide competitively neutral regulation for providers of communications services.<sup>5</sup> Despite the foregoing limitations, the City retains the authority to regulate and manage the City's rights-of-way during the exercise of the City's police powers.<sup>6</sup>

Florida Statutes Section 337.401(3)(a) precludes the City from requiring franchise agreements from providers of communications services as a condition of placing or maintaining communications facilities in the public right-of-way. Further, with the limited exception of certain Cable Television services, Florida Statutes Section 337.401(3)(f) precludes the City from requiring or soliciting "in kind" compensation from a provider of communications services which is in any way related to using City roads or rights of way.<sup>7</sup> Under Florida Statutes Section 337.401(7)(d), term "In kind" includes reserving fiber, conduit, or pole space for the City.

### **Sec. 104-3. Definitions.**

For purposes of this Article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

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*Abandonment* shall mean the permanent cessation of the use of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way. A utility pole installed by a wireless infrastructure provider shall be considered abandoned if a wireless service provider is not providing communications service through a small wireless facility collocated on such utility pole within nine (9) months after the application for the utility pole has been approved in accordance with Florida Statutes Section 337.401(7)(i). ~~It may also mean the discontinued use of obsolete technology in favor of new technology, which would require the removal of the discontinued, abandoned, technology.~~<sup>8</sup>

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Antenna shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.<sup>9</sup>

Applicable codes has its ordinary meaning; provided however that the definition of applicable codes set out in Section 104-6A(a)(1) shall apply to applications for small wireless facilities made pursuant to Section 104-6A.<sup>10</sup>

Applicant shall mean any person filing an application; provided however that the definition of applicant set out in Section 104-6A(a)(2) shall apply to applications for small wireless facilities made pursuant to Section 104-6A.

Application shall mean any request by a person for issuance of a registration, permit or other authorization from the City; provided however that the definition of application set out in Section 104-6A(a)(3) shall apply to requests for authorizations for small wireless facilities made pursuant to Section 104-6A.

Authority shall mean the county or City having jurisdiction and control of the rights-of way of any public road, in this case, the City of Miami Beach, Florida. The term does not include the Department of Transportation, which is excluded from the requirements of Florida Statutes Section 337.401(7).<sup>11</sup>

Authority utility pole shall mean a utility pole owned by the City in the right-of-way. The term does not include a utility pole owned by a City electric utility, or a utility pole used to support municipally owned or operated electric distribution facilities.<sup>12</sup>

*Arterial roadway shall mean any street or roadway that constitutes the highest degree of mobility at the highest speed, for long, uninterrupted travel, and constitutes the largest proportion of total travel as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Six Office, as amended.*

*City shall mean the City of Miami Beach, Florida.*

*Collector roadway shall mean any street or roadway that provides a mix of mobility and land access functions, linking major land uses to each other or to the arterial highway system as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Six Office, as amended.*

~~Collocation or collocate shall mean 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.<sup>13</sup> the situation in which a communications services provider or a pass-through provider uses an existing structure to locate a second or subsequent antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antenna.~~

*Communications facility shall mean a facility that may be used to provide communications services, as per Florida Statutes Section 337.401, as amended. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one communications facility.*<sup>14</sup> For avoidance of doubt, the utility poles, wireless support structures, wireline backhaul

facilities, cables and other structures and equipment explicitly excluded from the definition of “wireless facility” are, in fact, communications facilities which require either a permit or a specific exemption from permitting before they may be placed or maintained in the public rights-of-way.

~~Communications facility provider shall mean a person (other than a communications services provider operating one or more communications facilities located within the City) who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more communications service providers all or a portion of the tangible personal property used in a communications facility, including but not limited to, towers, poles, tower space, antennas, transmitters, and transmission line. Provisions of this Article that apply only to communications facility providers shall not apply to communications services providers even if the communication services provider also operates, licenses, leases, subleases, or sublets communications facilities.~~<sup>15</sup>

*Communications services* shall mean 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, as per Florida Statutes Section 202.11, as amended. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- ~~(1)(a)~~ Information services.
- ~~(2)(b)~~ Installation or maintenance of wiring or equipment on a customer’s premises.
- ~~(3)(c)~~ The sale or rental of tangible personal property.
- ~~(4)(d)~~ The sale of advertising, including, but not limited to, directory advertising.
- ~~(5)(e)~~ Bad check charges.
- ~~(6)(f)~~ Late payment charges.
- ~~(7)(g)~~ Billing and collection services.
- ~~(8)(h)~~ Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.<sup>16</sup>

*Communications services provider* shall mean a person who is a “provider of communications services,” as that term is used in Florida Statutes Section 337.401, as amended.

*Communications services tax* shall mean the local communications services tax authorized to be levied and collected by counties and municipalities, upon charges for communications services, pursuant to Florida Statutes Section 202.20, as amended.

*Existing Structure* shall mean a structure that exists at the time an application for permission to place antennas on the structure is filed with the City. The term includes any structure that can structurally support the attachment of antennas in compliance with applicable codes.<sup>17</sup>

*FCC* shall mean the Federal Communications Commission.

*Historic Property* shall mean any prehistoric or historic district, landmark, site, building, object or other real or personal property, of historical, architectural or archaeological value that has been

designated by the City or the State of Florida as a historic site, contributing structure or otherwise; provided however that no area or item shall be included within the definition of historic property if its designation was made outside of the time limitations of Florida Statutes Section 337.401(7)(k).

Make-ready work means a process by which existing attachments on a utility pole must be rearranged so that the utility pole can be made ready to accommodate new attachments, which may include replacing a pole with a repurposed structure.<sup>18</sup>

Micro wireless facility shall mean 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.<sup>19</sup>

*In public rights-of-way or in the public rights-of-way* shall mean in, on, over, under or across the public rights-of-way.

*Order*, as used in the definition of "wireless provider", shall mean:

- (a) — ~~The following orders and rules of the FCC issued in FCC Docket No. 94-102:
  - (i) — ~~Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 Code of Federal Regulations adopted by the FCC pursuant to such order.~~
  - (ii) — ~~Memorandum and Order No. FCC 97-402 adopted on December 23, 1998.~~
  - (iii) — ~~Order No. FCC DA 98-2323 adopted on November 13, 1998.~~
  - (iv) — ~~Order No. FCC 98-345 adopted December 31, 1998.~~~~
- (b) — ~~Orders and rules subsequently adopted by the FCC relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005 and Order Number FCC-2014-0011, adopted November 4, 2014.~~

Pass-through provider shall mean any person who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to Florida Statutes Section 202 and who does not remit taxes imposed by that municipality or county pursuant to Chapter 202, as per Florida Statutes Section 337.401, as amended.<sup>20</sup>

~~Pass-through provider shall include any person (other than a communications services provider) who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to Florida Statutes [Chapter] 202 and who does not remit taxes imposed by that municipality or county pursuant to Chapter 202 as per Florida Statutes § 337.401, as amended. A "pass-through provider" does not provide communications services to retail customers in the city. Provisions of this article shall not apply to communications services providers that provide the services identical or similar to those provided by pass-through providers.~~

*Permit* shall include, but not be limited to Miami Beach public right-of-way permits board or staff issued, and board or staff issued certificates of appropriateness.

*Person* shall include any individual, ~~children,~~ firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind,

successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the City to the extent the City acts as a communications services provider.

*Place or maintain or placement or maintenance or placing or maintaining* shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A person that owns, or exercises physical control over a communications facility in public rights-of-way, such as the physical control to install, remove, maintain or repair, is "placing or maintaining" that communications facility. Additionally, when a communications facility in the public rights-of-way uses FCC licensed spectrum to provide communications services, the FCC licensee [or, in the case of licenses subject to long term de facto spectrum leases, the lessee of the licensed spectrum] of the communications facility is "placing or maintaining" that communications facility.<sup>21</sup>

*Public rights-of-way* shall mean a public right-of-way, highway, street, bridge, tunnel or alley for which the City is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Public rights-of-way" shall not include private property or easements over private property. "Public rights-of-way" shall not include any real or personal City property except as described above and shall not include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

*Registrant* shall mean a communications services provider, wireless infrastructure provider or pass-through provider that has registered with the City in accordance with the provisions of Section 104-4 this Article and holds an effective registration.

*Registration* or *register* shall mean the process described in this Article whereby a communications services provider, wireless infrastructure provider or pass-through provider provides certain information to the City.

*Repurposed Structure* shall mean an Existing Structure owned by the City that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its existing purpose while also supporting the attachment of communication facilities or antennas through Stealth Design that is approximately in the same location as the Existing Structure and in such a manner that does not result in a net increase in the number of structures located within the public right-of-way, shall be installed as directed by the Public Works Director and does not interfere with pedestrian or vehicular access, is Americans with Disabilities Act, Florida Building Code, and Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, as same may be amended from time to time, compliant. By way of illustration only, where a light pole existing within the public right of way is removed and is replaced with a new light pole that is substantially similar to the old light pole but now supports the attachment or integration of communication facilities, the new light pole shall be considered a "repurposed structure." Unless stated otherwise, all references to "communications facilities" or "wireless facilities" shall also apply to repurposed structures. To "repurpose an existing structure" shall mean the act of renovating, reconfiguring, or replacing an Existing Structure as described above. The provider that later removes a repurposed structure shall reinstall a new light pole, utility pole or other applicable structure in the rights-of-way, at the direction of the City. During the life of the use of the repurposed structure (a) the City shall hold title to the repurposed structure, (b) the City shall pay all costs associated with the maintenance and operation of City facilities located on the repurposed structure, and (c) the communications services provider or wireless infrastructure

provider proposing the repurposed structure shall pay all costs associated with the maintenance and operation of its facilities located on the repurposed structure, including without limitation the cost of electric power for its facilities. A communications services provider or wireless infrastructure provider proposing to repurpose an Existing Structure owned by the City may propose to own and operate the repurposed structure and to pay all costs associated with the ownership and operation of the repurposed structure, including the costs associated with the City's equipment located on the repurposed structure and, if such a proposal is accepted by the City, title to the repurposed structure shall be conveyed to the communications services provider or wireless infrastructure provider; provided however no such conveyance shall convey any right title or interest in any portion of the public rights-of-way.

Small wireless facility shall mean a wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than six (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 six (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.<sup>22</sup>

Smart City technology shall mean the use of various types of electronic data collection sensors to supply information to manage City assets and resources efficiently. This includes data from citizens, devices and assets that is processed and analyzed to monitor and manage traffic and transportation systems, power plants, water supply networks, waste management, law enforcement, information systems, schools, libraries, hospitals, and other community services. "Smart City" technology integrates information and communication technology and various physical devices into a network (the internet of things) to optimize the efficiency of City operations and services and to connect to citizens.

Smart City initiative means the present and future plans of the City of Miami Beach to implement smart City technology through equipment installed in the rights-of-way.

Stealth design shall mean a method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure, or portion of a repurposed structure (ie: repurposed light pole, or repurposed light on a pole).

Tower shall mean any structure designed solely or primarily to support a communications services providers facility's antennas.<sup>23</sup>

Utility pole shall mean a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does



not include a pole or similar structure 15 feet in height or less unless The City grants a waiver for such pole. The term does not include a “wireless support structure,” such as a tower or monopole.<sup>24</sup>

Wireless facility shall mean a type of communications facility comprised of 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 back up 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.<sup>25</sup>

Wireless infrastructure provider shall mean a person 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.<sup>26</sup>

Wireless provider shall mean a wireless infrastructure provider or a wireless services provider.<sup>27</sup>

Wireless services means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.<sup>28</sup>

Wireless services provider means a person who provides wireless services.<sup>29</sup> A wireless services provider is a type of communications services provider.

Wireless support structure means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.<sup>30</sup>

~~Wireless communications facility shall mean equipment used to provide wireless service, as the phrase, wireless communications facility, is further defined and limited in Florida Statutes § 365.172, as amended. A wireless communications facility is a type of communications facility.~~

~~Wireless provider shall mean a person who provides wireless service and is either (a) subject to the provisions of the order or (b) elects to provide wireless 911 service or E911 service in Florida. A wireless provider is a type of communications services provider.~~

~~Wireless service shall mean “commercial mobile radio service” as provided under §§ 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312, as per Florida Statutes §365.172, as amended. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term~~

~~does not include communications services providers that offer mainly dispatch service in a more localized, non-cellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air to ground services; or public coast stations.~~

**Sec. 104-4. Registration for placing or maintaining communications facilities in public rights-of-way.**

Proof of a current valid registration under this Section 104-4 shall be included in any ~~administratively reviewed application or Design Review Board or Historic Preservation Board application, as required under Sections 104-6, 104-6A of the City Code or, 118-251, or Section 118-564, of the City's Land Development Regulations.~~<sup>31</sup>

(a) ~~A communications services provider, wireless infrastructure provider, or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the City shall first register with the City in accordance with this Article. This Chapter provides no right of access to the public rights-of-way for persons other than communications services providers or wireless infrastructure providers. Subject to the terms, conditions and limitations prescribed in this Article, a registrant may place or maintain a communications facility in public rights-of-way after registration, review and permitting, and as may be subject to the exemptions as set forth in Florida Statutes Section 337.401(7)(e).~~<sup>32</sup>

~~A communications services provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this article. This chapter provides no right of access to the public rights-of-way for (i) persons other than communications service providers or (ii) businesses other than providing communications services. Other uses of the public rights-of-way reasonably related to the provision of communications services may be allowed in the reasonable discretion of the city. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a communications facility in public rights-of-way.~~

(b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way.<sup>33</sup> Tangible personal property placed in the public rights-of-way pursuant to this Article shall retain its character as tangible personal property and shall not be regarded as real property, fixtures or mixed property. Registration under this Article governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. A registrant seeking to place or maintain facilities in the public rights-of-way for the purpose of providing services other than communications service must obtain all additional and separate authorizations from the City as may be required by applicable law. Registration does not excuse a registrant from obtaining appropriate access or pole attachment agreements before locating its facilities on the City's or another person's facilities. Registration does not excuse a registrant from complying with all applicable City ordinances, codes or regulations, including this Article.

