

## Garcia, Cynthia

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**From:** AnneMarie.Ortiz@hklaw.com  
**Sent:** Monday, December 9, 2019 5:26 PM  
**To:** Valdes-Fauli, Raul; Lago, Vincente; Keon, Patricia; Jorge Fors; Mena, Michael  
**Cc:** Iglesias, Peter; City Attorney; Ramos, Miriam; Suarez, Cristina; City Clerk; Urquia, Billy; Gary.Resnick@gray-robinson.com; Janna.Lhota@hklaw.com  
**Subject:** City Commission Meeting – December 10, 2019, Proposed Communications Ordinance (Item No. F-4)  
**Attachments:** Letter to City.pdf; Coral Gables CROW Ord 2nd Rdg Draft 12-2-19 with Vz comments and objections 12-5-2019.pdf

**CAUTION:** External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon. On behalf of Janna Lhota, please see the attached.

Thank you,  
Anne Marie

**Anne Marie Ortiz | Holland & Knight**

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December 9, 2019

*Via E-mail*

Mayor Raul Valdes-Fauli  
Vice Mayor Vince Lago  
Commissioner Patricia Keon  
Commissioner Jorge L. Fors, Jr.  
Commissioner Michael Mena  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134

Re: City Commission Meeting – December 10, 2019  
Proposed Ordinance No. 2019-9180 (Item No. F-4)

Dear Mayor Valdes-Fauli, Vice Mayor Lago and Commissioners:

Holland & Knight LLP represents Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”). Tomorrow the City Commission will consider for adoption a draft Ordinance (Agenda Item No. F-4) which seeks to amend Chapter 70 of the City Code regarding the placement of communications services facilities, including small wireless facilities, in the City’s public rights-of-way (the “Draft Ordinance”). The Draft Ordinance seeks, in part, to implement changes approved by SB 1000 (2019) to Section 337.401, Florida Statutes, regarding the deployment of small wireless facilities in the public rights-of-way (“ROW”), which facilities are a critical component in Verizon Wireless’ effort to upgrade the City’s wireless infrastructure supporting both the City’s residents, businesses and visitors.

Attached to this letter is a copy of the revised Draft Ordinance included in the Agenda back-up which has been annotated with our outstanding comments and objections with the accompanying legal support. While we appreciate the time afforded us to voice our comments and objections to the Draft Ordinance, as the attached annotated document demonstrates, significant issues remain unresolved that will impact Verizon Wireless’ ability to deploy communications facilities in the City. One item of concern relates to the repeated use of the phrase “to the extent not inconsistent with applicable law” or the like throughout the Draft Ordinance in

December 9, 2019

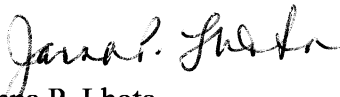
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connection with provisions that expressly or as applied violate the law. While we appreciate the City recognizing that state and federal law will control, we are concerned that this drafting tool may lead to issues with implementation if the individuals reviewing any permit application are not aware of the legal constraints associated with the deployment of small wireless facilities in the ROW.

As it is our understanding that the City intends to move forward tomorrow and consider the Draft Ordinance for adoption, we respectfully request that the City Commission include this letter and the attached annotated Draft Ordinance in the record for this item. In closing, we would like to take this opportunity to thank City staff for their time, professional manner and consideration of the comments submitted on behalf of our client Verizon Wireless. It is very much appreciated.

Sincerely yours,

HOLLAND & KNIGHT LLP



Janina P. Lhota

C: Peter Iglesias, City Manager, [piglesias@coralgables.com](mailto:piglesias@coralgables.com)  
Miriam Soler Ramos, City Attorney [cityattorney@coralgables.com](mailto:cityattorney@coralgables.com)  
Christina Suarez, Deputy City Attorney [csuarez@coralgables.com](mailto:csuarez@coralgables.com)  
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Gary Resnick, [Gary.Resnick@gray-robinson.com](mailto:Gary.Resnick@gray-robinson.com)  
Client

Attachment

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2019-\_\_

**AN ORDINANCE OF THE CITY OF CORAL GABLES, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE CITY OF CORAL GABLES BY AMENDING ARTICLE III, CHAPTER 70, SECTIONS 70-76 THROUGH 70-91, THE “CORAL GABLES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE”; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION; PROVIDING FOR THE REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE CONSTRUCTION BOND ~~AND PERMANENT PERFORMANCE BOND TO PLACE OR MAINTAIN~~ COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, City of Coral Gables (“City”) staff periodically reviews City Ordinances and makes recommendations to the City Commission to revise its Ordinances; and

**WHEREAS**, the City Commission of the City of Coral Gables has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the City of Coral Gables by regulating the siting of communications facilities and utility poles within the public rights-of-way; and

**WHEREAS**, this Ordinance accommodates the growing needs and demand for communications services; and

**WHEREAS**, this Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic character of areas where such public rights-of-way exist; and

**WHEREAS**, Section 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

**WHEREAS**, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

**WHEREAS**, the City’s intent of non-discrimination and competitive neutrality is limited by the requirements of Florida and federal law addressing the siting of communications facilities

**Commented [A1]:** SB 1000 (2019), together with the prior amendment to Section 202.24, F.S. approved by HB 7087 (2018), make it clear that the City cannot require the maintenance of a security fund or permanent performance bond as a condition to the maintenance of communications facilities in the public rights-of-way. Section 337.401(7)(d).12, as revised by SB 1000, specifically deletes any reference to a security fund or performance bond from the host of items that the City may include in any ordinance relating to the use of the City’s rights-of-way. As such, any provision for a security fund or other bond that is maintained in perpetuity must be deleted from the Draft Ordinance as a condition for the placement of facilities in the public rights-of-way (“ROW”).

in public rights-of-way that require that the City address various technologies differently. For example, Florida statutes provide preferential treatment for technology known as “micro wireless facilities” that are not required to obtain a City permit to be placed in public rights-of-way and certain technology may apply to collocate on City-owned poles. Courts as well have recognized appropriate distinctions in regulations applicable to wireline and wireless communications facilities; and

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

**WHEREAS**, in 2019, the Florida Legislature enacted and the Governor approved CS/CS/CS/SB 1000 (“SB 1000”), amending Section 337.401, Florida Statutes, including subsections (3) and (7), known as the Advanced Wireless Infrastructure Deployment Act, (“Wireless Act”); and

**WHEREAS**, the City Commission adopted Ordinance 2019-08 to implement the Wireless Act; and

**WHEREAS**, it is the City’s intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the fullest extent, consistent with applicable state and federal law; and

**WHEREAS**, the City Commission finds that it is in the public interest to amend the City Code of Ordinances consistent with SB 1000; and

**WHEREAS**, the City’s rights-of-way are essential for the travel of persons and the transport of goods and for the provision of utility services throughout the City, and are a unique and physically limited resource requiring proper management by the City to ensure public safety, maximize efficiency, minimize costs to City taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

**WHEREAS**, the City elected to increase the Communications Services Tax rate in lieu of collecting permit fees from providers of communications services; and

**WHEREAS**, a duly noticed public hearing as required by law was held by the City Commission of the City of Coral Gables, at which public hearing all residents and interested persons were given an opportunity to be heard; and

**WHEREAS**, the City Clerk transmitted a copy of this Ordinance prior to consideration on first reading to the Florida Secretary of State in accordance with Section 337.401(3)(d), Florida Statutes; and

**WHEREAS**, the City Commission has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the City's plans.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA THAT:**

**SECTION 1.** The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance.

**SECTION 2.** That Article III, Chapter 70, Sections 70-76 through 70-91 of the Code of Ordinances of the City of Coral Gables are hereby amended as follows<sup>1</sup>:

**Sec. 70-76. - Short title.**

This article shall be known and may be cited as the "Coral Gables Communications Rights-of-Way Ordinance."

**Sec. 70-77 Intent and purpose; Applicability; Authority to Implement.**

(a) **Intent and purpose.**

It is the intent of the City to promote the public health, safety and general welfare by: providing for the placement and 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 the United States and Florida Constitutions, Section 337.401, Florida Statutes, as it may be amended, the City's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, the Spectrum Act, final effective orders of the Federal Communications Commission (FCC), and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this section; 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. To the extent provisions in this Ordinance conflict with final, effective orders of the FCC, or applicable federal or state law, the City reserves the right not to apply such conflicting provisions in this Ordinance.

(b) **Applicability.**

- (1) Persons seeking to place or maintain communications facilities on private property or other property to which the City, any municipality, Miami-Dade County, Miami-Dade County Public School Board, State of Florida, or federal government has a fee simple or leasehold interest in real property, not within and exclusive of the public rights-of-way, located within the

<sup>1</sup> Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

jurisdictional boundaries of the City shall comply with the applicable provisions of the City Zoning Code, including but not limited to Article 5, Division 20 to the extent it applies, unless such property is addressed expressly in this Ordinance. This Ordinance is not applicable to communication facilities outside the public rights-of-way, unless addressed expressly herein. Pursuant to this Ordinance, a person may be authorized to place or to maintain communications facilities, including but not limited to, small wireless facilities, micro wireless facilities, ~~or~~ utility poles for collocation of small wireless facilities, fiber, coaxial cable, and backhaul facilities in the public rights-of-way. Rules or regulations imposed by the City relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way shall be generally applicable to all providers of communications services, to the extent federal or Florida law does not require different treatment. Florida law requires that the City's rules and regulations take into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities. Accordingly, in the exercise of the City's authority, as required by Florida law, this Ordinance provides different regulations applicable to various communications facilities. Wireless support structures, telecommunications towers, and antennas that are not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law. This Ordinance applies to the placement of conduit, fiber or cable for the purpose of providing backhaul or communications service consistent with Section 337.401, Florida Statutes, as well as to a cable or video service provider that has been issued and holds a certificate of franchise authority from the Florida Department of State pursuant to Chapter 610, Florida Statutes, that places or maintains a cable system or wireline facilities in the City's public rights-of-way. This Ordinance shall not apply to the City to the extent consistent with applicable law. This Ordinance shall not apply ~~or~~ to wireless facilities owned by a person, including ~~the City or an~~ electric cooperative, to the extent such facilities are utilized solely on an internal, non-commercial basis by said person.

