

ORDINANCE NO. 16-

[CITY TO INSERT TITLE HERE]

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

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

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

WHEREAS, rules or regulations imposed by a municipality relating to communications services companies placing or maintaining communications facilities in roads or rights-of-way must be generally applicable to all communications services companies and, notwithstanding any other law, may not require a communications company to apply for or enter into an individual license, franchise, or other agreement with the municipality as a condition of placing or maintaining communications facilities in its roads or rights-of-way; and

WHEREAS, Section 337.401, Florida Statutes, was amended to state that because of the unique circumstances applicable to providers of communications services and the fact that Federal and State law require the nondiscriminatory treatment of providers of communications services, including telecommunication services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities treat providers of communications services in a reasonable, nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way; and

WHEREAS, it is the intent of the City of Fort Lauderdale to exercise the City 's authority over communications services providers' placement and maintenance of facilities in the public rights-of-way; and

WHEREAS, it is the City of Fort Lauderdale's intent to treat each communications services provider in a reasonable, nondiscriminatory and competitively neutral manner in exercising such authority, which authority is limited to only those matters necessary to manage the roads or public rights-of-ways of the City; and

WHEREAS, the public rights-of-way subject to the jurisdiction and control of the City are critical to the travel of persons and the transport of goods and other tangibles in the business and social life of the community by all citizens; are a unique and physically limited resource and proper management by the City is necessary to maximize efficiency, minimize the costs to the taxpayers of the foregoing uses, and to reasonably balance the potential inconvenience to and negative effects upon the public from such facilities' placement and maintenance in the public rights-of-way against the substantial benefits that accrue from such placement and maintenance of facilities to promote the public health, safety and general welfare; and are intended for public uses and must be managed and controlled consistently with that intent; and

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

WHEREAS, the City has reviewed its ordinances and has concluded that they must be updated, in conformance with Federal and State telecommunications laws and rules, in order to adequately regulate the placement and maintenance of existing, new and expanded communications facilities in the City's rights-of-way; and

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

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

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

Article XII, Communications Facilities in the Public Rights-of-Way.

Sec. 25-300 Title.

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

Sec. 25-301. Intent and Purpose.

It is the intent of the City of Fort Lauderdale to promote the public health, safety and general welfare by: providing regulations governing the placement or maintenance of Communications Facilities in the Public Rights-of-Way within the City of Fort Lauderdale; adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, including Section 337.401, Florida Statutes, the Federal Communications Act of 1934, including without limitation Sections 332 and 253, Section 6409(a) of 47 USC § 1455(a) and Orders issued by the FCC, as each may be amended from time to time, and other Federal and State law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of Communications Facilities in the Public Rights-of- Way by all Communications Services

Providers, including both wireless telecommunications providers and wireline communications providers; and minimizing disruption to the Public Rights-of-Way; to promote and encourage col-location of Communications Facilities on existing, modified or replacement structures within the Public Rights-of-Way as a primary option generally preferred over the construction of new single-use Wireless Support Structures; to promote and encourage utilization of technology that will either eliminate or reduce the need for the erection of new Wireless Support Structures; to avoid potential damage to Public Rights-of-Way caused by Communications Facilities by ensuring that such Facilities are soundly and carefully designed, constructed, modified and maintained; to establish reasonable rules and regulations necessary to manage the placement or maintenance of Communications Facilities in the Public Rights-of-Way by Communications Services Providers, Communications Facility Providers and other Pass-through Providers; and to minimize 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 in the City's Public Rights-of-Way shall comply with the provisions of this Article. Persons seeking to place or maintain Communications Facilities on private property or other property to which the City, Broward County, State of Florida or Federal government has a fee simple or leasehold interest in real property, exclusive of Public Rights-of-Way, located within the municipal boundaries of the City shall comply with the provisions of the City's Unified Land Development Regulations ("ULDR") to the extent it applies.

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

Sec. 25-302. Definitions.

For purposes of this Article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to have their common and ordinary meaning. The following definitions apply only for purposes of Sections 25-300 through 25-317.

"Abandonment" or "Abandoned" shall mean the permanent cessation of all uses of a Communications Facility; provided that this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Facility in Public Rights-of-Way. Notwithstanding the foregoing, if the Communications Facility is attached to an Existing Structure that has an independent function such as a light pole, intersection signal, pedestrian

signal, utility pole or the like, said Abandonment of the Communications Facility requires removal of the Facility only and does not require the removal of the Existing Structure.

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

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

“*City*” shall mean the City of Fort Lauderdale, Florida.

“*City Commission*” means the governing body of the City.

“*City Engineer*” means a Professional Engineer, licensed to practice in the State of Florida, employed or retained by the City and designated in writing by the City Manager, as the chief engineer for the City and who is responsible for administration of Chapter 25 of the City’s Code of Ordinances and is hereby vested with the authority to initiate enforcement action by issuance of a citation violation notice pursuant to City Code Sec. 11-17. For the purposes of this Article, the term City Engineer shall also include his or her designee.

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

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

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

“*Collocation*” or “*Collocate*” or “*Attach*” shall mean the placement or attachment of a Communications Facility on any Existing Structure, regardless of whether or not there is an existing Communications Facility located upon the Existing Structure. Collocating or Attaching a Wireless Communications Facility onto an Existing Structure does not automatically transform the Existing Structure into a Wireless Support Structure.

“*Communications Facility*” or “*Facility*” or “*Facilities*” shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathways placed or maintained or to be placed or maintained in the Public Rights-of-Way of the City and used or capable of being

used to transmit, convey, route, receive, distribute, provide or offer Communications Services. The term Communications Facility shall not include:

- (a) below-grade communications service facilities; or
- (b) at-grade communications service facilities as regulated under City Code Section 25-100.1; or
- (c) Utility Poles, including aerial facilities located between Utility Poles with associated Pole Attachments which do not provide Wireless Service; or
- (d) Services used to remotely facilitate, monitor or control the distribution or transmission of electricity on utility infrastructure.