(c) Each communications services provider, wireless infrastructure provider, or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the City shall file a single application for registration with the City which shall include the following information:<sup>34</sup>

- (1) Name of the ~~applicant~~ registrant;
- (2) Name, address and telephone number of the ~~applicant's~~ registrant's primary contact person in connection with the registration, and the person to contact in case of an emergency;
- (3) The type of communications services that the registrant provides or intends to provide within the City (if more than one, state all that apply), or, if none, indicate that the registrant is a wireless infrastructure provider or a pass-through provider, as the case may be, and whether the registrant currently remits or intends to remit the communications service tax authorized in Florida Statutes, Chapter 202.
- (4) Evidence of the insurance coverage required under this Article ~~or proof of self insured status adequate to defend and cover claims~~;
- (5) The limited guarantee required by Article 104-14, executed by all guarantors;
- (6) ~~An and~~ acknowledgment that registrant has received and reviewed a copy of this Article, which acknowledgment shall not be deemed an agreement;
- (7) Proof of authority to do business in the State of Florida, including the number of the corporate certification; and
- (8) The number of the ~~applicant's~~ registrant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission, or the FCC. ~~An applicant~~ registrant proposing to place or maintain a wireless facility operating on spectrum licensed by the FCC shall supply the file number of the FCC license authorizing such wireless service within ten days of a request from the City Manager or the City Manager's designee.

(d) Registration application fees: no registration application fees shall be imposed for registration under this Article.

(e) The City shall review the information submitted by the registrant. Such review shall be by the City Manager, or his or her designee. If the ~~applicant submits registration application~~ provides all information in accordance with subsection (c) above and is otherwise in compliance with the requirements of this Article, the registration shall be effective and the City shall notify the ~~applicant~~ registrant of the effectiveness of registration in writing. If the City determines that the application omits information required by subsection (c) above or that the application otherwise fails to comply with the requirements of this Article, the City shall notify the registrant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so reply to a registrant within 30 days after receipt of registration application from the registrant. Non-effectiveness of registration shall not preclude a registrant from filing subsequent applications for registration under the provisions of this Section. A registrant has 30 days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in Section 104-8 hereof. ~~The city shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Noneffectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has 30 days after receipt of a notice of noneffectiveness of registration to appeal the decision as provided in section 104-8 hereof.~~

(f) A registrant may cancel a registration upon written notice to the City stating that it will no longer place or maintain any communications facilities in public rights-of-way within the City and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

(g) Registration does not in and of itself establish a right to place or maintain or priority for the placement or maintenance of a communications facility in public rights-of-way within the City but shall establish for the registrant a right to apply for a permit.<sup>35</sup> To the extent that any person or registrant (a "third party beneficiary") leases or otherwise uses communications facilities which a different person or registrant (a "third party") places or maintains in the public rights-of-way, such third party beneficiary shall make no claim nor assert any right which will impede the lawful exercise of the City's rights vis-à-vis the third party or the third party's facilities, including the City's right to require removal of such third party's facilities from the public rights-of-way. This limitation on the rights of third party beneficiaries shall apply regardless of the effect on the third party beneficiary's ability to place or maintain its own communications facilities in the public rights-of-way. Registrations are expressly subject to any future amendment to or replacement of this Article and further subject to any additional City ordinances, as well as any state or federal laws that may be enacted from time to time.

(h) Registrant shall apply to renew its registration with the City each year, on or before October 1. Any such registration renewal application shall be governed by the requirements of Subsections (c) and (e), above. Within 30 days of any change in the information required to be submitted pursuant to subsection (c) hereof, a registrant shall provide updated information to the City. Failure to renew a registration may result in the City restricting the issuance of additional permits until the lapsed registrant has complied with the registration requirements of this Article.

~~Registrant shall renew its registration with the city, annually, by the anniversary of the date of initial registration. Each renewal shall include an inventory of the communications facilities, poles, towers, underground lines and equipment cabinets registrant installed in public rights-of-way in the city during the last term of the registration and an inventory of the wireless communications facilities, poles, towers, and equipment cabinets registrant abandoned in the public rights-of-way in the city during the last term of the registration. Within 30 days of any change in the information required to be submitted pursuant to subsection (c) hereof, a registrant shall provide updated information to the city. Failure to renew a registration may result in the city restricting the issuance of additional permits until the lapsed registrant has complied with the registration requirements of this article.~~

(i) In accordance with applicable City ordinances, codes or regulations, and subject to applicable statutory limitations, a permit is required of a registrant that desires to place, maintain or modify a communications facility in public rights-of-way.<sup>36</sup> An effective registration shall be a condition precedent obtaining approval of a permit. Notwithstanding an effective registration, all permitting requirements of the City shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

~~In accordance with applicable city ordinances, codes or regulations, a permit is required of a registrant that desires to place or maintain a communications facility, including, without limitation, a collocation, in public rights-of-way. An effective registration shall be a condition precedent to obtaining a historic preservation or design review board approval or a right-of-way permit. Notwithstanding an effective registration, all permitting requirements of the city shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.~~

(j) All applications filed pursuant to this Article, including without limitation applications for registration and applications for permits, shall be filed in the name of the real party in interest. Applications, amendments to applications, and responses to written inquiries from the City pertaining to applications shall all be in writing and shall be signed by the applicant. The signature of a person on an application, amendment or response to a City inquiry constitutes a certification to the effect that the person has read the document and that it is true, correct and complete to the best of the signator's knowledge after reasonable inquiry. If the City adopts a written or electronic form for an application, the application shall be submitted on that form and shall include all applicable information and exhibits required by that form. Failure to prosecute an application shall be cause for dismissal of that application, without further consideration. Batch-filed requests for permitting multiple communications facilities which are bundled into a single application are subject to dismissal if a registrant fails to prosecute any individual request for a communications facility included in the application. For avoidance of doubt, failure of an applicant to respond in a timely fashion to official correspondence or to any official request for additional information, will be cause for dismissal of its application for failure to prosecute.<sup>37</sup>

(k) In any matter pertaining to an application, neither the applicant, nor any person acting on behalf of the applicant, shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.<sup>38</sup>

#### **Sec. 104-5. ~~Notice of Transfer, sale, or assignment~~ notice of hypothecation of assets in public rights-of-way.**

(a) A registrant shall not transfer, sell or assign all or any portion of its assets located in public rights-of-way except to a person holding a valid registration issued pursuant to Section 104-4, hereof. A registrant placing or maintaining in the public rights-of-way a facility operating on spectrum licensed by the FCC shall deliver a copy of any filing with respect to the FCC license pursuant to 47 U.S.C. §310(d) to the City Manager, within 10 days of tendering the filing with the FCC. Written notice of the consummation of any such ~~proposed~~ transfer, sale or assignment of assets, along with assignee/transferee's signed and sworn certification of its compliance with the requirements of this Article, shall be provided by such registrant to the City within thirty (30) days after the effective closing date of the transfer, sale or assignment. If permit applications are pending in the name of the transferor/assignor, the transferee/assignee shall notify the City Manager that the transferee/assignee is the new registrant.

~~A registrant shall not transfer, sell or assign all or any portion of its assets located in public rights-of-way except to a person holding a valid registration issued pursuant to section 104-4,~~

~~hereof. Written notice of any such proposed transfer, sale, or assignment, along with assignee/transferee's signed and sworn certificate of its compliance with the requirements of this article, shall be provided by such registrant to the city at least five days prior to the effective date of the transfer, sale or assignment. If permit applications are pending in the name of the transferor/assignor, the transferee/assignee shall notify the city manager that the transferee/assignee is the new applicant. Violation of the requirements of this section 104-5 will subject the registrant to a fine of up to \$500.00 for each day the registrant fails to comply; provided however, city does not claim the right to approve or deny registrants' asset transfers or assignments to communications services providers operating at least one communications facility within the city, and the failure to comply with this section does not void any such asset transfer or assignment. The city reserves in right to exclude persons other than communications services providers from its right-of-way. Transfers or assignments of a communications facility to persons other than a communications services provider who will operate at least one communications facility within the city require compliance with this section in insure continued use of the public right-of-way.~~

(b) Subject to this article and applicable law, pledges in trust or mortgages of the registrant may be made to any person with notice to the City. No security interests, liens, pledges, hypothecations or encumbrances of any kind shall apply to public rights-of-way or City property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or upon an authority utility pole. Any mortgage, pledge, hypothecation, lease, lien or other encumbrance on a registrant's facilities placed or maintained in the public rights-of-way shall be subject and subordinate to the rights of the City under this Article and applicable law. In the event any security interests, liens, pledges, hypothecations or other encumbrances are created which violate the requirements of this subsection, the registrant shall discharge all such interests, liens and encumbrances at its expense within ten (10) days of receiving notice, or the City may discharge such interests, liens and encumbrances, and charge the costs plus reasonable attorney's fees to registrant.

(c) Violation of the requirements of this Section 104-5 will subject the registrant to a fine of up to \$500.00. Each day the registrant fails to comply shall constitute a separate violation. City does not claim the right to approve or deny registrants' asset transfers or assignments to communications services providers or wireless infrastructure providers authorized to place or maintain at least one communications facility within the public rights-of-way, and the failure to comply with this Section does not void any such asset transfer or assignment. The City reserves the right to exclude persons other than communications services providers and wireless infrastructure providers from its rights of way. Transfers or assignments of a communications facility to persons other than a communications services provider or a wireless infrastructure provider who will place or maintain at least one communications facility within the public rights-of-way require compliance with this Section to ensure continued use of the public rights-of-way.

**Sec. 104-6. Placement or maintenance of a communications facility in public rights-of-way.**

Unless included in Section 104-106A(a)(1), the provisions of this Section 104-106 do not apply to small wireless facilities.

(a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing, maintaining or modifying a communications facility in public rights-of-way, including, but not limited to, applicable provisions of Articles II and III of Chapter 98, and of Article V of Chapter 110 of this Code.

(b) Registrant shall not commence to place, maintain or modify a communications facility, including without limitation a ~~collocation~~, wireless facility, in public rights-of-way until all applicable permits, if any, have been issued by the City or other appropriate authority; provided, however, in the case of an emergency, a registrant may restore its damaged facilities in the right-of-way to their pre-emergency condition or replace its destroyed facilities in the rights-of-way with facilities of the same size, character and quality, all without first applying for or receiving a permit. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the repair or replacement of a communications facility in public rights-of-way in the event of an emergency, and shall be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in the public rights-of-way in connection with the emergency. Registrant acknowledges that as a condition of granting permits, the City may impose reasonable rules or regulations governing the placement or maintenance of a communications facility, including without limitation a wireless facility, in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The City may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits. The City may not require approval or require fees or other charges for (1) routine maintenance; (2) replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or (3) installation, placement maintenance or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under Florida Statutes Chapter 202; provided however that prior to engaging in any such activity, a registrant shall provide the City written notification (via email to the Director of the Public Works Department) of its intention to engage in specific permit-exempt activities including (x) a description of any equipment to be installed in or removed from the public rights-of-way and (y) the equipment's location in a format required for inclusion in the City's GIS database and (z) a demonstration that each proposed activity is exempt from the requirement of obtaining a permit; and provided further that the City shall require a right-of-way permit for any otherwise-permit-exempt activity that involves excavation, closure of a sidewalk or closure of a vehicle lane.<sup>39</sup>

~~Communication facilities providers and pass-through providers understand and acknowledge that the City's policies strongly favor strengthening utility infrastructure, in particular as it relates to flooding and hurricane related events. Subject to any applicable regulatory approval, the communication facility providers and pass-through providers will implement an infrastructure hardening plan for any facilities within the City's boundaries.~~

Occupation of the right-of-way by registrants is subject to City policies strongly favoring strengthening utility infrastructure, in particular as it relates to flooding and hurricane related events. Subject to any applicable regulatory approval and to the extent allowable under applicable law, registrants shall be required to periodically propose and implement an

infrastructure hardening plan for registrant's communications facilities within the City's rights of way.