- (2) This Ordinance implements *inter alia*, Section 337.401, Florida Statute, including the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), Florida Statutes ("Wireless Act"), as amended. By adopting this Ordinance, the City does not waive any rights with respect to the Wireless Act including any rights that may exist under federal law, the Florida Constitution and the U.S. Constitution. In the event the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), Florida Statutes, is repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law or regulation, in whole or in part, provisions of this Ordinance may no longer apply, in which case pending and future applications for small wireless facilities or utility poles intended to support the collocation of small wireless facilities in the public rights-of-way, will be governed by applicable law. In addition, permits

**Commented [A2]:** As this sentence concerns all of Section 337.401, F.S., why is the inapplicability of the Ordinance only limited to permit applications for small wireless facilities (SWF)?

issued pursuant to this Ordinance may be suspended or revoked, and facilities installed pursuant to permits issued pursuant to this Ordinance or without permits as authorized by this Ordinance may be required to be removed at the facility owner's expense, to the extent consistent with applicable law. It is the City's intent not to create any vested rights in placing and maintaining facilities addressed in the Wireless Act in the public rights-of-way as a result of this Ordinance or any permit issued pursuant to this Ordinance, to the extent not inconsistent with applicable law.

- (3) To the extent any provision of this Ordinance conflicts with the Code of Ordinances or Zoning Code of the City of Coral Gables, including but not limited to Zoning Code Article 5, Division 20, this Ordinance shall control.
  - (4) This Ordinance shall be applicable to all communications facilities placed or maintained in the public rights-of-way on or after the effective date of this Ordinance, all pending applications or requests for permits subject to this Ordinance, and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law. An existing registrant with an effective registration pursuant to ~~Section 70-79~~ of the City Code shall comply with this Ordinance by the earlier of the following: ninety (90) calendar days from the effective date of this Ordinance, the renewal or updating of a registration as required herein, or prior to applying for a permit pursuant to this Ordinance. This Ordinance shall not require removal or modification of communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit prior to the effective date of this Ordinance with the exception, to the extent not inconsistent with applicable law, of compliance with objective or stealth design standards that may require concealment such as landscaping, or unless such facilities are abandoned or otherwise required to be altered or removed pursuant to this Ordinance or applicable law.
  - (5) Reservation of rights. The City reserves the right to manage the City's public rights-of-way and to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers as expressly authorized in Section 337.401(3)(b), F.S. and the Florida Constitution. The City's police powers include, but are not limited to, the power to issue orders and to establish laws and regulations for the preservation of public order and tranquility, the promotion of public health, safety and general welfare and to define and to proscribe public nuisances. All fees, charges and financial obligations previously accrued pursuant to any ordinances and resolutions repealed or no longer effective pursuant to this Ordinance, shall continue to be due and owing until paid.
- (c) **Authority to implement Ordinance.** The city manager is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent and purposes of this Ordinance.

**Commented [A3]:** This language should be deleted. A change in Section 337.401(7) cannot and should not lead to widespread termination of lawfully-issued permits. In addition, requiring widespread removal of facilities would likely prohibit the provision of telecommunication services in violation of 47 USC §§ 253(a) and/or 332(c)(7)(B)(i)(II).



**Sec. 70-78 Definitions.** For the purposes of this Article III, the following terms, phrases, words and 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 in this Article or in any permit that may be granted pursuant to this Article shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §151 *et seq.*, as amended, or the Spectrum Act, 47 U.S.C. §1455(a)(collectively the “Communications Act”), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the City Code, and if not defined in the City Code, shall be construed to mean the common and ordinary meaning.

**Abandonment or Abandoned.** The cessation of all uses of a communications facility for a period of one hundred eighty (180) or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be Abandonment of a communications facility. 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 Section 337.401(7)(j), Florida Statutes. The terms Abandonment or Abandoned are not intended to include a dropped line from a potential or existing customer in the event the communications services provider reasonably anticipates future use of the dropped line.

**Abut.** When used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot of line or boundary line with another lot or parcel of land or public right-of-way.

**Adjacent Properties or Properties Adjacent.** (i) Those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels of public rights-of-way but for an intervening local or collector roadway.

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

**Applicable Codes.** 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, including, but not limited expressly to the [Florida Building Code](#), [the Florida Greenbook](#), [National Electrical Code](#), [National Electrical Safety Code](#), ~~and the 2017~~ edition of [Florida Department of Transportation Utility Accommodation Manual](#), ~~the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, and City codes or ordinances adopted to implement Section 337.401, Florida Statutes, including but not limited to this Ordinance.~~ The

**Commented [A4]:** Is this definition necessary as we do not see it used in the Draft Ordinance.

**Commented [A5]:** Revised to be consistent with the definition in Section 337.401(7)(b).2, F.S.

term includes objective design standards adopted by this Ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar 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 this Ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the City upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. To the extent not inconsistent with applicable law, (The term also includes the City of Coral Gables Code of Ordinances, and the City of Coral Gables Department of Public Works standards and procedures as they may be amended, to the extent applicable based on the proposed facility).

**Applicant.** A person who submits an application and is a wireless provider for a permit to locate a communications facility or utility pole within the public rights-of-way or for any request pursuant to this Ordinance.

**Application.** A request submitted by an applicant to the City for a permit to collocate small wireless facilities or to place a new utility pole used to support a small wireless facility any request pursuant to this Ordinance.

**As-Built Plans.** A set of final and complete drawings in a format as specified by the City submitted upon completion of a project, signed and sealed by professional surveyor or mapper as defined in Section 472.005, Florida Statutes, or a licensed engineer that reflect all changes made during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the permit.

**Authority.** The City, to the extent it has jurisdiction and control of the public rights-of-way of any public road. The term does not include the Florida Department of Transportation. Rights-of-way under the jurisdiction and control of the department, which are excluded from this Section.

**Authority Utility Pole or City Utility Pole.** A utility pole owned by the City in the public right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

A retirement community that:

- (i) Is deed restricted as housing for older persons as defined in Section 760.29(4)(b), Florida Statutes.
- (ii) Has more than 5,000 residents; and
- (iii) Has underground utilities for electric transmission or distribution.

**Backhaul Facilities.** A physical transmission path, all or part of which is within the public rights-of-way controlled by the City or any government entity, used for the transport of communications data by wire or fiber from a wireless facility to a network. A Backhaul facility may also consist of an antenna, including a microwave antenna, installed in the public rights-of-way, used for the transport of communications data wirelessly from a wireless facility to a network.

**Below-Grade Communications Facility.** Communications facilities, including manholes or access points, that are entirely contained below grade within the public rights-of-way.

**Commented [A6]:** While we recognize the qualification “to the extent no inconsistent with applicable law,” as it relates to SWF, Section 337.401(7)(b).2 makes it clear what is included in “Applicable Codes.” The definition clearly intends to encompass those uniform building, fire, electrical, etc. codes adopted by a recognized national code organization. As such, this language should be deleted.

**Commented [A7]:** This requirement for a survey is unreasonable and never before required of facilities in the ROW. Moreover, as applied to video service providers, a City may not require this level of information per Section 610.114 F.S.

Further, to the extent there are no changes required as the result of changes that occur in the field from the previously provided and approved plans, the City should allow for a statement that confirms that the improvements were built as provided for in the approved permitted plans with no changes.

**City.** The City of Coral Gables, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

**City Manager.** The City of Coral Gables, FL, City Manager or his/her designee.

**City Plan.** The property designated as the Coral Gables Historic City Plan, pursuant to Resolution No. 2017-240.

**Clear Zone.** The roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

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

**Communications Facility or Facility or System.** 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, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, and other equipment or pathway 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. A utility pole intended for collocation of a small wireless facility shall be considered a Facility for purposes of this Ordinance.

**Communications Services.** The transmission, conveyance or routing of voice, data, audio, video, or any other information or signals 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, including wireless services, regardless of the protocol used for such transmission or conveyance, and shall also include cable service and video service as defined in Sections 610.103(1) and (11), Florida Statutes.

**Communications Services Provider.** Any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider.

**Communications Services Tax.** The local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to Section 202.19, Florida Statutes. as amended.

**Consolidated Permit Application.** A single permit application that would otherwise require individual permit applications for the collocation of between two (2) and thirty (30) small wireless facilities to existing or proposed structures within the public rights-of-way.

**Commented [A8]:** Again, we recommend that the City allow for the ability to include in any consolidated permit, not only collocations on existing structures, but also new proposed utility poles.

**Days.** References to days in this Ordinance shall mean calendar days unless the language provides expressly for business days.

**Excavate or Excavation.** Any manmade cut, cavity, trench, or depression in the earth’s surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in s. 373.019(22), and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

**Extension of Existing Facilities or Extension.** Those extensions from the public rights-of-way into a customer’s private property for purposes of placing a service drop or those extensions from the public rights-of-way into a utility easement to provide service to a discreet identifiable customer or group of customers. ~~An extension of fiber or cable to serve a property with multiple customers, for example, a commercial building with multiple tenants, shall not constitute an extension of existing facilities unless all tenants are served by the owner of the facilities under one agreement.~~

**Commented [A9]:** This language creates a limitation on “extensions” that is inconsistent with 337.401(3)(g), F.S.

**FCC.** The Federal Communications Commission.

**Florida Building Code.** The Florida Building Code promulgated under Chapter 553, Florida Statutes and includes the applicable amendments thereto as both may be amended from time to time.

**Florida Greenbook.** The latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

**Force Majeure Event.** A cause or event not within a person’s control that 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 a person’s control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person’s directors, officers, employees, contractors or agents.