"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. A Pass-Through Provider is a Communications Facility Provider.

"Communications Services" shall mean the same as the term is defined in Section 202.11(1), Florida Statutes. Notwithstanding the forgoing, the term does not include: Communication Services transmitted by way of below-grade and at-grade communications service facilities regulated under City Code Section 25-100.1.

"Communications Services Provider" shall mean any Person, including a municipality or county, providing Communications Services through the placement or maintenance of a Communications Facility in Public Rights-of-Way but does not include:

- (a) the provision of below-grade communications service facilities; or
- (b) at-grade communications service facilities as regulated under City Code Section 25-100.1, or
- (c) Utility Poles, including aerial facilities located between Utility Poles with associated Pole Attachments which do not provide Wireless Service.

"County" means Broward County, Florida.

"Day(s)". In computing any period of time expressed in day(s) in this Article, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than

seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

“Eligible Facilities Request” shall mean a request to place a Wireless Communications Facility that, in accordance with the definitions contained in FCC regulations codified at 47 C.F.R. § 1.40001, does not substantially change the physical dimensions of the Existing Structure.

“Existing Structure” shall mean a structure within the Public Right-Of-Way that exists at the time an application for permission to place a Communications Facility on the preexisting structure is filed with the City. The term includes any structure that: (1) can structurally support the attachment of a Communications Facility; (2) can be modified or repurposed to support the attachment of a Communications Facility; (3) can be removed and replaced with a structure of similar design and purpose as the original existing structure that supports the attachment of a Communications Facility; or (4) other facilities in compliance with applicable codes and laws. The term Existing Structure shall not include below-grade communications facilities and at-grade communications facilities as regulated by City Code Section 25-100.1.

“Facility” or “Facilities” means a Communications Facility.

“FCC” shall mean the Federal Communications Commission.

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

“Grade” means the highest point in the Public Right-of-Way adjacent to a Communications Facility site or proposed site.

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

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

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

“Maintain” shall mean to exercise physical control over a Communications Facility in the Public Rights of Way, including ownership or the right to maintain and repair. A Person providing

service only through resale or only through use of a third party's unbundled network elements is not "maintaining" the Communications Facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Public Rights-of-Way does not constitute "maintaining" Facilities in the Public Rights-of-Way.

"Pass-Through Provider" means any person who places or maintains a Communications Facility in the Public Rights-of-Way of the City that levies a tax pursuant to Chapter 202, Florida Statutes and who does not remit taxes imposed by the City pursuant to Chapter 202, Florida Statutes, as same may be amended from time to time. Depending upon how the Communications Facility is utilized, the person who places or maintains a particular Communications Facility may be either a Pass-Through Provider, or a Communications Service Provider as to that particular Communications Facility. A Utility as defined in 47 U.S.C. § 224 is not a Pass-Through Provider.

"Permit" shall include, but not be limited to City of Fort Lauderdale Right-of-Way engineering and construction permits issued by the City Engineer or his or her designee.

"Person" shall include any individual, 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 "placement" or "placing" shall mean to erect, construct, install, place, extend, expand, remove, occupy, locate, relocate, or significantly alter the configuration of an existing Communications Facility. "Place" shall not include routine maintenance, emergency maintenance or upgrades of equipment at the Communications Facility.

"Pole Attachment" means any attachment of a Communications Facility by a provider of Communications Services to an existing Utility Pole or Existing Structure within a Public Right-of-Way.

"Project Permit" shall mean a single Project Permit that would otherwise require individual Permits for two or more Communications Facilities that form a cluster or multiple clusters to serve a specified service area that will be installed in a defined project phase.

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

real or personal City property except as described above and shall not include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

“Registrant” shall mean a Communications Services Provider, Communications Facility Provider or Pass-Through Provider that has registered with the City in accordance with the provisions of Section 25-303 this Article and holds an effective Registration.

“Registration” or *“Register”* shall mean the process described in this Article whereby a Communications Services Provider, Communications Facility Provider or Pass-Through Provider provides certain information to the City by which it is determined whether the Person will be authorized to become a Communications Service Provider, Communications Facility Provider or Pass-Through Provider pursuant to this Article.

“Signage” means any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display.

“State” means the State of Florida.

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

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

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

“Wireless Communications Facility” (“WCF”) is any Communications Facility used for the transmission of radiofrequency waves pursuant to an FCC license or other FCC authorization. WCF means equipment or Facilities located within Public Rights-of-Way, used to provide Wireless Service and may include, but is not limited to, antennae, wireless support structures, equipment enclosures, cabling, antenna brackets and other such appurtenant equipment. The term Wireless Communications Facility shall not include below-grade communications service facilities nor shall it include at-grade communications service facilities as regulated under City Code Section 25-100.1.

“Wireless Service” shall mean “Communication Service” provided by means of radiofrequency signals pursuant to an FCC license or other FCC authorization.

“*Wireless Service Provider*” shall mean a person duly authorized and licensed by the FCC to deliver Wireless Service. A Wireless Service Provider is a type of Communications Services Provider.

“*Wireless Support Structure*” means a vertical structure placed in the Public Right-of-Way for the sole or primary purpose of supporting a Wireless Communications Facility and shall not include for example: Utility Poles, light poles, pedestrian signalized poles or signalized intersection poles, masts, or similar vertical structures that have a primary purpose or function independent of supporting a Wireless Communications Facility.