(c) As part of any permit application to place a new, or to modify or replace an existing, wireless communications facility in public rights-of-way, the registrant shall provide the following:

~~As part of any permit application to place a new or replace an existing wireless communications facility in public rights-of-way, including, without limitation, a collocation, the registrant shall provide the following:~~

(1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of the facilities that will be located in public rights-of-way in compliance with the dimension requirements set out herein;<sup>40</sup>The location specified in the application must be the actual location where registrant intends to construct the proposed communications facility and shall not include contingent or alternative locations. Applications containing contingent or alternative locations will be dismissed and returned to registrant without further consideration.

(2) With respect to proposals to locate a new ~~tower~~ utility pole or wireless support structure facility or to replace an existing ~~tower~~ utility pole or wireless support structure facility in the right-of-way, engineering documentation demonstrating either: (i) how the proposed ~~tower~~ utility pole or wireless support structure ~~communications~~ facility can accommodate multiple collocations jointly-located wireless facilities;<sup>41</sup> (ii) why the City's interest in safe, aesthetic, efficient and effective management of the public rights-of-way is better served by the proposed ~~tower~~ utility pole or wireless support structure ~~communications~~ facility than by a communications facility that could accommodate multiple collocations jointly-located wireless facilities; (iii) why a repurposed structure is not better suited to or feasible for the site or (iv) why the proposed construction is exempt from the requirements of subsections (i)-(iii), above.

(3) A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);~~—~~ The City shall require a construction bond to cover the cost of the proper repair of the right-of-way due to any digging, dredging, paving, laying of cable or fiber-optics in the rights-of-way. All registrants shall comply with the City's Public Works Manual standards for repair of the sidewalks, or streets, and shall refrain from any activity causing a risk to pedestrians and vehicles due to improper repair. The City shall determine the amount of the bond and the City shall be named the beneficiary of the bond should the scope of the work covered by the bond not be properly completed. All work shall require either a construction bond or escrow agreement (for work after the fact) to cover the scope of work relating to restoration or replacement of the City's sidewalks, electrical connections, and paving. The specifics for the construction bond are located in Section 104.13, of this Article.<sup>42</sup>

(4) A maintenance of traffic plan for any disruption of the public rights-of-way.



(5) For purposes of assessing impact on right of way resources, effects on historic contributing structures or residential structures, and potential for including multiple wireless facilities or repurposed structures, information on the ability of the public rights-of-way to accommodate the proposed facility, including both information that identifies all above-ground structures (including light poles, power poles, equipment boxes and antennas), currently existing in the public rights-of-way in the City within a 50-foot radius of the proposed facility and information that identifies all below-ground structures currently existing in the public rights-of-way in the City within a 50-foot radius of the proposed facility, if available (such information may be provided without certification as to correctness, to the extent obtained from other registrants with facilities in the public rights-of-way); however, if the City administrative staff or Historic Preservation Board, as may be applicable, determines that it either: (1) better serves the City's interests in safe, aesthetic, efficient and effective management of the public rights-of-way; (2) is necessary to address a documented lack of capacity for one or more carriers; or (3) will help minimize the total number of communication facilities necessary to serve a particular area, then either or both of the 50-foot distance requirements may be modified. The registrant shall provide competent substantial evidence to reflect that the above conditions are met, in order to waive either of these distance requirements, and ensure compliance with all the other requirements of this Chapter. Please note, that applications for collocation of small wireless facilities under Section 104-106A are not subject to a mandatory distance separation, but, are subject to the site relocation procedures set out in Florida Statutes Section 337.401(7)(d)4.

~~For purposes of assessing impact on right-of-way resources, effects on neighboring properties and potential for collocations or repurposed structures, information on the ability of the public rights-of-way to accommodate the proposed facility, including information that identifies all above-ground and below-ground structures (including light poles, power poles, equipment boxes and antenna), currently existing in the public rights-of-way in the city within a 500-foot radius of the proposed facility, if available (such information may be provided without certification as to correctness, to the extent obtained from other registrants with facilities in the public rights-of-way); however, if the applicable board determines that it either: (i) better serves the city's interests in safe, aesthetic, efficient and effective management of the public rights-of-way; (ii) is necessary to address a documented lack of capacity for one or more carriers; or (iii) will help minimize the total number of communication facilities necessary to serve a particular area, then the 500-foot distance requirement may be modified. The applicant shall provide competent substantial evidence to reflect that the above conditions are met, in order to waive the 500-foot distance requirements, and ensure compliance with all the other requirements of this chapter;~~

(6) If appropriate given the communications facility proposed, an estimate of the cost of restoration to the public rights-of-way (Also see subsection (3), above).

(7) The timetable for construction of the facility project or each phase thereof, and the areas of the City which will be affected.

(8) Whether all or any portion of the proposed ~~facilities~~ communications facility will be rented, hired, leased, sublet or licensed from or to any ~~third-party~~ other person, and, if so, the identity and contact information of that third party.

(9) Prior to installation of any new or additional equipment in the rights-of-way at a specific site, the registrant shall be required to remove any and all ~~obsolete~~, unutilized or abandoned equipment. Any application to install new or additional equipment shall identify the abandoned, ~~obsolete~~ or unutilized equipment that shall be removed prior to the installation of any new or additional technology or equipment in the rights-of-way.

(10) If there exists a communications facility by the same registrant within the right-of-way that is adjacent to or within 15 feet of the proposed new communications facility location, the registrant shall be required to remove and consolidate the equipment into one facility, so as to not create a second location for street furniture within such a minimal distance.

~~If there exists a telecommunication facility by the same provider or pass-through provider within the right-of-way that is adjacent to or within 15 feet of the proposed new telecommunication facility location, the telecommunication provider or pass-through provider shall be required to remove and consolidate the equipment into one facility, so as to not create a second location for street furniture within such a minimal distance~~

(11) A certification that the communications facility complies with all OSHA requirements for radio frequency exposure of workers accessing the areas adjacent to the communications facility or, if power levels prevent registrant from making this certification, a plan, acceptable to the City, for turning off or reducing power to the communications facility when workers are present in the vicinity of the communications facility.

~~(12)~~(11) Such additional information as the City finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.

(d) To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way— and may consider, among other things and without limitation, the sufficiency of space to accommodate all of the present communications facilities and pending applications to place and maintain communications facilities in that area of the public rights-of-way, the sufficiency of space to accommodate City announced plans for public improvements or projects that the City determines are in the public interest (including without limitation any smart City initiatives), the impact on traffic and traffic safety, and the impact upon existing facilities in the rights-of-way. The City Manager or the Manager's designee may impose additional reasonable regulations and conditions on permits to ensure the public health, safety and welfare and peaceful enjoyment of City residents and businesses.

(e) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the City and the public, and with the rights

and ~~convenience~~ safety of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the ~~co-location~~ joint-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible. To the extent not prohibited by federal and state law, the City shall require any registrant that does not have communications facilities in the City as of the date of adoption of this Article to place any new cables, wires, fiber optics, splice boxes and similar communications facilities underground, unless such communications facilities can be collocated on existing poles. The City Manager may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this Article and other applicable law.

(f) All safety practices required by applicable law and all accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.

(g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the registrant in accordance with Florida Statutes Section 337.402, as it may be amended. For 12 months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Article at its own expense. This Section shall be adhered to in conjunction with subsection (c)(3), above.

(h) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of Florida Statutes Section 337.403 and 337.404, as they may be amended from time to time. Subject to the aforementioned Florida Statutes Section 337.403 and 337.404 and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground facilities pursuant to Article V of Chapter 110 of this Code, any registrant having communications facilities on poles that are to be removed shall arrange for the conversion to underground facilities on the same terms and conditions as the other utilities that are being converted to underground facilities; provided however this underground conversion requirement shall be waived pursuant to Florida Statutes Section 337.401(7)(i) to allow service from small wireless facilities, all of which are designed to operate with antennas above ground.<sup>43</sup>

(i) A permit from the City constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this Article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

(j) A registrant shall maintain its communications facilities in public rights-of-way in a manner consistent with accepted industry practice and applicable law.

(k) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the underground facility damage prevention and safety act set forth in Florida Statutes, Chapter 556, as it may be amended from time to time.

(l) Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas. Registrant shall be liable to the City for the acts of registrant's employees, agents, invitees and independent contractors in the public rights-of-way, including but not limited to any losses, damages, injuries or costs incurred by the City arising out of or related to their negligence, misfeasance, malfeasance or non-performance of any obligation of the registrant.

(m) Upon request of the City, and as notified by the City of the other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way, and registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.

(n) A registrant shall not place or maintain its communications facilities so as to interfere with, impede, obstruct, displace, degrade, damage or destroy any facilities of the City or of any person lawfully occupying the public rights-of-way, including without limitation sewers, gas mains, ~~or~~ water mains, fire hydrants, storm drains, pipes, cables or conduits, emergency communications equipment, public safety equipment and smart City technology within the public rights-of-way. By way of illustration and not limitation, a registrant's facilities shall neither obstruct line-of-sight of law enforcement monitoring or surveillance facilities in the public rights-of-way nor obstruct line of sight of emergency radio communications facilities in the public rights-or-way.

(o) The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's public rights-of-way, or of any authority utility pole, for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk. Nothing in this Article shall affect the City's authority to add, vacate, modify, abandon or otherwise dispose of public rights-of-way, and the City makes no warranties or representations regarding the availability of any added, vacated, modified or abandoned public rights-of-way for communications facilities.

(p) The City shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Article. Whenever practicable, such inspections shall be conducted by non-intrusive means.

(q) A permit application to place a new or to modify an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the City, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the City. Upon completion of any new or modified communications facilities, the registrant shall furnish to the City, at no cost to the City, one complete set of sealed "as built" plans, or in the case of any underground communications facilities, a sealed survey showing the exact location of such communications facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be), of communications facilities as the City Manager, or his or her designee, may approve. This requirement shall be in addition to, and not in lieu of, any filings the registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Florida

Statutes Chapter 556, as amended from time to time. The fact that such plans or survey is on file with the City shall in no way abrogate the duty of any person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the public rights-of-way. Any proprietary confidential business information obtained from a registrant in connection with a permit application or a permit shall be held confidential by the City to the extent provided in Florida Statutes Section 202.195, as amended from time to time.

(r) ~~(t)~~(5) Registrants are required to locate ~~wireless~~ communications facilities within rights-of-way in a manner that minimizes their impact in the City, including without limitation Miami Beach Historic Districts and areas on or adjacent to historic properties. Whenever a registrant applies for a permit to locate a ~~wireless~~ communications facility above ground in a right-of-way within a Miami Beach Historic District or within 50 feet of a historic property, a copy of the permit application shall be simultaneously served on the City of Miami Beach Historic Preservation staff, along with the required filing fee. In this connection, Historic Preservation review fees are fees of general applicability unrelated to placement of facilities in the public rights-of-way and may be charged pursuant to Florida Statutes Section 202.24(2)(c)6. ~~All other applications for permits to locate a wireless communications facility within the City shall be simultaneously served on the Design Review staff. Registrant must obtain the approval of the Design Review Board or the Historic Preservation Board (depending on the proposed facility's location and each board's respective jurisdiction)~~ Within a historic district or in areas on or adjacent to historic properties, registrant must obtain the approval of the Historic Preservation Board for the design and location of the ~~wireless~~ communications facility, in accordance with ~~their respective design review or~~ the board's appropriateness criteria. The City reserves the right to condition the grant of any permit to locate a ~~wireless~~ communications facility within the right-of-way upon the registrant taking such reasonable measures, consistent with the City's jurisdiction, as the City may determine are necessary to mitigate the impact of the ~~wireless~~ communications facility on a Miami Beach Historic District or historic property. Installation of a ~~pole or tower~~ communications facility under this Chapter shall not interfere with a clear pedestrian path, at a minimum the width required by the Americans with Disabilities Act and Florida Building Code.

(s) ~~(t)~~(4) Whenever ~~wireless~~ communications facilities must be placed in a right-of-way with residential uses on one or both sides, neither ~~towers~~ wireless support structures, utility poles, equipment, antennas nor 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 communications~~ facilities shall be located on the opposite side of the right-of-way, whenever possible. All ~~wireless~~ communications facilities shall be located such that views from residential structures are not unreasonably impaired. Newly installed utility poles and towers for wireless support structures for communications facilities should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the utility pole or wireless support structure. The requirements of this subparagraph shall not apply to repurposed structures when there is a one-to-one repurposing of an existing structure (ie: an existing light pole ).

(t) ~~(t)~~ The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, smart City technology and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant, and the City also reserves the right to reserve any portion of the public rights-of-way for its own present or future use pursuant to capital improvement plans. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public

rights-of-way within the limits of the City and within said limits as same may from time to time be altered.

(u) ~~(s)~~ A registrant shall promptly, at the request of any person holding a permit issued by the City, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation.

(v) ~~(t)~~ Subject to any applicable limitations set out in Section 104-6A, the following additional requirements apply when a registrant seeks authority to locate a wireless facility in the public rights-of-way:

(1) Registrants seeking to locate wireless facilities within the City are encouraged to locate on private property or government-owned property outside of the rights-of-way. An application for a permit to locate wireless communications facilities within the rights-of-way shall explain either why the registrant is unable to locate the proposed facilities on private property or government owned property or why the registrant is exempt from this requirement. The City may not deny an application based solely on the fact that the registrant is proposing to place a wireless telecommunications facility in the rights-of-way.