**Graffiti.** 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.

**Historic Property.** 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, the State of Florida, or the National Register Review Board. Historic properties and landmarks may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or designated by the City Historic Preservation Board pursuant to Article 3, Division 11, of the City Zoning Code, as amended. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure troves, landmarks, real property, artifacts, or other objects

that satisfy the criteria for designation of historic landmarks or historic districts pursuant to Section 3-1103 of the Zoning Code, or national register properties.

**Homeowners' Association.** An incorporated association whose members consist of owners of single family homes or condominium units that manage or control property owned by the association.

**In Public Rights-of-Way or In the Public Rights-of-Way.** In, on, over, under or across the public rights-of-way.

**Licensed Engineer.** A Florida registered professional engineer or a person who is exempt from such registration requirements as provided in Section 471.003, Florida Statutes.

**Lot.** A designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

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

**Ordinance.** This Ordinance codified in Article III, Chapter 70, of the City Code of Ordinances.

**Parcel.** Any piece of real property that has a single parcel identification number assigned to it by the Miami-Dade County Property Appraiser.

**Pass-Through Provider.** Pursuant to Section 337.401(6)(a)1, Florida Statutes, a person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the City pursuant to Chapter 202, Florida Statutes, as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this Ordinance.

**Permit.** The public right-of-way permit that must be obtained before a person may construct in the public right-of-way and shall include, but not be limited to, right-of-way engineering and construction permits issued by the City.

**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, but shall not include the City.

**Place or Maintain or Placement or Maintenance or Placing or Maintaining.** To erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate, or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is **Placing or Maintaining** the facilities. To the extent required by applicable law, a party providing service only through resale or only through use of a third party's unbundled network elements is not **Placing or Maintaining** the communications facilities through which such service is provided.

The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not **Placing or Maintaining** facilities in the public rights-of-way.

**PSC.** The Florida Public Service Commission.

**Public Rights-of-Way.** A public right-of-way, public easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley, or any other way for which the City is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. **Public Rights-of-Way** shall not include private property. **Public Rights-of-Way** shall not include any real or personal City property except as described above, and shall not include City parks, buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the **Public Rights-of-Way**.

**Registrant or Facility Owner.** A communications services provider or other person that has registered with the City in accordance with the provisions of this Ordinance.

**Registration and Register.** The process described in this Ordinance whereby a communications services provider provides certain information to the City.

**Requester.** A person who submits a request pursuant to this Ordinance.

**Request.** Any request other than an Application submitted by a person, associated with the placement or maintenance of a communications facility in the public rights-of-way. A Request includes, but shall not be limited to, a request for approval of a registration, a request to place or maintain a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way and includes for example, but is not limited to, a permit to construct cable, fiber, conduit, backhaul facilities, a pedestals, or a support structure that does not constitute a utility pole for the collocation of a small wireless facility in the public rights-of-way.

**Shroud.** A covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing ~~structure~~ utility pole or wireless support structure.

**Signage.** 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. The term Signage shall not include identification of the owner and contact information of the wireless facility provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

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

- (a) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are

not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

**Smart City Technology.** The City’s Information Technology Department’s present and future technology to support the City’s smart city initiatives, including but not limited to, sensors and smart lights, fiber, CCTV cameras, digital signage, data sharing with traffic applications, smart solar-powered charging stations, emergency alert applications and other initiatives over time.

**Stealth Design.** A method of camouflaging any wireless support structure, antenna, or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole which is designed to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

**Commented [A10]:** This is an unreasonably vague term and is not an “objective design standard” under Section 337.401(7)(r), F.S..

**Surrounding Neighborhood.** The area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

**Utility.** Any person or entity that is an electric, gas, water, steam or other public utility, or entity defined as a utility per Sections 366.02 or 337.401, Florida Statutes, and who owns or operates appurtenant facilities or equipment that is situated within the public rights-of-way for transmission of such utility’s goods, commodities, or services.

**Utility Pole.** 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 an authority grants a waiver for such pole.

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

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

**Wireless Infrastructure Provider.** A person who has been certificated under chapter 364 to provide telecommunications service in the state or under chapter 610 to provide cable or video services in this state, or that person’s affiliate, and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

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

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

**Wireless Services Provider.** A person who provides wireless services.

**Wireless Support Structure.** A freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than five (5) feet in height.

**Sec. 70-79. Registration For Placing Or Maintaining Communications Facilities in the Public Right-Of-Way.**

- (a) All persons, including, but not limited to a communications services provider, pass-through provider, or wireless ~~infrastructure~~ provider, seeking to place or maintain a communications facility, backhaul facility, or utility pole for collocation of a small wireless facility in public rights-of-way in the City pursuant to this Ordinance shall ~~first register~~ maintain an effective registration with the City in accordance with this Ordinance. An effective registration shall be required before being eligible to receive any permit from the City. Subject to the terms and conditions prescribed in this Ordinance and approval of a permit, if required, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless ~~infrastructure~~ provider with an existing communications facility in the public rights-of-way of the City as of the effective date of this Ordinance shall comply with the terms of this Ordinance, including, but not limited to obtaining an effective registration, within ninety (90) calendar days from the effective date of this Ordinance, or be in violation thereof. This provision shall not require the removal or alteration of existing communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit or otherwise lawfully installed prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed by applicable law or by the city manager consistent with applicable law.
  
- (b) Requirements for an effective registration. A person that ~~desires to place~~ or maintains a communications facility ~~backhaul facilities, and an infrastructure provider that seeks to apply to install a utility pole for collocation of a small wireless facility~~ in the public rights-of-way in the City shall file an original registration, with the city manager. The registration shall be submitted by the person that owns or controls the communications facility and that shall include the following information:
  - (1) Name of the registrant;
  - (2) Name, address, and telephone number of the registrant’s primary contact person in connection with the registration and name, address, telephone

**Commented [A11]:** Query: We note that Section 70-77(b)(4) provides for an updated registration “the earlier of” three different events. How is the City handling current registrants that have an approved Registration? Especially considering the requirements for a Registration have not added new requirements, but rather eliminated the need for a permanent performance bond? Is it the City’s intent that a CSP file an entirely new registration if the information is essentially the same?



number and email addresses of the registrant's primary contact person in the event of an emergency or issue involving its facilities, which shall be monitored 24 hours per day, 7 days per week;

- (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~~ A statement of whether the registrant is a communications facility provider, wireless infrastructure provider, or pass-through provider in the City as defined in Section 337.401(6)(a)1, Florida Statutes, as the case may be, and whether the registrant currently remits or intends to remit Communications Service Tax, as authorized in Chapter 202, Florida Statutes;
- (4) Evidence of the insurance coverage required under this Ordinance;
- (5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;
- (6) A copy showing the number of the registrant's current certificate of authorization, public convenience and necessity, or other similar certification or licenses issued by the Florida Public Service Commission, the Florida Department of State, or the FCC, or other federal authority. A copy of federal or state certification authorizing the registrant to provide communications services, if any; and
- (7) The registrant's federal employer identification number. Documentation demonstrating that if the registrant is an individual, that the registrant is a resident of Florida, or if the registrant is a corporation that the registrant is organized under the laws of Florida or licensed to do business within Florida, or, as applicable, a statement that the registrant is not a resident or organized or licensed to do business within Florida; and
- (8) ~~A permanent performance bond in accordance with this Ordinance.~~

(c) Insurance.

- (1) 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 in Best's Insurance Guide of A or better, or having a rating acceptable to the City. All liability policies shall provide that the City is an additional insured in the endorsement. 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 or certified mail must be given to the City of any cancellation, intent not to renew, or reduction in the

policy coverages. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the City. A provider of communications services may add the City to any existing insurance policy and the City shall accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the City is a party.

- (2) The limits of coverage of insurance required shall be not less than the following:
- i. Worker's compensation Coverage A when required by Florida Statute 440 as amended and employer's liability Coverage B with limits of \$1,000,000 per accident, per disease and per policy limit with a waiver of subrogation in favor of the City. Registrant shall require any contractor to provide to a registrant this coverage for the contractor's employees.
  - ii. Comprehensive general liability. Bodily injury and property damage: \$3,000,000 combined single limit each occurrence naming the City as an additional insured on a primary and non-contributory basis. Said coverage shall not exclude contractual liability, products/completed operations, explosion, collapse, and underground property damage, subcontractors or independent contractors.
  - iii. Automobile liability. Bodily injury and property damage: \$3,000,000 combined single limit each accident owned and non-owned vehicles, naming the City as an additional insured on a primary and non-contributory basis.
  - iv. 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.
  - v. Self-insurance. Registrant may satisfy the insurance requirements and conditions of this division 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 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.

- (3) Right to review. The City, by and through its risk manager, reserves the right to review, to reject, or to accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this Ordinance. The City reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.
- (4) This Ordinance shall not be construed to affect in any way the City's rights, privileges and immunities as set forth in Section 768.28, Florida Statutes. Insurance under this Ordinance shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this Ordinance and subject to the remedies as set forth herein. Notwithstanding the foregoing, the City may, in its sole discretion, require increased or decreased levels of insurance.
- (d) ~~Reserved. Permanent Performance Bond. For an effective registration, a registrant shall file with the City, for City approval, a permanent performance bond in the amount of fifty thousand dollars (\$50,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a separate account or City account. The letter of credit shall be issued by a financial institution within Miami Dade County and shall be in a form and issued by a financial institution acceptable to the City Attorney. The permanent performance bond shall be conditioned on the full and faithful performance by the registrant of all requirements, duties, and obligations imposed upon the registrant by the provisions of this Ordinance and applicable law, including but not limited to requirements to restore the public rights of way and guarantee such restoration, remove any abandoned communications facilities, indemnify the City as required herein, pay appropriate compensation to the City, and pay for any damage to City or other facilities in the public rights of way. The permanent performance bond is not a fee, tax or other imposition on a dealer of communications services in its capacity as a dealer of communications services or as compensation for use of the public rights of way and shall not be used by the City as such. Should the City draw upon the permanent performance bond, the City shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Ordinance, subject to providing prior notice and a reasonable opportunity to cure the failure, there shall be recoverable, jointly and severally from the principal and surety of the permanent performance bond, including a letter of credit, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees. The cash deposit and letter of credit 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. A registrant may request that the City return the permanent performance bond or approve the cancellation of the performance bond upon the expiration of a~~

registrant's obligations pursuant to the City Code and in no event while a registrant maintains any obligations with respect to facilities in the public rights of way. If the City determines it is appropriate to return the permanent performance bond, a cash deposit retained by the City shall be returned without interest.