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

(a) *Registration.* A Communications Services Provider, Communications Facility Provider or a Pass -Through Provider that desires to place or maintain a Communications Facility or a Pass-Through Facility in Public Rights-of-Way in the City shall first Register with the City in accordance with this Article. Subject to the terms and conditions prescribed in this Article, a Registrant may place or maintain a Communications Facility or Pass-Through Facility in Public Rights-of-Way. No registration is required under this Section for a Person with an effective registration pursuant to Section 25-99 of the City’s Code.

(b) *No property right arises from Registration.* A Registration shall not convey any title, equitable or legal, to the Registrant in the Public Rights-of-Way. 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. Registration does not excuse a Communications Services Provider, Communications Facility Provider or Pass-Through Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities in the City's Rights-Of-Way. Registration does not excuse a Communications Services Provider, Communications Facility Provider or Pass-Through Provider from complying with all applicable City ordinances, codes or regulations, including this Article.

(c) *Content of Registration.* Each Communications Services Provider, Communications Facility Provider or Pass-Through Provider that desires to place or maintain a Communications Facility or Pass-Through Facility in Public Rights-of-Way in the City shall file a single Registration with the City which shall include the following information:

- (1) Name of the applicant;
- (2) Name, address and telephone number of the applicant's primary contact person in connection with the Registration, and the person to contact in case of an emergency;

- (3) Evidence of the insurance coverage required under this Article and acknowledgment that Registrant has received and reviewed a copy of this Article; and
- (4) The number of the applicant's certificate of authorization or license to provide Communications Services issued by the Florida Public Service Commission, the FCC, or other Federal or State authority, if any; and
- (5) For an applicant that does not provide a Florida Public Service Commission certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, such as the number of the certificate from or filing with the Florida Department of State; and

(d) *Statement of Indemnification.* A statement by the Registrant in the Registration that by execution of the Registration application and acceptance of the Registration, the Registrant agrees to the terms of indemnification as provided by City Code Section 25-310; and

(e) *Unregistered Providers.* To the extent that an entity is not registered consistent with this Section or Section 25-99 of the City's Code, said entity shall register with the City pursuant to Section 25-303.3(c) above within one hundred-eighty (180) days from the effective date of this Ordinance. A Communications Facility Provider, Communications Services Provider or Pass-through Provider with an existing Communications Facility, in the Public Rights-of-Way who fails to so comply shall be in violation of City Code as provided by City Code Section 1-6 and City Code Chapter 11.

(f) *City Engineer review and approval.* The City shall review the information submitted by the applicant. Such review shall be by the City Engineer or his or her designee. If the applicant submits information in accordance with subsection (c) above, the Registration shall be effective and the City shall notify the applicant of the effectiveness of Registration in writing. If the City determines that the information has not been submitted in accordance with subsection (c) above, the City shall notify the applicant of the non-effectiveness of Registration, and reasons for the non-effectiveness, in writing. The City shall so reply to an applicant within thirty (30) days after receipt of registration information from the applicant. Non-effectiveness of Registration shall not preclude an applicant from filing subsequent applications for Registration under the provisions of this Article. An applicant has thirty (30) days after receipt of a notice of non-effectiveness of Registration to appeal the decision as provided in Section 25-307.

(g) *Cancellation.* A Registrant may cancel a Registration upon written notice to the City stating that it will no longer place or maintain any Communications Facilities or Pass-Through 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 or Pass-Through Facilities in Public Rights-of-Way.

(h) *Registration is non-exclusive.* Registration does not in and of itself establish a right to place or maintain or establish priority for the placement or maintenance of a Communications Facility or a Pass-Through Facility in Public Rights-of-Way within the City, but shall establish for the Registrant a right to apply for a Permit, if permitting is required by the City. Registrations are expressly subject to any future amendment to or replacement of this Article and further subject to any additional City ordinances or regulations, as well as any State or Federal laws that may be enacted.

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

(j) *Permits required of Registrants.* In accordance with applicable City ordinances, codes or regulations, a permit may be required of a Communications Services Provider or Pass-Through Facilities Provider that desires to place or maintain a Communications Facility or Pass-Through Facility in Public Rights-of-Way. An effective Registration shall be a condition of obtaining a Permit. Notwithstanding an effective Registration, permitting requirements shall also apply. A Permit may be obtained by or on behalf of a Registrant having an effective Registration if all permitting requirements are met.

(k) *Communications Services Tax or Permit fee.* A Registrant that places or maintains Communications Facilities in the Public Rights-of-Way shall be required to either pay a permit fee or remit a communications services tax at the City's election pursuant to Ch. 202, Florida Statutes. .

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

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

(a) If a Registrant transfers, sells or assigns its assets located in Public Rights-of-Way incident to a transfer, sale or assignment of the Registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Article. Written notice of any such transfer, sale or assignment shall be provided by such Registrant to the City within fourteen (14) business days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current Registrant, then the transferee, buyer or assignee is not required to re-Register. If the transferee, buyer or assignee is not a current Registrant, then the transferee, buyer or assignee shall Register as provided in Section 25-303 within sixty (60) days of the transfer, sale or assignment. If permit applications are pending in the Registrant's name, the transferee, buyer or assignee shall notify the City Engineer that the transferee, buyer or assignee is the new applicant.

(b) A violation of the requirements of this Section 25-304 shall be a violation of this Code and the Registrant who is alleged to have violated any of the provisions of this Section 25-304 may be subject to the enforcement remedies set forth in Code Section 25-312.

Sec. 25-305. Placement or Maintenance Permit Requirements within the Public Rights-of-Way.