(2) Registrants seeking to place, (2) construct or modify a wireless facility in the right-of-way shall either:

a. ~~Collocate wireless communications~~ jointly locate proposed wireless facilities with the wireless facilities of other wireless providers, as set out in Florida Statutes Section 365.172, as amended, or

b. install their wireless facilities on existing structures within the right-of-way, including without limitation existing utility ~~power poles, light poles and telephone poles~~, in a stealth design-or

c. repurpose an existing structure. ~~With respect to proposals to locate a new tower or replace an existing tower or wireless communications facility in the right-of-way, engineering documentation demonstrating either: (i) how the proposed tower communications facility can accommodate multiple collocations; (ii) why the City's interest in safe, aesthetic, efficient and effective management of the public rights-of-way is better served by the proposed tower or wireless communications facility than by a communications facility that could accommodate multiple collocations; or (iii) why ether a repurposed structure is not would be better suited to or feasible for to the site. repurpose an existing structure.~~

(3) Registrants seeking to construct wireless facilities within the rights-of-way shall locate their wireless facilities in the rights-of-way of arterial or collector roadways, whenever possible. An application for a permit to place wireless facilities in rights-of-way other than those of arterial or collector

roadways shall either explain why the registrant is unable to locate the wireless facilities in the rights-of-way of an arterial or collector roadway (in which case the application shall include an engineering analysis from the registrant demonstrating to the satisfaction of the City engineer the need to locate the wireless facilities in the areas proposed in the application) or explain why the proposed wireless facilities are exempt from the requirements of this subsection.

~~(4) Registrants seeking to construct wireless communications facilities within the rights-of-way shall locate their wireless communication facilities in the rights-of-way of arterial or collector roadways, whenever possible. An application for a permit to place wireless communication facilities in rights-of-way other than those of arterial or collector roadways shall explain why the applicant is unable to locate the wireless communications facilities in the rights-of-way of an arterial or collector roadway and shall include an engineering analysis from the applicant demonstrating to the satisfaction of the city engineer the need to locate the wireless communication facilities in the areas proposed in the application.~~

~~(5) Registrants are required to locate wireless communications facilities within rights-of-way in a manner that minimizes their impact in the city, including without limitation Miami Beach Historic Districts. Whenever a registrant applies for a permit to locate a wireless communications facility in a right-of-way within a Miami Beach Historic District, a copy of the permit application shall be simultaneously served on the City of Miami Beach Historic Preservation staff. All other applications for permits to locate a wireless communications facility within the city shall be simultaneously served on the design review staff. Registrant must obtain the approval of the design review board or the historic preservation board (depending on the proposed facility's location and each board's respective jurisdiction) for the design and location of the wireless communications facility, in accordance with their respective design review or appropriateness criteria. The city reserves the right to condition the grant of any permit to locate a wireless communications facility within the right-of-way upon the registrant taking such reasonable measures, consistent with the city authority's jurisdiction, as the city may determine are necessary to mitigate the impact of the wireless communications facility on a Miami Beach Historic District. Installation of a pole or tower under this chapter shall not interfere with a clear pedestrian path, at a minimum the width required by the Americans with Disabilities Act and Florida Building Code.~~

(4) ~~(6)~~ Stealth design shall be utilized wherever possible in order to minimize the visual impact of wireless facilities and associated utility poles and wireless support structures. Each application for a permit to place a utility pole, wireless support structure or a wireless facility in the right-of-way shall include:

- a. photographs clearly showing the nature and location of the site where each wireless communications facility is proposed to be located,

b. photographs showing the location and condition of properties adjacent to the site of each proposed ~~wireless~~ communications facility, and

c. a description of the stealth design techniques proposed to minimize the visual impact of the ~~wireless~~ communications facility and shall include graphic depictions accurately representing the visual impact of the ~~wireless~~ communications facility when viewed from the street and from adjacent properties.

(5) ~~(7)(a)~~ Stealth design of communications facilities to be located on new ~~towers~~ utility poles or on ~~wireless communications facilities~~ support structures in the rights-of-way shall eliminate the need to locate any ground or elevated equipment (other than antennas) on the exterior of a ~~tower~~ utility pole or ~~wireless communications facility~~ support structure. Stealth design of communications facilities to be located on existing structures other than wireless support structures shall minimize the need to locate any ground equipment or elevated equipment (other than antennas) on the exterior of the structure. The use of foliage and vegetation around any approved ground equipment may be required by the City based on conditions of the specific area where the ground equipment is to be located and in accordance with Subpart B, Land Development Regulations, Chapter 126, Landscaping.

~~(b)~~ ~~(9)a.~~ Each application to locate equipment at ground level on or adjacent to the exterior of a utility pole or ~~tower~~ wireless support structure and each proposal to locate elevated equipment (other than antennas) on or adjacent to the exterior of a ~~tower~~ wireless support structure or utility pole shall include engineering documentation demonstrating to the satisfaction of the City engineer that the facility cannot employ stealth design. ~~and that the proposed exterior location and configuration of equipment proposes the minimum equipment necessary to achieve needed function.~~ In order to avoid the clustering of multiple items of approved ground equipment or elevated equipment in a single area, only one equipment box may be located in any single location.

~~(c)~~ ~~(9)b.~~ Where a registrant demonstrates that stealth design cannot be employed, the ~~individual~~ approved exterior equipment boxes shall not exceed ~~12~~ 28 cubic feet in aggregate volume.

(6) ~~(8)~~ Stealth design of communications facilities to be located on structures in the rights-of-way shall (a) top mount antennas within enclosures that do not extend the diameter of the supporting structure at the level of antenna attachment and (b) shall side mount antennas within enclosures that do not extend more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment. Under no circumstances shall antennas be mounted less than ~~eight (8)~~ fifteen (15) feet above ground level. ~~For purposes of calculating (a) and (b), above, the dimensions of the supporting structure do not include any platform, rack, mount or other hardware used to attach an antenna or antenna enclosure to the supporting structure.~~



~~(7) The following additional requirements shall apply to wireless facilities located in the rights-of-way:~~

~~a. Each application to locate equipment at ground level on or adjacent to the exterior of a utility pole or tower wireless support structure and each proposal to locate elevated equipment (other than antennas) on or adjacent to the exterior of a tower wireless support structure or utility pole shall include engineering documentation demonstrating to the satisfaction of the City engineer that the facility cannot employ stealth design and that the proposed exterior location and configuration of equipment proposes the minimum equipment necessary to achieve needed function. In order to avoid the clustering of multiple items of approved ground equipment or elevated equipment in a single area, only one equipment box may be located in any single location.~~

~~b. Where a registrant demonstrates that stealth design cannot be employed, the individual approved exterior equipment boxes shall not exceed 12 cubic feet in volume.~~

(7) ~~(9)(e)~~ Wireless facilities in the rights-of-way must be spaced a minimum of 500 linear feet of right-of-way apart from each other except that no distance requirement shall apply to repurposed structures. This subsection may be waived upon a factual showing, supported by sworn testimony or matters subject to official notice, demonstrating to the satisfaction of the City, as determined by staff for all areas outside of Local Historic Districts ~~the Design Review Board or the Historic Preservation Board for Local Historic Districts and historic properties designated prior to 4/1/2017~~, depending upon which has jurisdiction, that locating a specific wireless facility less than 500 feet from other wireless facilities either: (1) better serves the City's interests in safe, aesthetic, efficient and effective management of the public rights-of-way than application of the 500 feet limitation; (2) is necessary to address a documented lack of coverage or capacity for one or more carriers;<sup>44</sup> or (3) will help minimize the total number of wireless facilities necessary to serve a particular area.—See Subsection 104-6(c)(5).

(8) All construction of wireless facilities in the public rights-of-way, including associated towers, utility poles, repurposed structures and any other wireless support structures, shall meet the wind velocity standards for risk category III and IV buildings and structures set out in Section 1620 of the 2017 Florida Building Code, as amended. If construction of wireless facilities requires the replacement of City lighting located in the public rights-of-way, any replacement lighting shall employ City-approved light emitting diode lights. The size and height of new wireless support structures and utility poles in the rights-of-way shall be no greater than the maximum size and height of any other utility or light poles located in the same portion of the right-of-way within the City; provided however that registrants proposing wireless facilities with antennas to be located on existing poles or repurposed structures may increase the overall height of the antenna(s) plus the existing pole or the repurposed structure up to 10 feet, if necessary, to avoid adversely affecting existing pole attachments All poles in the City, other than certain polls in Lincoln Road Mall are under 40 feet. The overall height of

~~any antenna(s) plus any repurposed structure within Lincoln Road Mall shall not exceed 60 feet, to replace the existing 60 foot light poles within the center of the pedestrian mall.~~

~~The size and height of new wireless communications facility towers and poles in the rights-of-way shall be no greater than the maximum size and height of any other utility or light poles located in the same portion of the right-of-way within the city; provided however, that registrants proposing wireless communications facilities with antennas to be located on existing poles or repurposed structures may increase the height of the existing pole or repurposed structure up to six feet, if necessary, to avoid adversely affecting existing pole attachments; and provided further that the overall height above ground of any wireless communications facility shall not exceed 40 feet or exceed the existing height of an existing light pole in the city's right-of-way, whichever height is greater. Any repurposed structure within Lincoln Road Mall shall not exceed 60 feet, to replace the existing 60-foot light poles within the center of the pedestrian mall.~~

(9) ~~(9)(e)~~ Wireless facilities installed on utility poles or ~~towers~~ wireless support structures that are not light poles, and repurposed structures that were not originally light poles, shall not be lit unless lighting is required to comply with FAA requirements.

(10) ~~(9)(f)~~ Registrants shall not place advertising on utility poles, wireless support structures or wireless facilities installed in the rights-of-way, provided, however, that repurposed structures that lawfully supported advertising before being repurposed may continue to support advertising as otherwise permitted by law.

(11) ~~(10)~~ The City's action on proposals to place, construct or modify wireless communications facilities shall be subject to the standards and time frames<sup>45</sup> set out in this ordinance, as modified to comply with Florida Statutes Section 337.401;<sup>46</sup> Florida Statutes Section 365.172;<sup>47</sup> 47 USC Section 1455(a);<sup>48</sup> and the applicable rules and policies<sup>49</sup> issued by the FCC, as they may be amended or otherwise modified.

~~(u) — The obligations imposed by the requirements of subsections 104-6(t)(1) through 104-6(t)(9), above, upon registrants proposing to place or maintain wireless communications facilities in the public rights-of-way shall also apply to registrants proposing to place or maintain any other type of communications facility in public rights-of-ways, if that other type of communications facility involves placement of over-the-air radio transmission or reception equipment in the public rights-of-way.~~

~~(v) — Prior to the issuance of any permit pertaining to the placement and maintenance of communications facilities within the public rights-of-way, the City may require the registrant to issue notice of the work to property owners who adjoin such rights-of-way (the "notification area"), and based on the scope of the proposed work, the number of affected property owners and the potential severity of the impact to such property owners, may further require the registrant to hold a public information meeting for purposes of answering questions and taking comments from affected property owners. The notification area may be expanded at the City's discretion and notice shall be effected in a manner deemed appropriate by the City; provided, however, the notification area, as expanded, shall not exceed a radius of 375 feet from the site of the proposed communications facilities. Should a public information meeting be required, the registrant shall meet with City staff as soon as practical to review comments received at the public information meeting, and attempt to resolve all negative comments or issues raised.~~

~~(w) Pursuant to Florida Statutes Section 337.401(c)(1)(b) and other applicable provisions of law, and notwithstanding any other provisions of this Code, the City hereby elects not to charge permit fees to any registrant for permits to do work in the public rights-of-way.~~

**Sec. 104-6A. Collocation of a small wireless facility in public rights-of-way.**

In addition to the applicable provisions of this Article, the following requirements shall apply to proposals to collocate a small wireless facility in the public rights-of-way:

(a) As used in this Section 104-6A, the following additional defined terms have the meanings stated:

(1) “Applicable codes,” when used with respect to a small wireless facility, shall mean uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement the requirements of Florida Statutes Section 337.401(7) relating to the “Advanced Wireless Infrastructure Deployment Act.” The term includes objective design standards adopted by ordinance that may require a new utility pole that replaces an existing utility pole to be substantially similar in design, material and color, or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by the City 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 with 45 days after the date of the request.<sup>50</sup> For avoidance of doubt, all existing local codes and ordinances applicable to a communications facility located in the public rights-of-way are hereby re-adopted and confirmed as applying to any small wireless facility, to the full extent application of the existing local codes and ordinances to a small wireless facility is consistent with the provisions of the local codes and ordinances and is not prohibited by Florida Statutes Section 337.401(7). In this connection, applicable codes include, without limitation, the following provisions of this Article: Sections 104-3 through 104-5; Section 104-6 Subsections (a), (b), (c)(1) through (c)(4), (c)(5) [but only with respect to identifying all above-ground and below ground structures currently existing in the public rights of way], (c)(6) through (c)(12), (d) through (u), (v)(4) through (v)(6), and (v)(8) through (v)(11); and Sections 104-6A through 104-21.