- (e) Review of Registration. The City shall review the information submitted ~~by for~~ the registration ~~applicant~~. If the registration ~~applicant~~ ~~submits~~ ~~includes~~ the information in accordance with this subsection, the City shall notify the ~~Requester~~ ~~applicant~~ of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with this subsection, the City shall notify the registration ~~Requester~~ ~~applicant~~ in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The City shall ~~endeavor to~~ ~~notify a Requester~~ ~~applicant~~ for a registration ~~applicant~~ within 30 days after receipt of registration information ~~from the applicant~~. A notice of non-effectiveness of a registration shall not preclude ~~an applicant from reapplying or~~ ~~the filing of a subsequent Requester~~ ~~applications~~ for registration under the provisions of this Ordinance.

**Commented [A12]:** Given the type of information to be provided, and consistent with most every other existing and adopted Registration Ordinance per Section 337.401, thirty (30) days is a reasonable period of time to review any requested registration.

- (f) Regulations Applicable to Registrations.
- (1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this Ordinance governs only the placement or maintenance of communications facilities in public rights-of-way. To the extent not inconsistent with applicable law, registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the City's or another person's facilities. Within ~~90~~ ~~30~~ days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the City.
- (2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any particular area in public rights-of-way within the City. Registrations are expressly subject to any future amendment to or replacement of this Ordinance, and further subject to any additional City ordinances, as well as any applicable state or federal laws.
- (3) Unregistered use of public rights-of-way. To the extent that a communications services provider, wireless provider, or pass-through provider with facilities in the public rights-of-way, is not registered as required herein, said person shall register with the City pursuant to this Ordinance within ninety (90) calendar days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way and such persons shall be subject to the City's enforcement remedies.
- (4) Registration renewal. A registrant shall renew its registration with the City ~~by on or about April 1 of even-numbered~~ every five years from the first April

~~after the initial effectiveness of the registration in accordance with the registration requirements in this Section, as may be amended, except that a registrant that initially registers during the even numbered year when renewal would be due, or the odd numbered year immediately preceding such even numbered year, shall not be required to renew until the next even numbered year.~~ If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the City restricting the issuance of additional permits until the ~~registrant~~ communications services provider has complied with the registration requirements of this Ordinance. ~~In connection with a renewal of the registration, the City may request an updated inventory of the registrant's communications facilities within the City public rights of way, and as built plans for such facilities, which the registrant shall promptly provide at its cost.~~ An existing effective registration ~~not pursuant to Section 70-79 of the City Code prior to the effective date of this Ordinance shall continue to be effective and as set forth in Subsection 70-77(b)(4), the registrant shall comply with this Ordinance~~ by the earlier of the following: ninety (90) calendar days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to applying for a permit.

**Commented [A13]:** Language is duplicative of that already contained in Section 70-77(b)(4). Also, please note our earlier comment and objection of requiring a new registration where the existing registration already complies with the Draft Ordinance.

- (5) Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the City, its elected and appointed 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 system or facilities in public rights-of-way, or otherwise caused by the registrant, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance or permit issued by the City, ~~or arises as a result of the City's negligence~~, provided, however that a registrant's obligations herein shall not extend to any damages caused solely by the negligence, gross negligence or ~~wanton or~~ willful acts of the City. In no event shall the City be liable for damage or destruction of a registrant's facilities installed on a City utility pole. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. City agrees to notify the registrant, in writing, within a reasonable time of City receiving notice, of any issue it determines may require indemnification. Nothing in this Ordinance shall prohibit the City from participating in the defense of any litigation by its own counsel. 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 Ordinance shall be construed or interpreted:

- i. as denying to either party any remedy or defense available to such party under the laws of the state of Florida;

- ii. as consent by the City to be sued; or
- iii. as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, or caps therein, as it may be amended.

- (6) A registrant may cancel a registration upon written notice to the City that the registrant will no longer place or maintain any communications facilities in public rights-of-way, and will no longer need to obtain permits to perform work in the public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in the public rights-of-way.
- (7) Liens. No liens 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 on a City utility pole. Any liens on a registrant's facilities shall be subordinate to the rights of the City pursuant to this Ordinance. In the event any liens are filed on the City property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the City may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.

~~(8) A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on the City's property including a utility pole as a result of a registrant's collocation on a City utility pole. A registrant shall reimburse the City for taxes paid by the City as a result of a registrant's facilities being placed or maintained in the public rights-of-way or on a City utility pole.~~

~~(9)~~(8) Reports and records.

- (a) Upon reasonable request, a registrant shall provide at its cost the following documents to the City as received or filed:
  - i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the City to protect its interests under this Ordinance;
  - ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy;
  - iii. Where required in connection with a permit application, 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, to avoid interference with other at grade or aerial facilities located at a specific location proposed for a small wireless facility or within 50 feet of such location, or as set forth in this Ordinance. Such maps shall be provided in a digitized format in compliance with the City's GIS standards, at the registrant's expense. ~~As an alternative, every registrant shall~~

**Commented [A14]:** What taxes are contemplated by this section keeping in mind the prohibition against impermissible exactions outlined in Section 202.24 and 337.401, F.S.

**Commented [A15]:** While we appreciate the language that was added consistent with Section 337.401(7)(d).2, the information and the statutory limitation recognized with the recent change applies to information that may be requested by the City in connection with a permit application. As such, we have qualified this subsection accordingly. The remainder of the subsection is deleted as it relates to all facilities that are placed in the ROW in violation of the cited statutory section noted above.

~~produce upon request and keep on file at its principal place of business an accurate and complete set of as built plans of all facilities placed and maintained in the public rights-of-way. The location and identification of facilities and the production of as-built plans shall be at the sole expense of the registrant. Within forty five (45) days of any request by the City Manager, the registrant shall provide to the City, at no cost, copies of complete sets of as built plans for the indicated public rights of way in the format required by the City. In addition to and without limiting the City's enforcement remedies, the failure of the registrant to produce, keep on file, or provide to the City as built plans as required herein shall be grounds for the City to deny the issuance of a permit.~~

- (b) At the registrant's request, the City shall keep any documentation, books and records of the registrant confidential to the extent authorized by Florida Statutes. The City shall maintain the confidentiality of records required by Florida statutes to be confidential.

~~(10)~~(9) Termination of Registration. The City may terminate a registration if:

- (a) A federal or state authority suspends, denies, or revokes a registrant's certification or license required to provide communications services;
- (b) 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;
- (c) The registrant abandons its facilities in the public rights-of-way; or
- (d) The registrant commits substantial and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.

~~(11)~~(10) Notice of intent to terminate. Prior to termination, the City shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. Except in the case of failure to remedy an extraordinary danger within the time required by the City pursuant to this Ordinance, the registrant shall have thirty (30) calendar days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the City, to accomplish the same and to take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way of the City safe. If the plan is rejected by the City, the City shall provide

written notice of such rejection within fifteen (15) calendar days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.

~~(+2)~~(11) Post termination action. In the event of termination, following any appeal period, the former registrant shall: (a) in accordance with the provisions of this Ordinance 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 (b) provide the City with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the 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 pursuant to this Ordinance, including but not limited to, utilize or allow 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 Ordinance may reapply for registration one (1) year after the termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the City.

~~(+3)~~(12) When removal not authorized or required. In the event of termination of a registration, this Ordinance 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 communications facilities holds a valid certification or license with the governing federal or state agency, if required, for the provision of such service, and is registered with the City, if required.

~~(+4)~~(13) Transfer or control, sale or assignment of assets. If a registrant transfers, sells or assigns its registration or its facilities in the 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 Ordinance. Written notice of any such transfer, sale or assignment shall be provided to the City within twenty (20) days after the effective closing date of the transfer, sale or assignment. If the transferee, buyer, or assignee is a current registrant, and is in compliance with the provisions of this Ordinance, then the transferee, buyer, or assignee is not required to re-register. If the transferee, buyer, or assignee is not a current registrant, or has an effective registration that is not in compliance with this Ordinance as it may have been amended, then the transferee, buyer, or assignee shall register as provided in this Ordinance within sixty (60) calendar 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 appropriate City officials that the transferee, buyer, or assignee is the new



applicant. An effective registration by the transferee, buyer, or assignee is required for the issuance of any permits.

~~(15)~~(14) Any mortgage, pledge, lease, or other encumbrance on the communications facilities of a registrant shall be subject and subordinate to the rights of the City under this Ordinance and applicable law.

~~(16)~~(15) City makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way or any City utility pole for the registrant's communications facilities, and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this Ordinance 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.

~~(17)~~(16) Conditional use of public rights-of-way.

(a) In the event a registrant desires to use its existing facilities or to construct new facilities for the purpose of supporting or providing any other services other than communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the City for such activities as may be required by applicable law.

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

**Commented [A16]:** What is contemplated by this phrase? We need to make sure that this language does not have the unintended result of limiting the scope of what is allowed as a communications service.