(a) *Permit Required.* A Registrant shall not commence to place nor maintain a Communications Facility or Pass-Through Facility in Public Rights-of-Way until all applicable Permits, if any, have been issued by the City or other appropriate authority, except in the case of an emergency as provided for in Section 25-305(i) herein. Registrant acknowledges that as a condition of granting such Permits, the City may impose reasonable rules or regulations governing the placement or maintenance of a Communications Facility or Pass-Through Facility in Public Rights-of-Way expressly related to public, health, safety and welfare; however, no such imposed conditions shall prohibit or otherwise adversely impact the provision of Communications Services. Permits shall apply only to the areas of Public Rights-of-Way specifically identified in the Permit. The City may also issue a single Project Permit authorizing the placement of multiple Communication Facilities in different locations as part of an overall deployment phase or cluster as provided for in Section 25-305(j) herein.

(b) *Contents for all Communications Facility Permit applications.* As part of any Permit application to place a Communications Facility in Public Rights-of-Way, the Registrant shall provide the following:

- (1) Signed and sealed plans from the Florida licensed professional engineer of record that show 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 Facilities that will be located in Public Rights-of-Way and that certify that the Communications Facility is designed to be structurally sound, and, at a minimum, in conformance with the applicable provision of the Florida Building Code.
- (2) For Permits for Collocations, Attachments or Pole Attachments, the applicant shall provide a statement prepared by Florida Licensed professional engineer that the proposed project is structurally sound and in conformance with the applicable provisions of the Florida Building Code or does not cause any quantifiable wind-loading stress on the Existing Structure requiring structural modifications to the Existing Structure;
- (3) A description of the manner in which the Facility will be installed and/or modified (i.e. anticipated construction methods or techniques);

- (4) A temporary sidewalk closure plan, if appropriate given the Facility proposed, to accommodate installation and/or modification of the Communications Facility;
- (5) A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate given the Facility proposed, to accommodate installation and/or modification of the Communications Facility;
- (6) Information on the ability of the Public Rights-of-Way to accommodate the proposed Facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other Persons);
- (7) If appropriate given the Facility proposed, a restoration plan and an estimate of the cost of restoration of the Public Rights-of-Way;
- (8) The timetable for construction of the project or each phase thereof, and the intended areas of the City to be served by the Communications Facility;
- (9) For Project Permits that involve multiple Collocations or Attachments to Existing Structures or installation of multiple new Wireless Support Structures, the applicant shall only be required to provide a structural certification by a Florida licensed professional engineer as to each type of Facility, not for each Facility proposed as part of the overall Project.
- (10) A statement within the application for a Permit that by execution of the application and by applying for the Permit, the Registrant agrees to the indemnification provisions set forth in Code Section 25-310 hereof; and
- (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.

(c) *Permit Review Standards for a new Communications Facility.* To the extent not otherwise prohibited by State or Federal law, the City shall have the power to prohibit or reasonably limit the placement of new or additional Communications Facilities within a particular area of Public Rights-of Way related solely to public health, safety and welfare that is necessary to manage the Public Rights-of-Way in the City. In determining whether to reasonably limit or prohibit a Communications Facility in the Public Rights-of-Way, the City Engineer shall limit his or her review and consideration of a Permit application and imposition of reasonable permit conditions solely to the following:

- (1) the sufficiency of space to accommodate all of the present and pending applications to place Communications Facilities and pending applications

to place and maintain Utility facilities in that area of the Public Rights-of-Way;

- (2) the sufficiency of space to accommodate City plans for public improvements or projects adopted as part of its three or five year capital improvements plan that the City determines are in the best interest of the public;
- (3) the impact on traffic and traffic safety;
- (4) the impact upon existing facilities in the Public Rights-of-Way;
- (5) Site safety triangles as defined in U.L.D.R. Section 47-35 which may be reduced to no less than ten (10) feet, if the City Engineer on a case-by-case basis, finds that the proposed reduction complies with all City Engineering standards and the City Engineer shall take into consideration neighborhood characteristics such as the location of schools, parks and other community facilities, pedestrian facilities such as adequate sidewalks, street characteristics such as pavement with, width of swale (right-of-way line to curb or edge of pavement for vehicular travel-ways) the curvature of the street, speed limits and other similar elements. Sight triangles located at the intersection of a local street or driveway within a right-of-way under county, state or federal jurisdictions, may be subject to the sight triangle requirements of those jurisdictions;
- (6) compliance with applicable ADA criteria and requirements;
- (7) Minimum distance separation from edge of pavement in accordance the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, Table 3-12, Minimum Width of Clear Zones. In accordance with Table 3-12, the City Engineer shall have the authority to reduce the four (4) foot minimum offset identified in Table 3-12 where that offset cannot be reasonably obtained and other alternatives are deemed impractical, the City Engineer shall have the authority to decide reductions in the clear zone in accordance with the above referenced Table 3-12.

(d) Communication Facility Standards. In addition to the standards set forth in Subsection 25-305(d) above, a Communications Facility shall be subject to the following criteria:

- (1) *Maximum Height Restrictions.* A Communications Facility, including any attached antennas, shall not exceed the following height per referenced Public Rights-of-Way:

- a. Section Line roadways and Arterials: the top of the uppermost antenna array, collocated or attached equipment or new Wireless Support Structure shall not exceed seventy-five (75) feet in height as measured from Grade.
- b. Half Section Line roadways and Collectors: the top of the uppermost antenna array, collocated or attached equipment or new Wireless Support Structure shall not exceed fifty-five (55) feet in height as measured from Grade.
- c. Local 2-lane Residential Neighborhood Roads: the top of the uppermost antenna array, collocated or attached equipment or new Wireless Support Structure shall not exceed forty (40) feet in height as measured from Grade, unless requested by the residents within a 350' foot radius of the proposed location.