(2) “Applicant” means a person who submits an application and is a wireless provider.<sup>51</sup>

(3) “Application” means a request submitted by an applicant to the City for a permit to collocate small wireless facilities.<sup>52</sup>

- (4) “Mutually-exclusive,” when used with respect to two (2) or more applications, means that the grant of one application will require dismissal or denial of the other application(s), when reviewed under the applicable codes.
- (b) An applicant is not required to provide more information to obtain a permit than is necessary to demonstrate compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.<sup>53</sup>
- (c) The City may not limit 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.<sup>54</sup>
- (d) The City may not limit the placement of small wireless facilities by minimum separation distances,<sup>55</sup> but may request that the proposed location of a small wireless facility be moved to another location pursuant to the procedures set out in Florida Statutes Section 337.401(7)(d)4.
- (e) The City shall limit the height of a small wireless facility to 10 feet above the utility pole or structure upon which the small wireless facility is to be collocated. Unless waived by the City, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right of way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet, the City shall limit the height of the utility pole to 50 feet.<sup>56</sup>
- (f) Except as provided in subparagraphs (d) and (e), above, the installation of a utility pole in the public rights-of-way designed to support a small wireless facility shall be subject to City rules or regulations governing the placement of utility poles in the public rights of way and shall be subject to the application review timeframes of Florida Statutes Section 337.401(7)<sup>57</sup>.
- (g) A wireless infrastructure provider may apply to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within nine (9) months after the date the application is approved.<sup>58</sup>
- (h) Registrants may be authorized to collocate small wireless facilities on City utility poles in the public rights-of-way pursuant to this Article upon terms and conditions consistent with the requirements of Florida Statutes Section 337.401(7). Make-ready work performed with respect to any such collocation shall conform to the following requirements:
- (1) For a City utility pole that supports an aerial facility used to provide communications services or electric service, registrant shall comply with the process for make-ready work under 47 U.S.C. Section 224 and implementing regulations. The City shall not be responsible for any make-ready work costs. The good-faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include a repurposed structure if necessary.<sup>59</sup>
  - (2) For a City utility pole that does not support an aerial facility used to provide communications services or electric service, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole

to support the requested collocation, including any necessary repurposed structure, within 60 days after receipt of a complete application. Make-ready work, including construction of any repurposed structure, must be completed by applicant within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the City may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including a repurposed structure, and perform the make-ready work.<sup>60</sup>

(3) The City may not require more make-ready work than is required to meet applicable codes and industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including the cost of any repurposed structure, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.<sup>61</sup>

(i) The City hereby reserves up to one third of the usable space on the City's utility poles for future public safety uses, including without limitation for future smart City initiatives; provided however, this reservation of space shall be implemented so as not preclude collocation of a small wireless facility. If replacement of a City utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.<sup>62</sup>

(j) Registrants collocating small wireless facilities on City utility poles shall be responsible for all costs of placing, maintaining and operating those small wireless facilities, including without limitation, costs of electrical power for those facilities. In this connection registrants are cautioned that unauthorized use of City facilities and resources, including without limitation electric power, is theft, a crime punishable under Florida Statutes Section 812.014 and that any such criminal activity will disqualify a registrant from placing or maintaining facilities in the public rights-of-way.

(k) Registrants are further cautioned that tampering with emergency or public safety communications equipment, or interfering with emergency or public safety communications, is a serious criminal offense that would disqualify a registrant from placing or maintaining facilities in the public rights of way.<sup>63</sup> Prior to a registrant [or its employees, agents or independent contractors] performing any work on a City utility pole supporting a governmental authority's emergency or public safety communications equipment, the registrant shall apply for and obtain a security clearance from the City's police department for each person performing the work on that City utility pole. Registrants shall keep accurate records identifying the date, time, location and identity of personnel accessing facilities collocated on any City utility pole. Registrants shall maintain the records to be kept pursuant to this subsection for a period of at least four years and shall make the records available to the City for inspection and copying promptly upon request.

(l) A structure granted a permit and installed pursuant to this Section 104-6A shall comply with Florida Statutes Chapter 333 and federal regulations pertaining to airport airspace protections.<sup>64</sup>

(m) The City shall act on each application in a manner consistent with the procedures and standards set out in Florida Statutes Section 337.401(7).

(n) A permit issued to an applicant shall expire in one year unless extended by the City.

(o) At no time shall a registrant hold unconstructed permits for more than ~~thirty (30)~~ small wireless facilities or for more than ~~thirty (30)~~ utility poles for the collocation of small wireless facilities. An application will not be accepted (or if inadvertently accepted will be dismissed) if grant of the proffered application, together with grant of all other pending applications of the applicant, would cause the applicant to exceed this limit on unconstructed permits.

(p) Applications shall be processed and granted (or dismissed or denied) on a first-come, first served basis. If mutually exclusive applications are filed with the City, the first-filed grantable application shall be granted and the remaining mutually exclusive application(s) shall be dismissed.

#### **Sec. 104-7. Stop Work Order and Suspension of permits.**

(a) The city manager may cause an immediate stop work order to be issued where any permitted or unpermitted construction or other work in the public rights-of- way poses a serious threat to the health, safety, or welfare of the public or City property until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies and prosecution as set forth in this Ordinance and applicable law. Any person who actively continues any work after having been served with a stop work order, except such work as that person is directed by the City to perform to remove a violation or unsafe condition, shall be subject to penalties as provided under the City Code.

(b) The City may suspend a permit for work in the public rights-of-way for one or more of the following reasons:

(1) Violation of permit conditions, including conditions set forth in the permit, this Article or other applicable City ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way;

(2) Misrepresentation or fraud by registrant in a registration or permit application to the City;

(3) Failure to properly renew or ineffectiveness of registration; or

(4) Failure to relocate or remove facilities as may be lawfully required by the City.

The City Manager shall provide notice and an opportunity to cure any violation of (b)(1) through (b)(4) above, each of which shall be reasonable under the circumstances.

#### **Sec. 104-8. Appeals.**

Any person aggrieved by any action or decision of the City Manager, or his or her designee, with regard to any aspect of registration under this Article may appeal to the special master

appointed pursuant to Article II of Chapter 30 of this Code by filing with the special master, within 30 days after receipt a written decision of the City Manager, or his or her designee, a notice of appeal, which shall set forth concisely the action or decision appealed from and the reasons or grounds for the appeal. No requests for extension of time for filing an appeal will be permitted. The only appeal that shall be considered are those appeals that allege that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Article. The special master shall set such appeal for hearing on the very next available date following such notice of appeal and cause notice thereof to be given to the appellant and the City Manager, or his or her designee shall present the case on behalf of the City. The special master shall hear and consider all facts material to the appeal and render a decision within 20 calendar days of the date of the hearing. The special master may affirm, reverse or modify the action or decision appealed from; provided, that the special master shall not take any action which conflicts with or nullifies any of the provisions of this Article. Any person aggrieved by any decision of the special master on an appeal shall be entitled to apply to the Circuit Court for a review thereof by Petition for Writ of Certiorari in accordance with the applicable court rules.

**Sec. 104-9. Involuntary termination of registration.**

(a) The City may terminate a registration if:

(1) A federal or state authority suspends, denies, revokes or otherwise fails to grant a registrant any certification or license required to provide communications services;

(2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;

(3) The registrant violates Florida Statutes Section 843.025, as amended;

(4) The registrant violates Florida Statutes Section 843.165, as amended;

(5) The registrant violates Title 18 United States Code Section 1362, as amended;

(6) The Registrant violates Florida Statutes Section 812.014; or

(7)(5) The abandonment by the registrant of all of its communications facilities in public rights-of-way and noncompliance with Section 104-16 hereof; or

(8) The registrant commits substantial and material violations of any provision of applicable codes, including without limitation this Article.

(b) Prior to termination, the registrant shall be notified by the City Manager, or his or her designee, with a written notice setting forth all matters pertinent to the proposed termination action, including which of (1) through (5) ~~(7)~~ above is applicable as the reason therefore, and describing the proposed action of the City with respect thereto. Except in the case of failure to remedy an extraordinary danger within the time required by the City pursuant to this Article,

The registrant shall have ~~60~~ 30 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City Manager to accomplish the same. If the plan is rejected, the City Manager shall provide written notice of such rejection to the registrant and shall make a recommendation to the Mayor and City Commission regarding a decision as to termination of registration. The City Manager, or his or her designee, shall provide notice to registrant of any resolution or other action to be taken up at any meeting of the Mayor and City Commission and registrant shall be granted the opportunity to be heard at such meeting. A decision by a City to terminate a registration may only be accomplished by an action of the Mayor and City Commission. A registrant shall be notified by written notice of any decision by the Mayor and City Commission to terminate its registration. Such written notice shall be sent within seven (7) days after the decision.

(c) In the event of termination, the former registrant shall: (1) notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or (2) provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way and restoration of the rights-of-way to their original condition. If a registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in Section 104-8 hereof, the registrant's communications facilities are deemed to be abandoned and the City may exercise any remedies or rights it has at law or in equity as well as the City's remedies under this Article, including but not limited to, utilizing or allowing other persons to utilize the registrant's facilities. The obligations of the registrant hereunder shall survive the termination of a registration. A registrant that has its registration terminated by the City under this Article may reapply for registration one (1) year after the termination date of the prior registration, unless otherwise stated in the order terminating its registration. In this connection the City's order terminating registration may ban a former registrant from reapplying for registration if its registration was terminated for dishonesty, criminality, gross incompetence or any similar reason which, in the context of an FCC licensing proceeding, would result in denial of an application on character grounds. requiring the registrant within 90 days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal.

(d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.

(e) In the event of termination of a registration, this Section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the City, if required.

#### **Sec. 104-10. Existing communications facilities in public rights-of-way.**

A person with an existing communications facility in the public rights-of-way of the City has 60 days from the effective date of this Article to comply with the terms of this Article, including, but not limited to, registration, or be in violation thereof; provided, however, that no new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way; and provided further that a communications services provider, wireless infrastructure



provider or pass-through provider that is otherwise lawfully occupying the public rights-of-way of the City shall not be required to obtain consent to continue its existing, lawful occupation of those public rights-of-way. Nothing in this Article 104-10 shall be interpreted to limit the power of the City to adopt or enforce reasonable rules and regulations pursuant to Florida Statutes Section 337.401.<sup>65</sup>

**Sec. 104-11. Insurance.**<sup>66</sup>

(a) A registrant shall provide, pay for and maintain satisfactory to the City the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the City. All liability policies shall provide that the City is an additional insured as to the activities under this Article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty days advance written notice by registered, certified or regular mail or facsimile as determined by the City must be given to the City of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City, as provided in subsection (d), below.

- (b) The limits of coverage of insurance required shall be not less than the following:
- (1) Worker's compensation and employer's liability insurance.  
Worker's compensation—Florida statutory requirements.
  - (2) Comprehensive general liability. Bodily injury and property damage: \$13,000,000.00 combined single limit each occurrence.
  - (3) Automobile liability. Bodily injury and property damage: \$34,000,000.00 combined single limit each accident.

(c) Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability, and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability, or employer's liability. The City shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.

(d) Self-insurance. Registrant may satisfy the insurance requirements and conditions of this Sec. 104-11 under a self-insurance plan and/or retention if acceptable to the City in its sole discretion based on the City's evaluation of the registrant's financial condition and its ability to comply with the City Code. Registrant agrees to notify the City, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The City reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity self-insure.

### **Sec. 104-12. Indemnification and Cooperation.**<sup>67</sup>

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its communications facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Article, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The City agrees to notify the registrant, in writing, within a reasonable time of 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, the registrant shall afford the City choice of counsel or, alternatively, pay for the City to engage counsel for defense, to the extent not inconsistent with applicable law. Nothing contained in this Section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (2) as consent by the City to be sued; or (3) as a waiver of sovereign immunity beyond the waiver provided in Florida Statutes Section 768.28, as it may be amended from time to time.

(b) Upon request of the city manager or his designee, a registrant shall cooperate with the City in any investigation of a claim or potential claim against the City or the registrant arising out of or related to registrant's activities in the public rights of way, including without limitation, registrant's placement or maintenance of a communications facility. A registrant shall supply information requested by the City in a prompt manner, within 48 hours if possible. Registrant's duty to cooperate with such a City investigation includes, if requested, providing the identity of any third party beneficiary of registrant's communications facilities located in the public rights-of-way and providing information on insurance coverage potentially available from each such third party beneficiary.

(c) The indemnification and cooperation requirements of this Section 104-12 shall survive and be in effect after the termination or cancellation of a registration.

### **Sec. 104-13. Construction and Performance Bonds.**<sup>68</sup>

(a) Construction Bond. Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, a City shall require a construction bond to secure proper performance under the requirements of any permits and the restoration of the public rights-of-way. Twelve months after the completion of the restoration in public rights-of-way in accordance with the bond, the registrant may eliminate the bond. However, the City may subsequently require a new bond for any subsequent work in the public rights-of-way. The construction bond shall be issued by a surety having a rating reasonably acceptable to the City; shall be subject to the approval of the City's risk manager; and shall provide that: "For ~~twelve (12)~~ months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until ~~sixty (60)~~ days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew." ~~Notwithstanding the foregoing, a~~

~~construction bond will not be required if the cost of restoration is less than the amount of the security fund filed by registrant under City Code Section 104-14.~~

(b) The rights reserved by the City with respect to any construction bond established pursuant to this Section are in addition to all other rights and remedies the City may have under this Article, or at law or equity.