~~(18) Facilities Outside of City Public Rights of Way. To the extent not inconsistent with applicable law, registrants shall provide a copy to the City Manager of a request or application for a permit submitted to the Florida Department of Transportation or Miami Dade County, to place or to maintain a communications facility below grade, or to install a small wireless facility at grade or a new utility pole for collocation of a small wireless facility, in a location within the jurisdictional boundaries of the City. The intent of this provision is to provide the City with notice of construction of facilities that may impact City utilities or otherwise be subject to requirements of the City Code. This requirement does not apply to an application for a permit to collocate a small wireless facility on an existing utility pole. Failure to comply with this requirement may result in revocation of a registration, denial of permits including but not limited to ancillary permits, or other enforcement remedies consistent with the City Code. Nothing herein shall restrict the City from enforcing its Code with~~

~~respect to facilities located outside of the City's public rights-of-way.~~

**Sec. 70-80**

**Requirement of a Permit.**

(a) In accordance with applicable law, City ordinances, codes and regulations, including this Ordinance, a right-of-way use permit issued by the City shall be required for a registrant to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this Ordinance or applicable law. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. In addition to the permit required by this Ordinance, a registrant shall be required to obtain additional permits that may be required by City Code depending on the circumstances of the registrant's proposed placement or maintenance of communications facilities in the public rights-of-way. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or to maintain a communications facility in the public rights-of-way until all applicable permits have been issued by the City or other appropriate authority. A registrant shall comply with all City requirements for issuing permits, including reasonable rules or regulations governing the placement or maintenance of a communications 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 or may impose lesser requirements.

(b) Limited Exceptions to Permit Requirement. The City shall not require a permit application nor issue a permit for the following activities.

(1) A registrant that is in compliance with this Ordinance shall be allowed to perform routine maintenance, emergency maintenance, service restoration work on existing facilities, or repair work, including but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers within the public rights-of-way without first obtaining a permit. In addition, a registrant that is in compliance with this Ordinance shall be allowed to maintain, repair, replace, extend, or upgrade existing aerial wireline communications facilities on utility poles, or for aerial wireline facilities between existing wireline communications facility attachments on utility poles, without first obtaining 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. Notwithstanding this provision, a registrant must provide notice to the City prior to commencing any placement or maintenance of a facility in the public rights-of-way. A registrant shall provide prompt notice to the City by contacting the City's public works department prior to performing work emergency maintenance in the public rights-of-way without a permit to allow a City observer to be present. If the public works department is not available based upon the timing of the emergency, the registrant shall notify the City's police department prior to commencing any construction or maintenance and shall provide the location, and proposed date and time of emergency maintenance

**Commented [A17]:** The City has no legal authority over ROW that is not owned by it or within its control pursuant to a delegation of authority. As to the FDOT, Section 337.401(7)(d).3.d clearly provides that the City cannot require compliance with this Ordinance or as a condition to receive any permit that might be ancillary to the FDOT permit. Furthermore, Section 337.401(7)(d).3.f further provides that the City may not require any direct or indirect public notification for the placement of a communications facility in the ROW. To the extent the City has facilities located below grade within County or FDOT ROW, the City will receive notification via the Sunshine One Call system. In light of the foregoing, the failure of a communications services provider to notify the City of any pending permit to "place or to maintain a communications facility below grade, or to install a small wireless facility at grade or a new utility pole for collocation of a SWF" within a County or FDOT ROW is not proper and cannot form the basis to revoke any registration or permits for facilities legally authorized within City ROW, nor be the basis of an enforcement action.

**Commented [A18]:** As noted elsewhere in these comments, the Ordinance in its current proposed form does not exempt construction otherwise exempted from permitting under state law.

**Commented [A19]:** No permit may be required for routine maintenance under Section 337.401(g) and (7)(e), F.S.

**Commented [A20]:** Added language to conform to the full exemption provided by Section 337.401(7)(e), F.S.

**Commented [A21]:** Added language to conform to the exemptions for aerial wireline work under 337.401(3)(g), F.S.

to allow the police department to notify the City public works director or his/her designee. The registrant shall document all restoration work with photographs and video, including of the public rights-of-way prior to and following performing such construction, and shall provide such documentation to the City when requested, but in no event later than fifteen (15) days following such work. Any maintenance of traffic required for emergency work shall meet the requirements of the latest edition of the FDOT 600 Series Standard Drawings and the Manual on Uniform Traffic Devices. Within thirty fifteen (1530) calendar days of completing the emergency maintenance, the registrant shall apply for a permit and submit the required performance construction bond, if such activity required a permit and bond under this Ordinance. The City reserves the right to require the removal of any facility placed in the public rights-of-way without an appropriate permit or notification to the City at the registrant's expense.

**Commented [A22]:** This language is unreasonable given the nature of the work be performed as described in this subparagraph and that such work, by statute, does not require a permit. If work is being performed on an emergency basis that would be the subject of a permit, due to a service outage or the result of a weather event, i.e. hurricane, both providing this notice and the availability of a City employee is highly unlikely.

**Commented [A23]:** Section 337.401(7)(e) provides for an exception from permitting where a provider is performing service restoration on an existing facility and the work is done in compliance with the 2018 edition of the FDOT UAM. Verizon objects to the extent this requirement exceeds that required by the 2018 edition of the FDOT UAM.

**Commented [A24]:** Section 337.401(7)(e) provides for thirty (30) days not fifteen (15).

(2) Notwithstanding anything herein to the contrary, a registrant seeking to perform emergency maintenance in the public rights-of-way on Miracle Mile and Giralda Avenue that involve excavation, shall comply with the requirements of Section 62-63(c) of the City Code, and shall immediately contact the City police department, which will contact the City public works director or his or her designee. ~~Before such excavation can proceed on an emergency basis, the public works director or his or her designee must approve the excavation in writing (via electronic mail) and the permit shall be secured pursuant to Section 62-64(c).~~ In addition, a registrant shall not disrupt trees or tree roots when placing or maintaining a communications facility in the public rights-of-way and shall comply with all City Code requirements related to trees and tree root protection when performing emergency maintenance.

**Commented [A25]:** Added to clarify the scope of Section 62-63(c).

**Commented [A26]:** This requirement is inconsistent with the exemption for service restoration work exempt from permitting under 337.401(3)(g).

(3) A registrant shall be allowed to perform routine maintenance within the public rights-of-way without a permit if such proposed routine maintenance does not involve excavation, construction, or disruption to trees, transportation or pedestrians in the public rights-of-way. ~~In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the City identifying the areas where such maintenance will occur, scope of maintenance, date(s), and duration of work to be performed.~~ If routine maintenance requires excavation, construction, or the closure of the public rights-of-way, regardless of the duration, a permit shall be required unless the registrant is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. In such case, the City will require notice of such work within 30 days after restoration and will require an after-the-fact permit for any work that would have required a permit.

**Commented [A27]:** This advance notice is outside the scope of Section 337.401(7)(e), F.S.

**Commented [A28]:** Added to render the language consistent with Section 337.401(7)(e), F.S.

(4) A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size.

**Commented [A29]:** Accommodation needs to be made for the replacement of aerial wireline facilities as provided by Section 337.401(3)(g), F.S.

(5) The City shall not require an application for a permit to a ~~A registrant that is in compliance with this Ordinance shall be allowed to for maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way and the City shall not issue a permit for such work. place or to maintain a service drop within the public rights-of-way without first obtaining a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights of way. All underground work without a permit shall be documented with photographs and video, and such documentation shall be provided to the City when requested but in no event later than fifteen (15) days following such work.~~

**Commented [A30]:** See prior objection - Section 337.401(7)(e) provides for an exception from permitting where a provider is performing service restoration on an existing facility and the work is done in compliance with the 2018 edition of the FDOT UAM. Verizon objects to the extent this requirement exceeds that required by the 2018 edition of the FDOT UAM.

~~(6)~~ A permit shall not be required for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting communications services tax under Chapter 202, Florida Statutes. Prior to placing or maintaining a micro wireless facility in the public rights-of-way pursuant to this subsection, ~~at least thirty (30) days prior to commencing said work,~~ the registrant shall submit a ~~certification or manufacturer's specifications with a letter under oath to~~ the City's Public Works Department from or on behalf of the communications provider, which shall be effective upon filing, attesting that the micro wireless facility's dimensions ~~to the City for review for compliance~~ with Section 337.401(7), Florida Statutes, and this Ordinance. If the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place, install, maintain, or replace such facility in the public rights-of-way without a permit issued pursuant to this Ordinance. A registrant's submission of a ~~manufacturer's specifications or other demonstration of letter pursuant to this provision~~ ~~a particular micro wireless facility's dimensions shall apply to all the communications services provider's same, substantially similar, or smaller size identical micro wireless facilities equipment.~~ ~~A registrant shall provide prior notification to the City public works department of the location and date and time of the placement of a micro wireless facility in the public rights of way and shall provide location information in a format required by the City no later than ten (10) business days for inclusion in the City's GIS database.~~

**Commented [A31]:** The stricken "under oath" requirement exceeds the permissible requirement of an initial letter allowed under 337.401(7)(e).

~~(7)~~(6) Notwithstanding the exceptions to permit requirements contained in this subsection, a registrant shall obtain from the City a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane, regardless of the duration of such closure, unless the registrant is a communications services provider that is performing service restoration on an existing facility and the work is done

**Commented [A32]:** While Section 337.401(7)(e).3 provides for the provision of a letter from the CST attesting that the micro wireless facilities will conform to the dimensions allowed by Florida law, it expressly provides that the City may not require additional filing or other information, including advance notice, to deploy these facilities.

in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, including but not limited to, the requirement to notify Sunshine 811 prior to any excavation or demolition activities in accordance with Chapter 556, Florida Statutes, and to comply with all City Codes. In such instance, the communications services provider shall provide information acceptable to the City detailing the service restoration that is needed on an existing facility and shall provide reasonable advance notice to the City of at least three (3) business days, so that the City may have an observer present. The City may require a specific method of excavation and a maintenance of traffic or sidewalk closure plan, as applicable. In addition, the registrant shall file for an after the fact permit within fifteen (15) days after completing restoration of the public rights of way. A registrant performing work without a permit shall ensure that the work is documented with photographs and videotape, including of the area of the public rights of way impacted, and such photograph and videotape documentation shall be provided to the City.

**Commented [A33]:** This language needs to be stricken as it provides for additional requirements that may conflict with those in the 2017 FDOT UAM as provided by Section 337.401(7)(e).3, F.S.

~~(8)(7)~~ (7) Any person disturbing, digging up, or excavating any pavement or sidewalk authorized herein shall exhibit, upon demand, to any City official, the permit for such work issued by the City, unless exempted hereunder, and any person failing to do so or to comply with the provisions of this Ordinance shall, upon conviction, be punished as provided in the City Code and applicable law.