- (2) *Equipment Volume*. Equipment that may be associated with the Communications Facility that may be attached to an Existing Structure or a new Wireless Support Structure or located in the Public Rights-of-Way at Grade, not including associated antenna(s), electric meter, telecom demarcation box, battery-back up power systems, grounding equipment, or power transfer switch, shall not exceed seventeen (17) cubic feet.
- (3) *Antenna Volume*. Each antenna that may be associated with the installation of a Communications Facility shall not exceed more than three (3) cubic feet in volume. Each antenna that is exposed and not concealed within a concealment enclosure, shall fit within an imaginary enclosure that does not exceed three (3) cubic feet.
- (4) *Lighting*. A Communications Facility shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation, the FAA or law ; provided, however, the City may require may require the installation of an LED street light on a new Wireless Support Structure or an Existing Structure functioning as a light pole .
- (5) *FCC compliance*. All Communications Facilities shall comply with any applicable FCC standards including but not limited to emissions standards;

(e) Permit Criteria for a New Wireless Support Structure. A request to place a new Wireless Support Structure shall:

- (1) Comply with the requirements of 25-305(b), 25-305(c) and 25-305(d) above, as may be relevant given the Facility proposed;

- (2) Comply with all ADA criteria and requirements as may be relevant given the Facility proposed;
 - (3) Provide an affidavit attesting to the fact that the Registrant made diligent efforts to collocate on, attach to, or replace an Existing Structure within the Public Rights-of-Way;
 - (4) Demonstrate why design alternatives that utilize or replace an Existing Structure cannot be utilized;
 - (5) Provide written, technical evidence that the proposed Communications Facility cannot collocate on, attach to, or replace an Existing Structure due to coverage or other technical requirements or limitations; and
 - (6) Locate the new Wireless Support Structure as close to a shared property boundary as feasible to the extent that the proposed new Wireless Support Structure is located within Public Rights-of-Way adjacent to single family residential.
- (f) *Exceptions.* The city engineer may grant an exception to the requirements of Sections 25-305(d) and 25-305(e) if an applicant demonstrates, with written evidence satisfactory to the City Engineer, that:
- (1) The exception will not create any threat to the public health, safety or welfare, or the operations of other Utilities; or
 - (2) The increased economic burden and the potential adverse impact on the permittee's construction schedule resulting from the strict enforcement of the requirements of such sections actually or effectively prohibits the ability of the applicant to provide Communications Services; or
 - (3) The requirement unreasonably discriminates against the applicant in favor of another Communications Services Provider.
- (g) *Permit Review Time-frames.* The following time limitations shall be considered the maximum time-frames allowed by State and Federal law:
- (1) Eligible Facility Permit. A Permit for an Eligible Facility shall be granted within the normal timeframe for a similar building permit review but in no case later than sixty (60) Days after submission. The City shall evaluate all Eligible Facility Permit applications for completeness and to determine whether such request qualifies as an Eligible Facility Request, and shall notify the applicant within thirty (30) days of the date of Permit application if the application does not contain sufficient information to allow the City to determine whether it properly qualifies as an Eligible Facility Request or contains any deficiencies. The deadline for approval may be tolled if the City provides notice of incompleteness within thirty

(30) Days, or upon mutual agreement of the parties, pursuant to federal law.

- (2) Statutory Collocation Permit. Any Collocation Permit application for a Wireless Communications Facility upon an Existing Structure that meets the criteria set forth in Chapter 365.172(13), Florida Statutes, shall be acted upon within the normal timeframe for a similar building permit review but in no case later than forty-five (45) business days after the date the Permit application is determined to be properly completed in accordance with Section 25-305. . The City shall evaluate the Statutory Collocation Permit application for completeness and notify the applicant of any deficiencies within twenty (20) Days of the date of Permit application.
- (3) Collocation or Attachment Permit. A Permit application to Collocate or Attach a Communications Facility that is not deemed an Eligible Facility Permit request or is not a Statutory Collocation as defined in Chapter 365.172(13), Florida Statutes, shall be acted upon within the normal timeframe for a similar building permit review but in no case later than ninety (90) Days after the date the Permit application is submitted. The deadline for approval may be tolled if the City provides notice of incompleteness within thirty (30) Days, or upon mutual agreement of the parties, pursuant to federal law.
- (4) Wireless Support Structure Permits. All other requests for Permits to install a Wireless Support Structure in the Public Rights-Of-Way shall be acted upon within the normal timeframe for a similar building permit review but in no case later than one hundred fifty (150) Days after the date the Permit application is submitted. The deadline for approval may be tolled if the City provides notice of incompleteness within thirty (30) Days, or upon mutual agreement of the parties, pursuant to federal law.
- (5) Other Communications Facility Permits. Any request for a Permit other than pursuant to subsections (1) through (4) immediately above, shall be acted upon within thirty (30) Days of Permit application, except that in the case of a Project Permit application, the City shall act within a reasonable period of time based upon the size and scope of the project.
- (6) Calculation of Timeframes; Notice; Cure. A Permit application is deemed submitted or resubmitted on the date the application is received by the City. If the City does not notify the applicant in writing that the Permit application is not completed in compliance with Section 25-305 within the timeframes specified for each type of Permit request enumerated in subsections (1) through (5) above, the application is deemed to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the Permit application. If the Permit

application is not completed in compliance with the City's regulations, the City shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the Permit application properly completed. Upon resubmission of information to cure the stated deficiencies, the City shall notify the applicant, in writing, within the normal timeframes of review and within any applicable federal limits, but in no case longer than twenty (20) Days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the City do not make the Permit application incomplete. If a specified deficiency is not properly cured when the applicant resubmits its Permit application to comply with the notice of deficiencies, the City may continue to request the information until such time as the specified deficiency is cured. The City may establish reasonable timeframes within which the required information to cure the Permit application deficiency is to be provided based upon the type of Facility or number of Facilities which are the subject of the Permit application or the application will be considered withdrawn or closed.