(c) The rights reserved to the City under this Section are in addition to all other rights of the City, whether reserved in this Article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the City may have.

#### **~~Sec. 104-14. Security fund.~~<sup>69</sup>**

~~At the time of registration, the registrant shall be required to file with the City, for City approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$25,000.00, having as a surety a company qualified to do business in the State of Florida, and acceptable to the City Manager, or his or her designee, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of: (a) transfer, sale, assignment or removal of all communications facilities in public rights-of-way; or (b) 12 months after the termination or cancellation of any registration. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this Article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Article, subject to section 104-15 of this Article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the City may in its discretion not require a security fund or may accept a corporate guarantee of the registrant or its parent company.~~

#### **Sec. 104-14. Limited Guarantee**

At the time of registration, the registrant and registrant's parent entities shall be required to file with the City, a joint and several unconditional guaranty of payment and faithful performance of all of registrant's obligations under this Article and any permit issued hereunder; provided however the maximum amount of a parent entity's obligation under this guaranty shall not exceed Fifty Thousand Dollars \$50,000.00 with respect to any single default or other single failure to perform by registrant.<sup>70</sup> Continuation of this guarantee shall be a condition precedent to any renewal of the registration. As used herein, "parent entities" are entities holding direct or indirect control of a registrant as the term "control" is interpreted under 47 U.S.C. §310(d).

#### **Sec. 104-15. Enforcement remedies.**

(a) A registrant's failure to comply with provisions of this Article shall constitute a violation of this Article and shall subject the registrant to the code enforcement provisions and procedures as provided in Chapter 30 of this Code, including the provisions of Chapter 30 that allow the City to seek relief as otherwise provided by law.<sup>71</sup>

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

#### **Sec. 104-16. Abandonment of a communications facility.<sup>72</sup>**

(a) Registrants shall comply with the provisions of Subsections 104-6(c)(9) and (10), relating to abandoned equipment and the addition of equipment. Further, upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the City, in writing, within 90 days. This written notification shall (1) identify each item of abandoned equipment, (2) identify the location [or in the case of removed equipment, the former location] of each item of abandoned equipment in a format required for inclusion in the City's GIS database and (3) state with respect to each item of abandoned equipment, whether it has been removed from the public rights-of-way. The level of detail in the written notification shall be sufficient to enable the city to maintain an accurate GIS database with respect to the identity and location [or former location] of each item of equipment abandoned in or removed from the public rights-of-way. Additionally, registrants shall comply with the provisions of Subsection 104-4(h) relating to annual registration and updating of facilities. Note, a utility pole placed in the public rights-of-way by a wireless infrastructure provider will not be considered abandoned pursuant to this section (i) during the nine-month period following the approval of the request for a permit to locate the utility pole in the public rights-of-way or (ii) during any period a wireless services provider is using a small wireless facility collocated on the pole to provide wireless service.<sup>73</sup>

(b) The City shall direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the City determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility: (1) compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way; (2) prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or (3) creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of Subsection (b)(2), above, the City may require the ~~third~~ other person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

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

(d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the City within a reasonable time period, not to exceed ~~sixty (60)~~ days, 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 and utilize ~~the any bond~~ required pursuant to Section 104-13 and the guarantee required pursuant to Section 104-14, for this purpose.

#### **Sec. 104-17. Force majeure.<sup>74</sup>**

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

#### **Sec. 104-18. Reservation of rights and remedies.**

(a) The City reserves the right to amend this Article as it shall find necessary in the lawful exercise of its police powers.

(b) This Article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Article.

(c) The adoption of this Article is not intended to affect any rights or defenses of the City or a communications service provider under any existing franchise, license or other agreements with a communications services provider.

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

(e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

#### **Sec. 104-19. Establishment of the rate of the communications services tax.**

(a) For the fiscal year of the City commencing on October 1, 2001, and ending on September 30, 2002, the City hereby establishes the rate of the communications services tax as the base rate of 5.10 percent established by Florida Statutes Sections 202.19 and 202.20, plus 0.40 percent, as permitted by Section 13 of Chapter 2001-140 of the Laws of Florida, plus 0.12 percent, as permitted by Florida Statutes Section 337.401, for a total of 5.62 percent.

(b) On and after October 1, 2002, the City hereby establishes the rate of the communications services tax as the base rate of 5.10 percent established by Florida Statutes Section 202.20, plus 0.12 percent, as permitted by Florida Statutes Section 337.401, for a total of 5.22 percent.

(c) The City hereby instructs the Florida Department of Revenue to collect the communications services tax at the rates set forth in Subsections (a) and (b) of this Section.

**Sec. 104-20. Compensation for Use of Rights-of-way.<sup>75</sup> ~~Pass-Through Provider and Communications Facility Provider Fees and Charges.~~**

(a) A registrant that places or maintains communications facilities, utility poles or wireless support structures in the public rights-of-way that provides communications services, as defined in Florida Statutes Section 202.11, within the City shall comply with communications services tax regulations as required by state and other applicable law. If a registrant does not remit communications services taxes in accordance with Florida Statutes Section 202.11, then a registrant must remit fees to the City in accordance with subSections (b) and (c) below.

(b) A registrant that collocates a small wireless facility on an authority utility pole in the public rights-of-way shall remit \$150 per pole per year to the City. Agreements between the City and wireless providers that are in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The registrant may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

(c) A registrant who places or maintains in the public rights-of-way any communications facility [other than a small wireless facility on an authority utility pole], utility pole, wireless support structure, cable fiber optic or other pathway shall pay to the City annually no less than \$500.00 per linear mile, or portion thereof, up to the maximum amount allowed under Florida Statutes Section 337.401, whichever is greater, to the extent that Section 337.401 is applicable, as follows:

(1) Annual payments shall be due and payable on April 1<sup>st</sup> of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable. All fee payments shall be subject to audit by the City, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the City, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made; and

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

(d) Except to the extent prohibited by applicable law: (1) Any fee payments made pursuant to this Section shall not be deemed to be a tax; (2) Such fee payments shall be in addition to any and all taxes of a general applicability; and (3) A registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said City taxes or other fees or charges of general applicability which registrant is required to pay to the City, except as required by law.

(e) The fee specified herein is the minimum consideration for use of the public rights-of-way, including all public easements, for the purpose of installing and maintaining a communications facility, utility pole or wireless support structure.

~~(a) — Pass-through providers and communications facility providers that maintain one or more communications facilities in the City's roads or rights-of-way shall pay the City the maximum annual amount allowed under Florida Statute § 337.401, as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a pass-through provider or communications facility provider for purposes of supporting antennas or other over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate communications facility subject to assessment of a separate permit fee in the amount of \$500.00 up to the maximum amount allowed under specified in Florida Statutes § 337.401, whichever is higher, to the extent that Florida Statutes §337.401 is applicable.~~

~~(b) — The annual amount referenced in subsection 104-20(a), above, shall be due and payable on October 1 of every year. Fees not paid within ten days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable or authorization to install any facilities in the City's rights-or-way.~~

### **Sec. 104-21. Reports and records.**

Upon reasonable request, a registrant shall provide at its cost the following documents to the City as received or filed:

(a) Any pleadings, petitions, notices, and documents, which may directly impact the obligations of registrant or City under this Article and which are reasonably necessary for the City to protect its interests under this Article;

(b) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy; and

(c) A copy of updated maps depicting the locations and descriptions of all of the registrant's facilities in the public rights-of-way by longitude and latitude. Such maps shall be provided in a digitized format in compliance with the City's GIS standards, at the registrant's expense.

**SECTION 2.** City Code Chapter 118, "Administration and Review Procedures," Article II, "Boards," Division 3, "Design Review Board," Section 118-71, "Powers and duties," is hereby amended as follows:

\* \* \*

**Sec. 118-71. Powers and duties.**

The Design Review Board shall have the following powers and duties:

- (1) To promote excellence in urban design.
- (2) To review all applications requiring design review approval for all properties not located within a designated historic district or not designated as a historic site. For works of art in the art in public places program, the Design Review Board shall serve as advisor to the City Commission, and may impose binding criteria, as provided in Chapter 82, Article VII, "Art in Public Places," Division 4, "Procedures." This authority shall not include review and approval of design and location within public rights-of-way outside of locally designated historic districts of all wireless communications facilities, as defined in Chapter 104, "Telecommunication," Article I, "Communications Rights-of-Way" under the standards provided therein. Telecommunications shall be reviewed administratively by staff due to the limited review time constraints of Florida Statutes Section 337.401 (less than 60 days, and in some cases, 45 or 14 days).
- (3) To prepare and recommend adoption of design plans pertaining to neighborhood studies.
- (4) To promote reduced crime and fear of crime through the use of crime prevention through environmental design guidelines and strategies, as approved by the City Commission.
- (5) To hear and decide appeals of the planning director when deciding matters pursuant to Section 118-260.

\* \* \*

**SECTION 3.** City Code Chapter 118, "Administration and Review Procedures," Article II, "Boards," Division 4, "Historic Preservation Board," Section 118-102, "Powers and duties," is hereby amended as follows:

\* \* \*

**Sec. 118-102. Powers and duties.**

The Historic Preservation Board shall:

- (1) Recommend to the planning board, and City Commission, the designation of historic buildings, structures, improvements, landscape features, public interiors, and historic sites or districts.
- (2) Prepare and recommend for adoption specific guidelines for each designated site or district to be used to evaluate the appropriateness and



compatibility of proposed alteration or development within designated historic sites or historic districts.

(3) Issue or deny certificates of appropriateness, certificates to dig and certificates of appropriateness for demolition in accordance with procedures specified in this division, excluding certificates of appropriateness for demolition for City-owned buildings and other improvements as hereinafter specified on City-owned property and public rights-of-ways, and property owned by the Miami Beach Redevelopment Agency, for which properties the Historic Preservation Board shall serve as advisor to the City Commission. This authority shall include review and approval of design and location within public rights-of-way inside of locally designated historic districts of all wireless communications facilities, as defined in Chapter 104, "Telecommunication," Article I, "Communications Rights-of-Way," and under the standards provided therein, at Sections 1046(t) and 1046A

(4) Recommend restoration of property to its prior condition as required by Section 118-533 when the property has been altered in violation of this division.

(5) Advise the board of adjustment with regard to variances associated with properties designated as historic sites, historic buildings, historic structures, historic improvements, historic landscape features or any building or structure located within a historic district or a National Register District through written recommendation to be read into the record by the planning and zoning director at the board of adjustment's hearing.

(6) Facilitate the redevelopment of historic sites and districts by directing the planning department, and other City departments, to provide advisory and technical assistance to property owners, registrants for certificates of appropriateness.

(7) Make and prescribe by-laws and application procedures that are reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this division. The board shall prescribe forms for use by registrants when requesting action under this division. The board may authorize any one of its members to administer oaths and to certify official documents.

(8) Award historic markers or plaques upon the recommendation of the City manager and with the consent of the City Commission.

(9) Update and revise the historic properties database.

(10) Advocate that the City administration explore and advise the Historic Preservation Board and the building official as to alternatives available for stabilizing and preserving inadequately maintained and/or unsafe buildings or structures within the City's designated historic districts or on designated historic sites.

(11) Review all new construction, alterations, modifications and improvements to any building, structure, improvement, landscape feature, public interior or site

individually designated in accordance with Sections 118-591, 118-592 and 118-593, or located within an historic district.

(12) To review any and all amendments to this Code affecting historic preservation issues; specifically, Division 4 of Article II of Chapter 118 entitled "Historic Preservation Board," and Article X of Chapter 118 entitled "historic preservation," pursuant to Section 118-163.

**SECTION 4.** City Code Chapter 118, "Administration and Review Procedures," Article VI, "Design Review Procedures," Section 118-251, "Design Review Criteria," is hereby amended as follows:

\* \* \*

**Sec. 118-251. Design review criteria.**

(a) Design review encompasses the examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure and physical attributes of the project in relation to the site, adjacent structures and surrounding community. The board and the planning department shall review plans based upon the below stated criteria, criteria listed in neighborhood plans, if applicable, and design guidelines adopted and amended periodically by the Design Review Board and/or Historic Preservation Board. Recommendations of the planning department may include, but not be limited to, comments from the building department and the public works department. If the board determines that an application is not consistent with the criteria, it shall set forth in writing the reasons substantiating its finding. The criteria referenced above are as follows:

(1) The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.

(2) The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.

(3) The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

(4) The color, design, selection of landscape materials and architectural elements of exterior building surfaces and primary public interior areas for developments requiring a building permit in areas of the City identified in Section 118-252.

(5) The proposed site plan, and the location, appearance and design of new and existing buildings and structures are in conformity with the standards of this Article and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Board and all pertinent master plans.