**Commented [A34]:** Section 337.401(7)(e).3 provides that the City may require notice of such work *within* 30 days after restoration, not before, and can require an after-the-fact permit for work that would have otherwise required a permit. This language needs to be deleted or rewritten consistent with the statute. To require advance notice of at least three business days to restore service is unreasonable and directly conflicts with the express language of the statute. See also 337.401(3)(g), F.S.

~~(9)(8)~~ (8) If any placement or maintenance by a registrant that does not require a permit from the City involves a City utility pole or otherwise impacts City utilities or property, the registrant shall provide the City with at least five (5) days advance notice for the City to have an observer present. The City may charge the registrant for the cost of such observer to the extent not inconsistent with applicable law.

**Commented [A35]:** The City may not charge for an observer under Sections 202.24 and 337.401(3), F.S.

(c) 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 Article 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 Section 162, Florida Statutes, and the City Code.

(d) All work performed pursuant to a permit shall be subject to inspection and shall be closed out as required by the permit. The City may require that to close out a permit issued pursuant to this Ordinance, a registrant shall at its cost arrange for the inspection of the work performed pursuant to a permit and provide documentation to the satisfaction of the City from a Florida licensed engineer that the work performed pursuant to the permit complied with the requirements of the permit.

**Commented [A36]:** Per Chapter 202 and Section 337.401(3), the City cannot charge fees related to the placement of communications facilities in the ROW, including payment for any required inspections.

**Sec. 70-81 Permit Application Information Requirements and Review Procedures.**

Consistent with Florida law, this Ordinance provides different requirements and procedures for applications and for requests, as defined herein. Applications shall not be included with requests and requests shall not be included in applications unless allowed by the City Manager.

(a) Pre-submittal application meeting.

(1) Applications. To minimize issues related to a permit application, prior to submitting a permit application, to the extent not prohibited by applicable law based on the facilities proposed to be placed in the public rights of way, a registrant shall conduct a pre submittal meeting with the City to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights of way including all City permits or approvals that may be required based on the nature of the registrant's proposed work in the public rights of way. A registrant is encouraged to be prepared to discuss its network needs and planned locations, design of facilities and other issues that may arise under this Ordinance. The City shall undertake efforts to accommodate a registrant's request for a pre-submission meeting within ten (10) business days of a request. At a registrant's request, the City, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this Ordinance. In no event shall the requirement of a pre-submission meeting that is not prohibited by applicable law be waived for a consolidated permit application. Even if a pre-submittal meeting may not be required under applicable law, registrants are strongly encouraged to engage in a pre-applicationsubmittal meeting to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way including all City permits or approvals that may be required based on the nature of the registrant's proposed work in the public rights-of-way. A registrant is encouraged to be prepared to discuss its network needs and planned locations, design of facilities and other issues that may arise under this Ordinance. The City shall undertake efforts to accommodate a registrant's request for a pre-submission meeting within ten (10) business days of a request.

(2) Requests. To minimize issues related to a permit request, prior to submitting a permit request, a registrant shall conduct a pre-submittal meeting with the City to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way including all City permits or approvals that may be required based on the nature of the registrant's proposed work in the public rights-of-way. A registrant is encouraged to be prepared to discuss its network needs and planned locations, design of facilities and other issues that may arise under this Ordinance. At a registrant's request, the City, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this Ordinance. In no event shall the requirement of a pre-submission meeting that is not prohibited by applicable law be waived for a permit request that

**Commented [A37]:** This provision must be revised as a mandatory pre-application meetings must be included in the timeframe for review and approval of any permit per Section 337.401(3)(g), which incorporates the timeframes in 337.401(7)(d) to any permit application for the placement of communications facilities. Otherwise this requirement operates to circumvent the explicit timeframe limits

involves excavation of over 50 feet of public rights-of-way.

- (3) The City shall undertake efforts to accommodate a registrant's request for a pre-submission meeting within ten (10) business days of a request. A pre-submittal meeting, whether required herein or voluntary on the part of a registrant, shall not commence the time frames provided herein for City review and processing of an application or a request.

~~A pre-submittal meeting, whether required herein or voluntary on the part of a registrant shall not commence the time frames provided herein for City review of an application.~~

- (b) ~~Application requirements for all communications facilities in the public rights-of-way.~~ As part of any permit application to ~~place or maintain~~ collocate small wireless facilities, to place a new utility pole used to support a small wireless facility, or to ~~place or maintain a communications facility any facility~~ pursuant to this Ordinance in the public rights-of-way, a registrant or a registrant's agent or contractor shall provide a permit application on the form provided by the City, that sets forth, at a minimum, the following:

- (1) If the applicant for the permit is not the registrant, a statement of authority executed by the registrant for the applicant to act on behalf of the registrant. In addition, if the applicant is a contractor, pursuant to ~~Section 62-85(e) of the City Code~~, a contractor applying for a permit to perform any work in the City's public rights-of-way must comply with the requirements of the City public works department with respect to providing copies of certifications, licenses and insurance. An applicant shall submit the number of copies of a permit application in the format as required by the City Public Works Department and shall file a copy of the application with the City's Historical Resources Department and the City's Information Technology Department. Failure to comply with such filing requirements shall render an application incomplete.
- (2) ~~Information as to whether the applicant engaged in a pre-submittal meeting or such meeting was waived by the City, or an explanation if the registrant does not engage in a pre-submittal meeting on the grounds that such pre-submittal meeting is not consistent with applicable law, and that the applicant has an effective registration with the City.~~ Information as to whether the registrant engaged in a pre-application meeting, that the registrant has an effective registration with the City, and that this registrant is otherwise in compliance with the City Code.
- (3) Engineering plan. An engineering plan signed and sealed by a licensed engineer, that includes the information required by the City's application form, including but not limited to the following:
- (a) Except for applications to collocate small wireless facilities on existing utility poles in the public rights-of-way, an right-of-way boundary survey American Land Title Association (ALTA) survey or other survey that may be specified in the City's permit application form submitted by a licensed engineer or

**Commented [A38]:** Revised consistent with the typical form of survey used for ROW permits.

professional surveyor as defined in Section 472.005, F.S., demonstrating that the proposed location of the facility or utility pole is within the public rights-of-way, unless waived by the City in its sole discretion, pursuant to an applicant's attestation that the proposed facility is located with the public rights-of-way;

- (b) The type, location, and dimensions, height, footprint, stealth design, and concealment features of the proposed facility;
- (c) The Global Positioning System (GPS) coordinates of the proposed facility. The location must be the actual location where registrant intends to construct the proposed communications facilities and shall not include contingent or alternative locations. Permit applications or requests containing contingent or alternative locations will be returned as incomplete. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six (6) decimal point precision;
- (d) Distances between the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, smart city technology, fire hydrants, nearby structures in the public rights-of-way, above-grade ~~and below-grade~~ utilities, and other above-grade structures ~~and utilities located above-grade~~ within a ~~50~~ ~~100~~ 500-foot radius of the proposed facility ~~and below-grade structures and utilities located within a 50-foot radius of the proposed facility, if available. Such information may be provided without certification of correctness, to the extent obtained from the City or from third parties.~~ Upon request, the City Manager may modify the ~~500-foot and 50-foot~~ radius requirements for such distance information for good cause related to the safe and efficient management of the public rights-of-way;
- (e) For proposed new communications facilities, a sketch showing pavement, sidewalks, driveways, ramps, trees, above-grade utilities, and other above-grade ~~located above~~ ~~and below-grade~~ structures and utilities located within a ~~100~~ 500-foot radius of the proposed facility ~~and below-grade structures and facilities within a fifty (50) foot radius, if available. With respect to identifying other communications facilities, the applicant need only identify at-grade communications facilities within a 50-foot radius of the location for the installation of proposed at-grade communications facilities. Such information may be provided without certification of correctness, to the extent obtained from the City or from third parties.~~ Upon request, the City Manager may modify the ~~500-foot and 50-foot~~ radius requirements for

**Commented [A39]:** The language as proposed previously, with our prior suggested revisions complied with Florida law. As revised in this draft, the City fails to recognize the express language included in Section 337.401(7)(d).2 regarding the 50' radius limitation for other communications equipment. The other information sought beyond the statutory 50' radius, i.e. nearby drainage systems, nearest residential properties, etc., go beyond that provided in Section 337.401(7)(d) as it is requesting information clearly outside the ROW and which is not necessary to review the Application to ensure it is consistent with Applicable Codes.

**Commented [A40]:** Same comment as above. Also, we note this subsection appears to be asking for the same information as in the preceding subsection but just a different format.



such sketch for good cause related to the safe and efficient management of the public rights-of-way;

- (f) Sufficient specificity demonstrating compliance with applicable codes, ~~the Florida Greenbook, the Florida Building Code, most current edition, specifically including but not limited to compliance with the wind velocity standards for risk category III and IV buildings and structures specified therein Section 1620 of the 2017 Florida Building Code, as amended, or as otherwise established in the Florida Building Code, as applicable; National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, FCC and OSHA standards;~~
  - (g) The routes of all new transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements) or any connection to tie-in to existing lines in the public rights-of-way, as may be applicable based on the proposed installation;
  - ~~(h) Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;~~
  - ~~(i) Certification that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook;~~
  - ~~(j) Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and~~
  - ~~(k) Other engineering information that may be requested by the City.~~
- (4) Whether the proposed facility is to be placed within a location subject to site specific restrictions pursuant to this Article, such as a proposed location subject to a homeowner's association covenants, within the Miracle Mile and Giralda Avenue areas referenced in this Ordinance, or within historic property as referenced herein. If so, whether the applicant received the appropriate approval that may apply for the proposed facility in such location, has an application pending for such approval, or is seeking a waiver of such approval requirements.
- (5) Description of trees or landscaping proposed to be removed or impacted upon the placement or maintenance of the proposed facility. The applicant shall include with the application an effective tree removal permit obtained

**Commented [A41]:** See earlier comment regarding definition of "applicable codes."

**Commented [A42]:** Again, as the City should be reviewing the application for compliance with Applicable Codes, which includes ADA, Florida Greenbook, why is it necessary to require a certification of compliance?