(h) *Format of Permit Application; When As-Built Plans Required.* A Permit application and plans to place a Communications Facility, Pass-Through Facility or Wireless Support Structure in Public Rights-of-Way 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. If the plans so provided pursuant to Section 25-305(c) require revision based upon actual installation, the Registrant shall promptly provide the City with revised plans. The plans shall

(i) *Emergency Permits.* In the case of an emergency, a Registrant may restore its damaged Facilities in the Public Rights-of-Way to their pre-emergency condition or replace its destroyed Facilities in the Public Rights-of-Way with Facilities of the same size, character and quality, all without first applying for or receiving a Permit.

- (1) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.
- (2) A Registrant shall provide prompt notice to the City of the repair or replacement of a Communications Facility in the 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.

(j) *Project Permit.*

- (1) General. The City may issue a single Project Permit that would otherwise require individual Permits for two or more Communications Facilities that form a cluster or multiple clusters to serve a specified service area that will be installed in a defined project phase. The process will start with a Preliminary Review Meeting. After completion of this meeting a project plan will be submitted with Project Permit application.
- (2) Preliminary Review Meeting. A meeting with City Engineer to discuss code concerns prior to submitting project plans. For purposes of the Master Project Plan, this meeting is the forum in which the design team describes their intentions for the completion sequence. This is a crucial step that designates how to permit the entire project in order to realize these intentions. From information gathered at the meeting, a Project Plan will be created and submitted with a Permit application.
- (3) Project Plan. An organization chart which breaks down the phases of project. The organization is arranged to reflect the dependency that exist between sub-projects. The purpose of the Preliminary Project Plan is to show the sequence of completion for the project.

(k) *General Communications Facility Regulations:*

- (1) Non-interference with use. All Communications Facilities, including new Wireless Support Structures shall be placed or maintained so as not to unreasonably interfere with the use of the Public Rights-of-Way by the public and with the rights and convenience of the property owners who adjoin any of the Public Rights-of-Way.
- (2) Safety Practices. All safety practices required by applicable law shall be used during the placement or maintenance of Communications Facilities.
- (3) Restoration of Right-of-Way. After the completion of any work involving 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 thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the Registrant in accordance with Section 337.402, Florida Statutes, as it may be amended. For twelve (12) months following the original

completion of the work, the Registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Article at its own expense.

- (4) Removal or Relocation governed by Florida Law. 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 Sections 337.403 and 337.404, Florida Statutes, as they may be amended.
- (5) Permit does not create a property right. 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.
- (6) Maintenance in accordance with applicable law. A Registrant shall maintain its Communications Facility in Public Rights-of-Way in a manner consistent with applicable law.
- (7) Underground Facility Damage Prevention and Safety Act. 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 Chapter 556, Florida Statutes, as it may be amended.
- (8) Use of due caution. 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, including, but not limited to those safeguards set forth in Chapter 33, Florida Building Code.
- (9) Coordination with other work in Public Rights-of-Way. 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 and minimizes any interference with the existing Communications Facilities.
- (10) Avoidance of interference, displacement, damage or destruction. A Registrant shall not place or maintain its Communications

Facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, storm drainage lines, pipes, cables or conduits of the City or any other Person's facilities lawfully occupying the Public Rights-of-Way of the City. A Registrant shall not modify or relocate any other Person's facilities that are lawfully occupying the Public Rights-of-Way of the City without the consent of the affected Person.

- (11) No warranties. City makes no warranties or representations regarding the fitness, suitability, or availability of the City's Public Rights-of-Way for the Registrant's Communications Facilities provided that the City shall not preclude the installation of a Communications Facilities if it can be demonstrated that adequate space within the right-of-way is available to accommodate the Facility, unless the City has an identified project in its 5-year capital improvements program. 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 or abandon Public Rights-of-Way, and the City makes no warranties or representations regarding the availability of any added, vacated or abandoned Public Rights-of-Way for Communications Facilities. In the event the City vacates or abandons the public rights-of-way where Communications Facilities exist, the City shall act in good faith to permit the relocation of an Existing Communications Facility in an expedited manner or grant an easement in favor of the provider to allow continued use of the Facility in the existing location.
- (12) Right of Inspection. 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 and upon reasonable notice to ensure compliance with this Article.
- (13) City reservation of rights. The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other 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. 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 subject to any

limitations contained in Section 337.403, Florida Statutes, as may be amended.

- (14) Temporary raising and lowering of Communication Facilities as accommodation. A Registrant shall, on the request of any Person holding a Permit issued by the City, temporarily raise or lower its Communications Facilities to permit the work authorized by the Permit within the Public Rights-of-Way. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Registrant shall have the authority to require such payment in advance. The Registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation.
- (15) Maintenance and Graffiti plan. Each Communications Facility within the Public Rights-of-Way, including any appurtenant features incorporated therewith under this Article shall be maintained in a neat and clean condition at all times. Specifically, but not without limiting the generality of the foregoing, each Communications Facility in the Public Rights-of-Way shall be regularly maintained so that:
 - a. they are free of Graffiti visible from the Public Rights-of-Way at grade. All Graffiti shall be removed within thirty (30) days from receipt of notice thereof by the City that Graffiti exists on the Communications Facility or any portion thereof.
 - b. it is reasonably free of dirt and grease, rust and corrosion in visible metal areas, chipped, faded, peeling and cracked paint that is visible from the Public Right-of-Way at grade. All such conditions shall be remedied within thirty (30) days from receipt of notice thereof from the City.
- (16) Building Code Compliance. The design, construction, and installation of such Communication Facilities shall comply with any applicable local building codes and the Florida Building Code;
- (17) No Signage and advertising. Registrants shall not place or commercial advertising signage on Communications Facilities installed in Public Rights-of-Way, unless otherwise required by Federal or State statute, provided, however, that Existing Structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.
- (18) Exterior finish. Communications Facilities, not requiring FAA painting or marking, shall have an exterior, hard durable finish

which enhances compatibility with adjacent uses, as approved by the City Engineer.