(6) The proposed structure, and/or additions or modifications to an existing structure, indicates sensitivity to and is compatible with the environment and adjacent structures, and enhances the appearance of the surrounding properties.

(7) The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

(8) Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safety and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.

(9) Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.

(10) Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

(11) Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

(12) The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

(13) The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.

(14) The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

(15) An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

(16) All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.

(17) The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

(18) In addition to the foregoing criteria, Section 104-6(t) of the City Code shall apply to the Design Review Board's review of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public-rights-of-way, other than small wireless facilities as defined in Chapter 104, and Florida Statutes 337.401.

\* \* \*

**SECTION 5.** City Code Chapter 118, "Administration and Review Procedures," Article VII, "Design Review Procedures," Section 118-252, "Applicability and exemptions," is hereby amended as follows:

\* \* \*

**Sec. 118-252. - Applicability and exemptions.**

*(a) Applicability.*

(1) All building permits for new construction, public interior areas, interior areas that face a street or sidewalk, demolitions and wrecking, alterations, or additions to existing buildings, including fences, parking lots, walls and signs, whether new or change of copy, and exterior surface finishes and materials, shall be subject to review under the design review procedures except as provided in subsection (b) of this section. No building permit shall be issued without the written approval by the design review board or staff as provided for in these regulations.

(2) Except for stormwater pump stations and related apparatus installed by the City, all public improvements upon public rights-of-way and easements shall be reviewed by the Design Review Board. For purposes hereof, public improvements shall include, structures, streetscape projects, street improvements or redesign, modifications to street lighting or signage, landscaping projects, medians, master screening plans for stormwater pump stations and related apparatus, and above ground utilities; provided, however, that public improvements shall not include routine maintenance, utility repair work, and stormwater pump stations and related apparatus installed by the City.

(3) The review and approval of all new single-family home construction, in accordance with subsection 142-105(d)(7).

(b) *Exemptions.* Exemptions to these regulations include all of the following provided no new construction or additions to existing buildings are required:

(1) All permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building, excluding public interior areas and interior areas that face a street or sidewalk; however, the planning director may approve such building permit applications for minor work on the exterior of buildings.

(2) Any permit necessary for the compliance with a lawful order of the building official, fire marshal or public works director related to the immediate public health or safety.

(3) All single-family dwellings are exempt from the design review regulations, with the exception of exterior surface color samples and finishes, and the review and approval of all new single family home construction in accordance with subsection 142-105(d)(7). However, all building permits for new construction, alterations or additions to existing structures shall be subject to compliance with section 142-105, and all demolition permits must be signed by the planning director, or designee.

(4) All properties located within designated historic districts and designated historic sites.

(5) Small wireless facilities, as defined in Chapter 104, "Telecommunication," Article I, "Communications Rights-of-Way" under the standards provided therein. However, Telecommunications shall be reviewed administratively by staff due to the limited review time constraints of Florida Statutes Section 337.401.

**SECTION 6.** City Code Chapter 118, "Administration and Review Procedures," Article X, "Historic Preservation," Division 3, "Issuance of Certificate of Appropriateness/Certificate to Dig/Certificate of Appropriateness for Demolition," Section 118-564, "Decisions on certificates of appropriateness," is hereby amended as follows:

\* \* \*

**Sec. 118-564. Decisions on certificates of appropriateness.**

(a) A decision on an application for a certificate of appropriateness shall be based upon the following:

(1) Evaluation of the compatibility of the physical alteration or improvement with surrounding properties and where applicable compliance with the following:

a. The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as revised from time to time; and

b. Other guidelines/policies/plans adopted or approved by resolution or ordinance by the City Commission.

(2) In determining whether a particular application is compatible with surrounding properties the Historic Preservation Board shall consider the following:

- a. Exterior architectural features.
- b. General design, scale, massing and arrangement.
- c. Texture and material and color.
- d. The relationship of subsections a., b., c., above, to other structures and features of the district.
- e. The purpose for which the district was created.
- f. The relationship of the size, design and siting of any new or reconstructed structure to the landscape of the district.
- g. An historic resources report, containing all available data and historic documentation regarding the building, site or feature.
- h. The original architectural design or any subsequent modifications that have acquired significance.

(3) The examination of architectural drawings for consistency with the criteria stated below, with regard to the aesthetics, appearances, safety, and function of any new or existing structure, public interior space and physical attributes of the project in relation to the site, adjacent structures and properties, and surrounding community. The Historic Preservation Board and planning department shall review plans based upon the below stated criteria and recommendations of the planning department may include, but not be limited to, comments from the building department. The criteria referenced above are as follows:

- a. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.
- b. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.
- c. The color, design, surface finishes and selection of landscape materials and architectural elements of the exterior of all buildings and structures and primary public interior areas for developments requiring a building permit in areas of the City identified in Section 118-503
- d. The proposed structure, and/or additions to an existing structure ~~is~~ are appropriate to and compatible with the environment and adjacent structures, and ~~enhances~~ enhance the appearance of the surrounding properties, or the purposes for which the district was created.

e. The design and layout of the proposed site plan, as well as all new and existing buildings and public interior spaces shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on preserving historic character of the neighborhood and district, contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

f. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that any driveways and parking spaces are usable, safely and conveniently arranged and have a minimal impact on pedestrian circulation throughout the site. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with vehicular traffic flow on these roads and pedestrian movement onto and within the site, as well as permit both pedestrians and vehicles a safe ingress and egress to the site.

g. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties and consistent with a City master plan, where applicable.

h. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall site plan design.

i. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.

j. Any proposed new structure shall have an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).

k. All buildings shall have, to the greatest extent possible, space in that part of the ground floor fronting a sidewalk, street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a sidewalk street, or streets shall have residential or commercial spaces, or shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of a parking structure from the surrounding area and is integrated with the overall appearance of the project.

l. All buildings shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.

m. Any addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).

n. All portions of a project fronting a street or sidewalk shall incorporate an amount of transparency at the first level necessary to achieve pedestrian compatibility.

o. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.

p. In addition to the foregoing criteria, for telecommunications, the Board shall review, Section 104-6A, ~~104-6(t)~~, and the requirements of Chapter 104, of the City Code ~~shall apply to the Historic Preservation Board's review~~ of any proposal to place, construct, modify or maintain a wireless communications facility or other over the air radio transmission or radio reception facility in the public-rights-of-way. As there is no physical address or property for the wireless communications facility being located in the right-of-way, the posting and mailing notice of 118-8 shall not apply to said applications. Posting on the website and advertising in a newspaper of general circulation shall continue to be required.

q. Section 337.401(7)(k), Florida Statutes states, in pertinent part: "An authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority. An authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes has been publicly declared on or before April 1, 2017." Accordingly ordinance provisions regarding review by the City's Historic Preservation Board of construction of communications facilities within all existing historic districts, except Tatum Waterway Expansion must comply with the provisions of this Code. The Tatum Waterway Expansion area shall be administratively reviewed by staff, as it was not designated until after October 10, 2017.

#### **SECTION 7. CODIFICATION.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the Sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "Section" or other appropriate word.

#### **SECTION 8. NOTIFICATION OF SECRETARY OF STATE.**

Pursuant to the requirements of Florida Statutes Section 337.401, the City has provided the Secretary of State: (a) at least 15 days prior to consideration on first reading, notice of this ordinance governing a telecommunications company placing or maintaining telecommunications facilities in its roads or rights-of-way; and (b) at least 10 days prior notice of the second reading, public hearing.

#### **SECTION 9. REPEALER.**



All ordinances or parts of ordinances and all Section and parts of Sections in conflict herewith be and the same are hereby repealed.

**SECTION 10. SEVERABILITY.**

If any Section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 11. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

Underscore denotes new language  
~~Strike through~~ denotes stricken language

(Sponsored by Mayor Dan Gelber)

First Reading:  
Second Reading:

\_\_\_\_\_  
<sup>1</sup> The City's challenge in adopting an ordinance governing telecommunications use of its rights-of-way is reconciling its general legislative power under both Article VIII, Section 2 of the Constitution of the State of Florida and Florida Statutes Section 166.021 with numerous, sometimes conflicting, statutes, administrative rules and regulatory pronouncements addressing the process of approving the location and construction of telecommunication facilities. The City's task is further complicated by (a) the inconsistent meanings used in definitions of terms used in common by the various statutes, rules and pronouncements and (b) the inconsistent deadlines for administrative action created by the various statutes and rules, which are further complicated by inconsistent methods of counting days in the calculation of deadlines. To a large extent these problems are addressed in this ordinance by reliance, wherever possible, on the provisions of Florida Statutes Section 337.401, "Use of right-of-way for utilities subject to regulation; permit; fees."

<sup>2</sup> Florida Statutes Section 202.24 largely prevents municipalities from receiving the compensation for use of public rights-of-way granted under Florida Statutes Section 337.401, by prohibiting municipalities from "levying on or collecting from dealers or purchasers of communications services any tax, charge, fee, or other imposition on or with respect to the provision or purchase of communications services." This prohibition encompasses "any amount or in-kind payment of property or services which is required by ordinance or agreement to be

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paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.” Prohibited charges include any sales tax, subscriber charge, franchise fee, user fee, privilege fee, occupancy fee, rental fee, license fee, pole fee, tower fee, base-station fee, security fund or other tax or fee measured by amounts charged or received for services or intended as compensation for the use of public roads or rights-of-way, for the right to conduct business or for other purposes.

Notable exceptions to the restrictions of Florida Statutes Section 202.24 include (a) local communications services taxes levied under Chapter 202 of the Florida Statutes, (b) ad valorem taxes levied under Chapter 200 of the Florida Statutes, (c) business taxes levied under Chapter 205 of the Florida Statutes, (d) 911 service charges levied under Chapter 365 of the Florida Statutes, (e) rental fees for use of property which is not located in the public rights-of-way, (f) permit fees of general applicability which are not related to placing or maintaining facilities in or on public roads or rights-of-way and (g) utility service fees or other similar user fees for utility services.

<sup>3</sup> See Florida Statutes Section 337.401(7)(d)4.

<sup>4</sup> See Florida Statutes Section 337.401(7)(d)5.

<sup>5</sup> The City interprets this requirement of non-discrimination and competitive neutrality as being qualified by the requirement that the City obey State and Federal law governing siting approval of communications facilities in public rights-of-way. A corollary to this interpretation is that the City is permitted to address unique circumstances created by statutory disparities in the treatment of providers of communications services. The provisions of Florida Statutes Section 337.401, codifies special treatment for certain communications facilities that meet the definition of “small wireless facility,” requiring municipalities to grant them access to municipal property located in the public rights-of-way. The statute exempts certain installations of communications facilities qualifying as a “micro wireless facility” in the public rights-of-way from right-of-way permitting. The legislature, having favored certain providers of communications services in its statutory scheme, has prevented literal application of Florida Statutes Section 337.401’s professed goal of non-discrimination among providers of communications services.

<sup>6</sup> Police power connotes the power to establish laws and regulations for the preservation of public order and tranquility, the promotion of public health, safety and morals, and the general welfare. It embraces the power to define and proscribe public nuisances. See *Thompson v. State*, 392 So. 2d 1317, 1318 (Fla. 1981); and see also *Bal Harbor Village v. Walsh*, 29 Fla. L. Weekly D1816a, 4 ER FALR 218 (Fla. 3<sup>rd</sup> DCA 2004).

<sup>7</sup> See also Florida Statutes Section 202.24(1).

<sup>8</sup> The City’s power to adopt reasonable, nondiscriminatory ordinances governing abandonment of equipment in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

<sup>9</sup> See Florida Statutes Section 337.401(7)(b)1.

<sup>10</sup> See Florida Statutes Section 337.401(7)(b)2.

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<sup>11</sup> See Florida Statutes Section 337.401(7)(b)5.

<sup>12</sup> See Florida Statutes Section 337.401(7)(b)6.

<sup>13</sup> This definition is taken from Florida Statutes Section 337.401(7)(b)7. It contrasts with the definition of collocation used in Florida Statutes Section 365.172(3)(f), which was the basis of the previous definition in the ordinance.

<sup>14</sup> See Florida Statutes Section 337.401(6)(a)2.

<sup>15</sup> This definition has been replaced with the concept of “wireless infrastructure provider,” as defined in Florida Statutes Section 337.401(7)(b)13.

<sup>16</sup> See Florida Statutes Section 202.11(1).

<sup>17</sup> See Florida Statutes Section 365.172(3)(i).

<sup>18</sup> *Cf. Implementation of Section 224 of the Act*, 25 FCC Rcd. 11864, 11943, n.37 (2010) (“Make-ready” is any rearrangement of equipment and attachments in order to make room on either an existing pole or a new, different pole for a new attacher.)

<sup>19</sup> See Florida Statutes Section 337.401(7)(b)9.

<sup>20</sup> See Florida Statutes Section 337.401((6)(a)1.

<sup>21</sup> Each FCC licensee is obligated to maintain control over its stations. See 47 U.S.C. Section 310(d), which provides, in pertinent part, that “No construction permit or station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.”

<sup>22</sup> See Florida Statutes Section 337.401(7)(b)10.