**Commented [A43]:** Please see our following objections regarding the City's regulations regarding proposed SWF in these areas.

pursuant to the City Code, and the plan for tree and root protection pursuant to the City Code, as applicable.

- (6) Photographic or video documentation is strongly encouraged of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.
- (7) Description of installation or construction. A description of the method and timetable for each phase by which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques). If the applicant intends to perform excavation in the public rights-of-way, the applicant shall include with the application an effective permit for excavation pursuant to the City Code, as applicable.
- (8) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, designed by a holder of an FDOT Temporary Traffic Control Advanced Maintenance of Traffic Certificate, if appropriate, to accommodate placement or maintenance of the facility.
- (9) Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and MOT plan, if appropriate, to accommodate placement or maintenance of the facility. The MOT plan shall be prepared in conformance with the City's requirements. If a road closure is necessary, the detour and MOT shall be designed and signed and sealed by a licensed engineer. Road closures must be coordinated with the City at least two weeks in advance of the planned work.
- (10) Restoration plan and estimated cost of restoration of the public rights-of-way. A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way. Such good faith estimate shall be accepted by the City unless the City determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced. Tree or landscaping removal shown on the permit application shall be restored as provided with a tree removal permit, if applicable.
- (11) Indemnification. A statement shall be included with the permit application that by execution of the application and by applying for the permit, the applicant shall be bound to the City with respect to the indemnification provisions set forth in Section 70-79(f)(5) of the City Code, as it may be amended.

- (12) Airport airspace protection. If applicable, the applicant shall confirm compliance with Chapter 333, Florida Statutes and all State and federal laws and regulations pertaining to airport airspace protections.
- (13) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation ~~by an officer of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine (9) months after the date the application is approved, or such utility pole shall be deemed abandoned.~~
- (14) Pole attachment agreement. Except for pole attachments regulated pursuant to 47 U.S.C. § 224, if applicable for the proposed facility, the applicant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the applicant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the City, and indicating the registrant is authorized to install its facility on the identified utility pole. By submitting an application to collocate on a utility pole, the applicant is certifying to the City that it has the utility pole owner's authority.
- (15) Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the height and location with GPS coordinates of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade in place within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.
- (16) If the permit ~~request~~ application includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfy the applicable provisions of the City Code.
- (17) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility in the public rights-of-way, the applicant shall provide the following:
- (a) ~~Documentation to the satisfaction of the City from a licensed engineer, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;~~
  - (b) Certification and description by the applicant to the satisfaction of

**Commented [A44]:** This exceeds the language of Section 337.401(7)(g), F.S.

**Commented [A45]:** This requirement is already covered by subsection (3)(f) above as any application will need to comply with Applicable Codes.

the City how the proposed small wireless facility complies with the objective design standards set forth in this Ordinance. For a proposed ground-mounted small wireless facility, such information shall include the landscaping for the proposed small wireless facility and the architectural design to demonstrate that the small wireless facility satisfies the requirements of this Ordinance or has been approved by the City's Board of Architects (Architectural Review Board), as may be required pursuant to this Ordinance.

(c) Accurate photo simulations or a visual depiction of the proposed small wireless facility and if applicable, as collocated on the utility pole.

(18) ~~Applicable permit fees including reimbursement for City consultants, to the extent not inconsistent with applicable law.~~

(19) Consolidated permit application.

An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to thirty (30) small wireless facilities. The application must include the information required for an application for each of the proposed ~~collocated small wireless facilities. A consolidated permit application process shall not be available for applications to place utility poles to support the collocation of small wireless facilities, for backhaul facilities, for ground based equipment, or for other communications facilities unless authorized by the City Manager in a pre-submittal meeting.~~ In addition, prior to applying for a consolidated permit to collocate small wireless facilities, the applicant is strongly encouraged to ~~must~~ engage in a pre-submittal meeting with the City ~~if any of the proposed facilities in a consolidated permit application are not exempt from such requirement under applicable law including effective FCC regulations. A separate application must be filed for each utility pole to be placed in the public rights-of-way for the collocation of a small wireless facility unless the City consents to a single application for multiple utility poles at a pre-submission meeting.~~ The City may act on a consolidated permit application in its entirety or may separately address small wireless facility collocations for which incomplete information has been received or which are granted or denied.

(20) To the extent not inconsistent with applicable law, such additional information requested by the City reasonably necessary to demonstrate the application's compliance with applicable codes.

(c) Application Review and Procedures for Applications for Small Wireless Facilities and Utility Poles for Collocation of Small Wireless Facilities. The following procedures and time periods shall apply for both Requests and solely to applications for small wireless facilities and to the installation of utility poles in the public rights-of-way for collocation of small wireless facilities. The City shall process applications in the order in which they are filed. To the extent that a later filed

**Commented [A46]:** Two objections to this language: (1) there is no similar requirement that ground mounted equipment associated with other forms of communications services is required to provide landscaping. As such, the imposition of this requirement is not competitively neutral or non-discriminatory and should not be imposed as the equipment to be placed is similar to that which would be placed by wireline providers; (2) the our later objection/comment regarding any review of a SWF by the ARB and concern that the same can be accomplished within the statutory time frames.

**Commented [A47]:** The City can only apply objective design standards and evaluation the permit application based upon those standards which can be assessed by a visual depiction, brochure or diagram. Photo simulations interject a contextual subjective element and represents information that is excessive in violation of Section 337.401(7)(b), F.S.

**Commented [A48]:** The City cannot charge any fees because it has elected to receive higher CST under Chapter 202 and 337.401(3). We note that the Whereas Clauses even state this point. To include this language, notwithstanding the inclusion of the language "to the extent not inconsistent with applicable law," will very likely lead to confusion in the implementation of the Ordinance.

**Commented [A49]:** Considering the efficiencies that can be achieved, largely with staff time and review, why does the City not consider allowing the placement of Utility Poles associated with SWF be included in a consolidated permit?

**Commented [A50]:** Note, this section needs to be amended as Section 337.401(3)(g) expressly provides that permit applications for wireline facilities are to be process under the same timeframes as provided by Section 337.401(7)(d).7, .8 and .9, F.S.

~~application is required to be granted or denied prior to an earlier filed application that has been extended, and the granting of the earlier filed application would cause the denial of the later filed application, such later filed application shall be denied if not extended.~~ The applicant may re-file the application following the City's action on the earlier filed application.

1) ~~Time periods within this subsection may be extended for the period of time impacted by a force majeure event or by a declared local, State or federal emergency that directly affects the administration of all permitting activities of the City ("force majeure extension"). If an applicant opposes a force majeure extension of City time periods pursuant to this Section 70-81(c)(1) of the City Code, it shall notify the City within 24 hours of such extension or force majeure event becoming effective or the applicant shall be deemed to have consented to the extension.~~

(a) Unless extended by mutual consent of the applicant and City, within fourteen (14) days after receiving an application, the city manager will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the City will specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within 14 days.

(b) Negotiation Process.

(1) Unless extended by mutual consent of the applicant and the City, within fourteen (14) days after the date of filing the application, the City may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative City utility pole or support structure or may place a new utility pole. The City and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for thirty (30) days after the date of the request.

(2) Pursuant to Section 337.401(7)(d)4., F.S., at the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the City of such acceptance and the application shall be deemed granted not only for any new location for which there is agreement but for all other locations in the application. The City Manager may withdraw the request for an alternative location, objective design standard, reasonable spacing requirements, or any other item subject to negotiation pursuant to this subsection at any time, and may grant or deny the application as submitted.

**Commented [A51]:** While we understand the City has elected to separate permits for SWF from permits for the placement of other communications facilities, Section 337.401 does not provide nor allow the City to de facto extend the time frame to review and approve or deny any validly filed permit.

**Commented [A52]:**

**Commented [A53]:** The City cannot unilaterally extend the review timeframes established by Section 337.401(7) and federal law. Notwithstanding the foregoing, assume there is a "force majeure" event such as a hurricane impacting the City, it is unreasonable to provide that a permittee must notify the City within 24 hours of an event (with no notice thereof) or it is deemed consented to.

- (3) If an agreement is not reached, the applicant must notify the City of such non-agreement and the City must grant or deny the original application within ninety (90) days after the date the application was filed unless extended by mutual consent of the applicant and City. Failure of the applicant to so notify the City as required herein shall be deemed to constitute the applicant's rejection of the City's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.
- (c) The City processes all applications on a nondiscriminatory basis. Unless the City and the applicant engage in negotiations as provided above or mutually agree to an extension, the City will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within sixty (60) days after the receipt of an application. The City shall deny an application that does not meet the City's applicable codes, or does not comply with the applicable design standards provided in this Ordinance. City Code including compliance with this Article. A complete application is deemed approved if the City fails to approve or to deny the application within 60 days after receipt of the application. The City may, at the request of a registrant, perform an expedited review of a permit application, if the applicant agrees to pay costs incurred by the City for the City to engage consultants to review the application.
- (d) Extension of time. If the City and the applicant do not engage in negotiations, ~~or a force majeure extension does not apply,~~ the applicant and City may mutually agree to extend the sixty (60) day application review period. The City shall grant or deny the application at the end of the extended period.
- (e) The City may deny an application to a proposed collocation of a small wireless facility in the public rights-of-way or to place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed collocation or utility pole used to support a small wireless facility:
- (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

**Commented [A54]:** Revised to comply with Section 337.401(7)(d).12, F.S.

**Commented [A55]:** Deleted per objection noted above.

- (4) Materially fails to comply with the 2019~~7~~ edition of the Florida Department of Transportation Utility Accommodation Manual; ~~or~~
  - (5) Fails to comply with applicable codes ~~including but not limited to this Ordinance;~~
  - (6) Fails to comply with objective design standards set forth in this Ordinance. ~~or~~
  - (7) Would constitute a violation of the City Code.
- (f) Cure Procedure.
- (1) If the application is denied, the City will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the City denies the application.
  - (2) The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after the notice of denial is sent.
  - (3) If an attempt to cure is made by the applicant, the City will approve or deny the revised application within 30 days after receipt of the revised application. If the applicant revises any information in the application other than to address expressly the deficiencies identified by the City, the applicant shall submit a new application.
  - (4) The City's second and subsequent reviews of revised applications will be limited to the deficiencies cited in the denial notice.
- (g) Requests for waivers.
- (1) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers or pass-through providers, in violation of federal or state law.
  - (2) A waiver may be granted by the City in those circumstances where a competitively neutral use of the public rights-of-way as may be required by applicable law is impaired by strict application of the requirements of this Ordinance. In addition, a waiver of provisions of this Article may be

**Commented [A56]:** Revised consistent with Section 337.401(7)(d).12, F.S. Inclusion of the phrase City Code (an undefined term), goes beyond that provided by Florida law.

granted by the City as set forth in this Article.