- (19) No Permit fees for work under this Article. Pursuant to Section 337.401(3)(c)(1)(b), Florida Statutes, as same may be amended from time to time, and other applicable provisions of law, and notwithstanding any other provisions of this Code, the City hereby elects not to charge Permit fees to any Registrant for Permits to do work under this Article in the Public Rights-of-Way.
- (20) Issuance of Permit in violation of Code or construction in violation of Code.
 - a. The issuance of a Permit for a Communications Facility shall not be construed as a right to installation, construction or maintenance of the Communications Facility that fails to meet the requirements of this Article.
 - b. The issuance of a Permit for a Communications Facility shall not be deemed or construed to be a Permit for or approval of any violation of any of the provisions of this Article. No Permit presuming to give authority to violate or cancel the provisions of Chapter 25 of this Code shall be void and invalid except insofar as the work or use which it authorizes is lawful.
- (21) Permit Errors. The issuance of a Permit upon the application for Permit shall not prevent the City Engineer from thereafter requiring the correction of errors when in violation of Chapter 25 of this Code.

Sec. 25-306. Suspension of Permits.

The City may suspend a Permit for work in the Public Rights-of-Way for one or more of the following reasons, subject to Section 25-307 of this Article:

- (a) 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;
- (b) Misrepresentation or fraud by Registrant in a Registration or Permit application to the City;
- (c) Failure to timely update a Registration; or
- (d) Failure to relocate or remove Facilities pursuant to Sections 337.403 and 337.404, Florida Statutes. Upon the recommendation of a suspension of the Permit by the City

Engineer, the City Engineer shall provide notice and an opportunity to cure any violation of subsections (a) through (c) above, each of which shall be reasonable under the circumstances. The suspension shall terminate upon curing of the underlying violation(s).

Sec. 25-307. Appeals.

(a) Any person aggrieved by any action or decision of the City Engineer with regard to any aspect of Registration or issuance of or suspension of a Permit under this Article may appeal to the City Manager by filing with the City Manager, within sixty (60) days after receipt of a written decision of the City Engineer, 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; provided however, the right of appeal of any action or decision of the City Engineer with regard to an aspect of Registration or issuance of or suspension of a Permit under this Article shall not be available in the event a citation violation notice has been given pursuant to the terms of Code Sec. 11-17, et seq., the right of appeal under a citation violation notice procedure being provided for under Code Section 11-14.

(b) The only appeal that shall be considered with respect to an action or decision of the City Engineer with regard to any aspect of Registration or issuance or suspension of a Permit under this Article are those appeals that allege that there is error in any order, requirement, decision, or determination made by the City Engineer in the enforcement of this Article.

(c) The City Manager shall set such appeal for a hearing held by the City Manager on the very next available date following such notice of appeal and cause notice thereof to be given to the appellant and the City Engineer and the City Engineer shall present the case on behalf of the City.

(d) The City Manager shall hear and consider all facts material to the appeal and render a decision within twenty (20) calendar days of the date of the hearing. The City Manager may affirm, reverse or modify the action or decision appealed from; provided, that the City Manager shall not take any action which conflicts with or nullifies any of the provisions of this Article.

(e) Any person aggrieved by any decision of the City Manager 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. 25-308. Involuntary Termination of Registration.

- (a) *Termination Events.* The City Manager may terminate a Registration if:
- (1) A federal or state authority suspends, denies, revokes a Registrant's certification or license required to provide Communications Services;

- (2) The Registrant's placement or maintenance of a Communications Facility in the 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 § 843.025, as same may be amended from time to time;
- (4) The Registrant violates Florida Statutes § 843.165, as same may be amended from time to time;
- (5) The Abandonment by the Registrant of all of its Communications Facilities in the Public Rights-of-Way and noncompliance with City Code Section 25-315 hereof; or
- (6) Repetitive violations of any of the provisions of this Article.

(b) *Notice of Intent to Terminate.* Prior to termination, the Registrant shall be notified by the City Manager, with a written notice setting forth all matters pertinent to the proposed termination action, including which of subsections (a)(1) through (a)(6) above is applicable and the reason therefore, and describing the proposed action of the City with respect thereto. The Registrant shall have fifteen (15) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan satisfactory to the City Manager to accomplish the same. If the plan is rejected by the City Manager, the City Manager shall provide written notice within seven (7) days of such rejection to the Registrant and shall make a recommendation to the City Commission regarding a decision as to termination of Registration. At the next available date for a Regular Meeting of the City Commission, but no sooner than ten (10) days after the City Manager makes his recommendation to the City Commission, the City Commission shall hear appeals from the Registrant and the City Manager. The City Commission shall make a final determination as to termination of the Registration and the terms and conditions relative thereto. Any person aggrieved by any decision of the City Commission on an appeal regarding termination of a Registration shall be entitled to apply to the Circuit Court for a review thereof by Petition for Writ of Certiorari in accordance with the applicable court rules.

(c) *Post-Termination Action; Appeal.* In the event of termination, the former Registrant shall: (1) in accordance with the provisions of this Article and as may otherwise be provided under state law notify the City of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Communications Facilities in the Public Rights-of-Way; or (2) provide the City with an acceptable plan for disposition of its Communications Facilities in the Public Rights-of-Way. If a Registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in City Code Section 25-307 hereof, the City may exercise any

remedies or rights it has at law or in equity, including, but not limited to requiring the Registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the Registrant and City Manager, to remove some or all of the Communications Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to its original condition before the initial installation of the Facilities. In any event, a terminated Registrant shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way of the City.