<sup>23</sup> See Florida Statutes Section 365.172(bb); and 47 C.F.R. Section 1.4001(b)(9).

<sup>24</sup> See Florida Statutes Sections 337.401(7)(b)11 and 337.401(7)(b)17.

<sup>25</sup> See Florida Statutes Section 337.401(7)(b)12.

<sup>26</sup> See Florida Statutes Section 337.401(7)(b)13.

<sup>27</sup> See Florida Statutes Section 337.401(7)(b)14.

<sup>28</sup> See Florida Statutes Section 337.401(7)(b)15.

<sup>29</sup> See Florida Statutes Section 337.401(7)(b)16.

<sup>30</sup> See Florida Statutes Section 337.401(7)(b)17.

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<sup>31</sup> The City has legislative authority to require each provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the City. See Florida Statutes Section 337.401(3)(a).

<sup>32</sup> The limitations of Section 337.401(7)(e) are incorporated into Section 104-6(b) of this Ordinance.

<sup>33</sup> In fact, registration does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in the public roads or rights-of-way. See Florida Statutes Section 337.401(3)(b).

<sup>34</sup> Florida Statutes Section 337.401(3)(a) states, in pertinent part, “In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications facilities in its roads or rights-of-way under this subsection, a municipality or county may require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant’s current certificate of authorization issued by the Florida Public Service Commission, the Federal Communications Commission, or the Department of State; and proof of insurance or self-insuring status adequate to defend and cover claims.”[emphasis added.]

<sup>35</sup> See Florida Statutes Section 337.401(3)(b).

<sup>36</sup> In this connection there are limited exemptions from right-of-way permitting for routine maintenance, replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size, and certain micro wireless facilities; provided however that permits are required when work requires excavation, closure of a sidewalk, or closure of a vehicle lane. See Florida Statutes Section 337.401(7)(e).

<sup>37</sup> Compare 47 C.F.R. Sections 1.934 and 73.3568.

<sup>38</sup> Compare 47 C.F.R. Section 1.17 and 18 U.S.C. Section 1001.

<sup>39</sup> See Florida Statutes Section 337.401(7)(e).

<sup>40</sup> Proper description of location and proposed facilities allows the City to determine whether the registrant’s proposal can be accommodated in the right-of-way in a manner consistent with the requirements of this Article. Where two pending permit requests propose facilities that cannot be simultaneously accommodated in the ROW, in a manner consistent with the criteria set out in this Article, they are said to be “mutually-exclusive.” See Article 104-6A(a)(4).

<sup>41</sup> Public policy generally favors common siting of wireless facilities. See Florida Statutes Section 365.172(13)(a). Despite this policy, the City is statutorily prohibited from requiring common siting of small wireless facilities. See Florida Statutes Section 337.401(7)(d)3.

<sup>42</sup> The City’s power to adopt reasonable, nondiscriminatory ordinances governing performance bonds for work in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

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<sup>43</sup> This waiver provision is important to insuring the City's ability to comply with 47 U.S.C. Section 253(a) ["No State or local statute or regulation , or other State or local legal requirement, shall have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."] and 47 U.S.C. Section 332(c)(7)(B)(i) ["The regulation of the placement, construction and modification of personal wireless service facilities by any State or local government...(I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services."]

<sup>44</sup> See 47 U.S.C Section 253(a) and 47 U.S.C. Section 332(c)(7)(B)(i).

<sup>45</sup> These time frames are often referred to as "shot clocks" and are established by various state and federal statutes, FCC rules and FCC declaratory rulings. The shot clocks vary significantly from each other, depending upon (a) the size of the wireless facility proposed [tower, utility pole, small wireless, micro wireless, etc.], (b) the type of installation [new facility; modification of existing facility with significant changes to dimensions; modification of existing facility without significant changes to dimensions; modification of existing facility to add additional antennas; construction requires excavation; lane closures or sidewalk closures], and (c) the legal issues presented [is the permit filing complete; does the permit filing require a waiver of applicable codes; has the permit filing been amended]. The shot clocks also use various processes for computing deadlines [Do you count calendar days or business days; does the computation involve tolling the running of time] Remedies for municipal inaction on ROW permit requests vary, as well, with the most severe being that the permit is "deemed granted" by the running of time.

<sup>46</sup> See Florida Statutes Section 337.401(7), which establishes deadlines for municipal action on ROW permit requests for small wireless facilities and for certain utility poles used to support small wireless facilities. Under Subsection 337.401(7)(d)7, the City has 14 days to determine the completeness of a permit request and to notify the registrant via email whether the request is complete. During this same 14 day period, Subsection 337.401(7)(d)4 allows the City to request that the registrant relocate a proposed small wireless facility to a different site in the ROW.

A relocation request under Subsection 337.401(7)(d)4 triggers a 30 day negotiation period. At the end of this period, if the registrant accepts the relocation proposal, the permit request is deemed granted for the new location and for all other locations in the application. Subsection 337.401(7)(d)10 allows registrants to specify up to 30 small wireless facilities in a single consolidated ROW permit application and allows, but does not require, the City to consider individual facilities separately for purposes of assessing completeness. Apparently Subsection 337.401(7)(d)(4) requires consolidated grant of multi-location applications where a single site is subject to relocation negotiation.

Under Subsection 337.401(7)(b)2, a registrant's request for waiver of design standards must be acted upon within 45 days of the request. Subsection 337.401(7)(d)(8) requires City action on a complete ROW permit request within 60 days after receipt of the application. Otherwise the ROW permit is deemed granted. This time frame for action is altered if the City requests to negotiate relocation of a small wireless facility under Subsection 337.401(7)(d)4. In that case the City must grant or deny the original application within 90 days after the date the application was filed. Regardless of the applicable timeframe for action, if a request for a ROW permit

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application is denied, Subsection 337.401(7)(d)9 affords the registrant 30 days after notice of denial to resubmit the application and cure deficiencies identified in the denial. The City then has 30 days to act on the resubmitted permit request, or it is deemed granted.

Subsection 337.401(7)(f)5.c. imposes an additional deadline on the City in cases where (a) an applicant files to collocate a small wireless facility on a City utility pole that does not support an aerial facility used to provide communications services or electric services and (b) make-ready work or pole replacement is needed to support the proposed collocation. Under those circumstances, the City has 60 days from receipt of a complete application to provide the applicant with a good faith estimate of the costs of any make-ready work or the costs of any pole replacement needed to enable the pole to support the collocation.

<sup>47</sup> Florida Statutes Section 365.172(13) establishes criteria and procedures streamlining approval of proposals for joint location of multiple wireless facilities on a wireless support structures. Section 365.172 applies to approving construction of wireless facilities in commercial mobile radio service that provide wireless 911 or E911 services, whether or not they are located in the public ROW.

The shot clock established by Section 365.172 distinguishes between applications proposing joint location of wireless facilities (which joint location is called a “collocation” in this statute) and applications for “any other wireless communications facility.” Under Subsection 365.172(13)(d)1, an application proposing a “collocation” must be acted upon within 45 business days after the application is determined to be properly completed. Subsection 365.172(13)(d)2 requires action on all other applications for a wireless communications facility, i.e. action on applications that are not a “collocation”, be completed no later than 90 business days after the application is determined to be properly completed. Applications which are not acted upon within the time frames of Subsections 365.172(13)(d)1 and 2 are deemed granted.

In calculating dates for completeness, an application is submitted or resubmitted on the date it is received by the City. Subsection 365.172(13)(d)3a, gives the City 20 business days to notify an applicant that its application is incomplete. Otherwise, the application is deemed complete. An incomplete application may be resubmitted within reasonable timeframes established by the City, and the City again has 20 business days to rule on its completeness (or the application is deemed complete).

<sup>48</sup> Under 47 U.S.C. Section 1455, the City is required to approve “any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.” This statute includes, but is not limited to, modification of existing towers and base stations in the public rights-of-way.

In response to 47 U.S.C. Section 1455, the FCC adopted a regulation, 47 C.F.R. Section 1.40001, which defined the types of insubstantial changes to towers and base stations that can be made through an eligible facilities request. This rule also established a 60-day shot clock for processing eligible facilities requests. This 60-day period begins when a permit request is filed and is subject to tolling if the request is incomplete.

In this connection, the information to be provided in request for ROW permit for an eligible facilities request is limited to documentation or information “reasonably related to determining whether the request meets the requirements [of 47 C.F.R. Section 1.40001.]” The City has 30

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days to provide the registrant written notice of the permit request's incompleteness, delineating all missing documents and information. When this written notice is issued, the running of the 60-day period stops until the registrant files a supplemental submission. Thereafter, the City has ten days to provide a second or subsequent notice of incompleteness, which halts the running of the 60 day period until a second or subsequent supplemental submission is submitted.

The remedy for a failure to act on an eligible facilities request within the 60 day period is that the request is deemed granted. However the remedy is not effective until the registrant notifies the City in writing that the request is deemed granted and the City may bring claims related to the request in any court of competent jurisdiction.

<sup>49</sup> The FCC's original foray into shot clocks for the processing of siting proposals for wireless facilities was a declaratory ruling interpreting the following provision of 47 U.S.C. Section 332(c)(7)(B)(ii): "A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request." See *Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, 22 FCC Rcd. 13994 (2009); *recon. denied*, 25 FCC Rcd. 11157 (2010).

The problem addressed in the declaratory ruling was the question of when is the correct time to institute litigation with a governmental authority that fails to act on a siting request. The answer given in the declaratory ruling was 90 days for proposals to jointly locate wireless facilities at the site of existing wireless facilities and 150 days for all other siting requests. The declaratory ruling also allowed for tolling of these periods when the governmental authority notifies the siting request's proponent of incompleteness of the request, within 30 days of the proposal's filing.

<sup>50</sup> This definition, up to placement of the endnote, generally tracks the definition in Florida Statutes 337.401(7)(b)2. Thereafter it seeks to describe the provisions of local codes and ordinances applying to small wireless facilities.

<sup>51</sup> This is the definition found at Florida Statutes Section 337.401(7)(b)3.

<sup>52</sup> This is the definition found at Florida Statutes Section 337.401(7)(b)4.

<sup>53</sup> See Florida Statutes Section 337.401(7)(d)2.

<sup>54</sup> See Florida Statutes Section 337.401(7)(d)3.

<sup>55</sup> See Florida Statutes Section 337.401(7)(d)4.

<sup>56</sup> See Florida Statutes Section 337.401(7)(d)5.

<sup>57</sup> See Florida Statutes Section 337.401(7)(d)6.

<sup>58</sup> See Florida Statutes Section 337.401(7)(j)

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<sup>59</sup> See Florida Statutes Section 337.401(7)(f)5.b.

<sup>60</sup> See Florida Statutes Section 337.401(7)(f)5.c

<sup>61</sup> See Florida Statutes Section 337.401(7)(f)5.d.

<sup>62</sup> See Florida Statutes Section 337.401(7)(d)14.

<sup>63</sup> See Florida Statutes Sections 843.025 and 843.165. See *a/so* 18 U.S.C. Section 1362.

<sup>64</sup> See Florida Statutes Section 337.401(7)(d)15.

<sup>65</sup> See Florida Statutes Section 337.401(3)(h).

<sup>66</sup> The City's power to adopt reasonable, nondiscriminatory ordinances requiring insurance as a condition of placing or maintaining communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

<sup>67</sup> The City's power to adopt reasonable, nondiscriminatory ordinances requiring indemnification as a condition of placing or maintaining communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

<sup>68</sup> The City's power to adopt reasonable, nondiscriminatory ordinances governing performance bonds with respect to placement or maintenance of communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

<sup>69</sup> Registrants paying the Communications Services Tax cannot be required to supply a security fund, even though such funds are explicitly authorized by Florida Statutes Section 337.401(7)12. See Florida Statutes Section 202.24(1)(b)1.

<sup>70</sup> A registrant's use of the right-of-way is conditioned, by statute, on its being responsible for any damage resulting from the issuance of a permit. See Florida Statutes Section 337.401(2). This financial obligation is unlimited and is not restricted to damage caused to City property. The guarantee provided herein simply limits a registrant's ability to use of shell entities to circumvent the financial obligations imposed in Florida Statutes Section 337.401(2), but only to the extent of \$50,000 per violation, not the full unlimited extent of registrant's obligation.

<sup>71</sup> These remedies include injunctive proceedings as provided by Florida Statutes Section 120.69 to enforce the provisions of this ordinance. See Florida Statutes Section 337.401(2).

<sup>72</sup> The City's power to adopt reasonable, nondiscriminatory ordinances governing abandonment of communications facilities in the public rights-of-way is confirmed at Florida Statutes Section 337.401(7)(d)12.

<sup>73</sup> See Florida Statutes Section 337.401(7)(j).

<sup>74</sup> See Florida Statutes Section 337.401(7)(d)12.



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<sup>75</sup> The compensation structure set out in this section reflects the fact that Florida Statutes Section 202.24 prevents the City from obtaining compensation for the use of City facilities in the rights-of-way from entities paying the Communications Services Tax. The municipal compensation provisions found in Florida Statutes Section 337.401 is \$150 per pole, per year.