(d) *When Removal Not Authorized or Required.* In the event of termination of a Registration, this section does not authorize the City to cause the removal of 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. 25-309. Insurance.

(a) *General.* A Registrant shall provide, pay for and maintain satisfactory to the City the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having an A.M. Best A-VII or better rating. All liability policies shall provide that the City is an additional insured as to the activities under this Article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty (30) days advance written notice by registered, certified or regular mail or facsimile as determined by the City must be given to the City's Risk Manager of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City.

(b) *Coverage Limits.* 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: \$1,000,000.00 combined single limit each occurrence.
- (3) Automobile liability. Bodily injury and property damage: \$1,000,000.00 combined single limit each accident.

(c) *Duration.* The coverage provided herein shall be for a period not less than the period for which the indemnification obligations under City Code Section 25-311 hereof are imposed.

Sec. 25-310. Indemnification.

(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. City shall not settle or compromise any matter for which a Registrant is obligated to indemnify without the prior written consent of the Registrant, such consent shall not be unreasonably withheld. Nothing contained in this Section shall be construed or interpreted:

- (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or
- (2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

(b) The indemnification requirements shall survive and be in effect after the termination or cancellation of a Registration.

Sec. 25-311. Performance Bond.

(a) Prior to issuing a Permit where the work under the Permit will require restoration of Public Rights-of-Way, the City Engineer shall require a performance bond by a surety duly authorized to do business in the State of Florida and having an A.M. Best A-VII rating or better. The bond shall be in the amount of 125 % of the construction and restoration cost estimate of the Public Rights-of-Way, as certified by a professional engineer licensed in the State of Florida, to secure proper performance under the requirements of any Permits and the restoration of the Public Rights-of-Way. Twelve (12) months after the completion of the restoration of the Public Rights-of-Way in accordance with the bond, the Registrant may eliminate the bond. However, the City Engineer may subsequently require a new bond for any subsequent work by the same Registrant in the Public Rights-of-Way. The performance bond 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 performance bond will not be required if a Registrant reasonably demonstrates to the City that the Registrant is financially qualified to restore the Public Rights-of-Way. A Registrant shall be presumed to be financially qualified if it has a history of restoring the Public Rights-of-Way in the City with respect to the construction of its Facilities over a period of the last three (3) years prior to the issuance of the current Permit.

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

(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. 25-312. Enforcement Remedies.

(a) A Registrant's failure to comply with provisions of this Article shall constitute a violation of this Code and shall subject the Registrant to the penalties provided by City Code § 1-6, termination of Registration in accordance with the provisions of City Code § 25-308, suspension of Permit under the provisions of City Code § 25-306 and a Registrant who is alleged to have violated any provisions of this Article may be further subject to a civil penalty in accordance with the provisions of Code Section 11-25 and the procedures promulgated under Code Section 11-17, et seq. or injunctive relief as otherwise provided by law.

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

Sec. 25-313. Abandonment of a Communications Facility.

(a) Upon Abandonment of a Communications Facility owned by a Registrant in Public Rights-of-Way, the Registrant shall notify the City within ninety (90) days.

(b) The City may direct the Registrant by written notice to remove all or any portion of such Abandoned Facility at the Registrant's sole expense if the City determines that the Abandoned Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Facility: (a) compromises safety at any time for any Public Rights-of-Way user or during construction or maintenance in Public Rights-of-Way; 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 (c) creates a maintenance condition that is disruptive to the Public Rights-of-Way's use. In the event of (b), the City

may require the third Person to coordinate with the Registrant that owns the existing Facility for joint removal and placement, where agreed to by the Registrant.

(c) In the event that the City does not direct the removal of the Abandoned Facility, the Registrant, by its notice of Abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the Facility by the City or another Person at such third party's cost.

(d) If the Registrant fails to remove all or any portion of an Abandoned Facility as directed by the City within a reasonable time period as may be required by the City under the circumstances, the City may perform such removal and charge the cost of the removal against the Registrant.

Sec. 25-314. Reports and records.

(a) A Registrant shall provide the following documents to the City as received or filed.

(1) Upon reasonable request, any pleadings, petitions, notices and documents, which may directly impact the obligations under this Article and which are reasonable necessary for the City to protect its interests under this Article.

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

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

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

Sec. 25-315. Force Majeure.

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

Sec. 25-316. 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) The provisions of this Article shall be applicable to all Communications Facilities placed in the City's Public Rights-of-Way within the City on or after the effective date of this Ordinance and shall apply to all existing Communications Facilities placed in the Public Rights-of-Way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law, except that any provision of this Article regarding the size, composition, or location of Communications Facilities shall not apply to Communications Facilities lawfully placed within any Public Right-of-Way within the City prior to the effective date of this Ordinance.

(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.

Sec. 25-317. No liability or warranty.

Nothing contained in this Article shall be construed to make or hold the City responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the Registrant's Communications Facilities by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any Permit or the approval or disapproval of any placement or maintenance of the Registrant's Communications Facilities as authorized herein constitute any representation, guarantee or warranty of any kind by, or create any liability upon the City or any official, agent or employee thereof. Additionally, the City shall only be responsible for any relocation costs incurred by any Registrant due to the City's or any other party's work in the Public Rights of Way in accordance with Ch. 337.401 and 337.403, Florida Statutes.

SECTION 2. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

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

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

PASSED FIRST READING this the ___ day of _____, 2016.

PASSED SECOND READING this the ___ day of _____, 2016.

ATTEST:

Mayor
JOHN P. "JACK" SEILER

City Clerk
JEFF MODARELLI