- (3) A request for a waiver shall be filed either prior to or contemporaneously with the permit application or request. The request for waiver shall contain each provision for which a waiver is sought. If an applicant for a small wireless facility seeks a waiver of an objective design standard contained herein, the City may waive such standard upon a showing on the ground that such standard is not reasonably compatible with the particular location of a small wireless facility or utility pole or is technically infeasible or that the design standard ~~or~~ imposes an excessive expense. To satisfy this showing, the request for a waiver shall include the following information, as applicable:

(i) If applicable, a detailed explanation, with supporting engineering material by a licensed engineer or other data, as to why a waiver from the requirements of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria including the cost of complying with the standard and why such cost is excessive or why the objective design standard is technically infeasible;

(ii) Nature and characteristics of the surrounding neighborhood;

(iii) Any special conditions and circumstances affecting the proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;

(iv) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;

(v) Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;

(vi) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. §12101, *et seq.*, and applicable codes;

(vii) Any other information the City may reasonably require to process the request for waiver.



- (viii) The City shall grant or deny an application request for a waiver within forty-five (45) days after receiving the ~~request~~ application for waiver or time frame under applicable law unless the applicant and City consent to an extension. In granting any waiver, the City may impose conditions to the extent the City determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety, and welfare of the public.
- (4) ~~(4)~~ Should a request for waiver, and ultimately a permit, be denied by the City, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Ordinance.
- (h) A permit issued pursuant to an approved application for a small wireless facility or utility pole for collocations of a small wireless facility shall remain in effect for one (1) year unless otherwise extended, suspended, or revoked by the City pursuant to this Ordinance. The City shall issue other permits for thirty (30) days and may extend such permits for registered utility companies for up to one year. If a small wireless facility or utility pole is installed without a permit pursuant to applicable state or federal law or this Ordinance, the applicant shall nevertheless be required to have an effective registration, comply with the requirements of this Ordinance, including the development standards and provide the performance construction bond required in this Ordinance prior to performing construction.
- (i) A permit from the City constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this Ordinance, 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.
- 2) Permits Other Than Pursuant to Applications.
- (a) Requests for Communications Facilities. The City shall review and process ~~requests~~ applications for permits for backhaul facilities, fiber, cable, conduit, and communications facilities, other than small wireless facilities and utility poles for collocation of small wireless facilities, and other permit requests, consistent with applicable law and the City Code, and the City's policies and procedures.
- (b) Ancillary Permits. The City shall process requests for ancillary permits required for the operation of a communications facility, including but not limited to an electrical permit, in accordance with the City's policies and procedures. Consistent with the City's policies, the City may withhold or deny an ancillary permit if the

**Commented [A57]:** What facilities are intended to be covered by this language? Is the intent that any permit for backhaul associated with a SWF is valid for only 30 days?

**Commented [A58]:** Considering the fact that any wireline facilities must be processed in accordance with the same time frames associated with SWF, this should be deleted and subsection 70-81(c) expanded to include requests for both wireline and SWF. See Section 337.401(7)(d), .7, .8, and .9, F.S. See Section 337.401(3)(g), F.S.

person seeking such permit is otherwise in violation of the City Code.

3) Suspension and revocation of permits.

(a) The City may order the suspension of ~~placement and maintenance~~ work under a permit and ultimately may suspend or revoke any permit, in the event of a material breach of the terms and conditions of any applicable codes ~~including but not limited to~~ this Ordinance, State and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:

- (1) The violation of any material provision of the permit, City Code, or applicable codes;
- (2) An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the City;
- (3) Any material misrepresentation of fact in the process of permittee's request or application for a permit or Registration;
- (4) The failure to maintain the required performance ~~bond,~~ construction bond, security fund or insurance;
- (5) The failure to properly restore the public rights-of-way;
- (6) The failure to comply within the specified time with an order issued by the City;
- (7) The failure to register, renew a registration, or provide notice of transfer in accordance with this Ordinance;
- (8) The failure to relocate or remove facilities pursuant to this Ordinance and Sections 337.402, 337.403 and 337.404, Florida Statutes, as amended;
- (9) Conducting work in the public rights-of-way without a permit, if required.

(b) If the City determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes, ~~or the City Code including but not limited to this Ordinance,~~ the City shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the City may place additional or revised permit conditions on the permit following a substantial breach. In addition, the City may refuse to issue new permits and may deny an application or request for a new permit to a registrant or registrant's contractor that has materially violated any provisions of a permit, City Code, or applicable codes ~~including but not limited to this Ordinance,~~ until such time as the registrant cures the violation to the satisfaction of the City, including paying any damages, costs or penalties that may have been assessed.

**Commented [A59]:** See earlier objection. The applicable standard is "applicable codes".

**Commented [A60]:** Adding clarifying language as the City is only able to require a performance construction bond. See later objection.

**Commented [A61]:** See prior objection.

**Commented [A62]:** See prior comment.

- (c) Within thirty (30) days of receiving notification of the breach, the permittee shall contact the City and provide a plan, acceptable to the City to remedy the breach. The City shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the City, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the City's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens immediate harm to the health, safety or welfare of persons or property.
- (d) If a permit is revoked, the permittee shall reimburse the City for the City's reasonable costs, including restoration costs, administrative costs, and the cost of collection. These costs may also be recovered from the ~~deducted from the~~ registrant's permanent performance construction bond in the City's discretion.
- (e) The City may cause an immediate stop work order, whether performed pursuant to a permit or without a permit, where the construction poses a serious immediate threat to the health, safety, or welfare of the public or property until such time as such serious threat has been abated.

**Commented [A63]:** Language revised to properly provide for the recovery from the performance construction bond.

**Commented [A64]:** Language added to make it more objective.

(d) Appeals and Exhaustion of Administrative Remedies.

- (a) Final, written decisions of a designee of the city manager, including but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending, or terminating a registration or denying a request for a waiver, or imposing costs or a fine, are subject to appeal to the city manager. A decision to deny a permit is not final if the applicant has resubmitted a revised application or request in an effort to cure the bases for denial within thirty (30) days of being notified of such denial, in which case the City shall review the revised application or request and grant or deny it within thirty (30) days or applicable time frame consistent with applicable law and the City's policies and procedures. An appeal must be filed with the city clerk with the appeal fee as established in the City fee ordinance, within thirty (30) days of the date of the final, written decision to be appealed. An applicant or requester shall waive any appeal that is not timely filed as set forth herein. The city manager shall hear the appeal or may appoint a hearing officer to consider the appeal. The decision on

**Commented [A65]:** As it relates to the review of a revised Application, the time period to review is 30 days and is limited to the deficiencies cited in the denial. See Section 337.401(7)(d)9, F.S.

appeal shall be based on the information submitted previously to the City and no new information shall be considered. Subject to a force majeure event, the hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the person pursuing the appeal applicant, and a written decision shall be rendered within fifteen (15) ~~twenty (20)~~ days of the hearing or by the time period required by applicable law.

- (b) ~~An appeal from a decision of the City Manager or a hearing officer may be appealed to the City Commission within thirty (30) days, by filing a written notice of appeal with the City Clerk with the applicable fee per the City fee ordinance, and providing copies to the city manager and the city attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee established in the City fee ordinance. The City Commission may affirm, modify or reverse the decision of the city manager. The city manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the City Commission. Nothing contained herein shall preclude the City Commission from seeking additional information prior to rendering a final decision. The decision of the City Commission shall be by resolution and a copy of the decision shall be forwarded to the City Manager and the appealing party. Prior to filing an action in an appropriate court, any person challenging a provision of the City Code, City policy or procedure, or City action shall be required to exhaust administrative remedies as provided herein. To challenge action by a designee of the City Manager, the person shall be required to file an appeal with the City Manager as provided in this subsection. If a person is challenging a provision of this Ordinance or a policy or procedure of the City that is adopted pursuant to this Ordinance, the person shall provide documentation to the City Manager with sufficient detail explaining why such Code provision or policy or procedure is in violation of applicable law. The City Manager may reject or grant the appeal in whole or in part, and may place the matter on an agenda of the City Commission. For administrative remedies related to the City's denial of an application, to the extent required by applicable law, the City waives administrative reviews that are not complete within 45 days after the person files a complete request for review. For all challenges to City action other than denial of an application, the City does not waive the exhaustion of administrative remedies. Nothing herein shall constitute a waiver of the City's rights under applicable law including the Florida Constitution.~~
- (c) Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, following the exhaustion of administrative

remedies, a party aggrieved by a decision of the City ~~Commission~~ Manager may appeal an adverse decision to the Circuit Court In And For Miami-Dade County or applicable federal district court in Miami-Dade County. The party making the appeal shall be required to pay to the city clerk the fee established in the City fee ordinance, to defray the costs of preparing the record on appeal.

**Commented [A66]:** Per section 337.401(8)(a), any person aggrieved by a violation of Section 337.401 may bring a civil action in USDC or any other court of competent jurisdiction and is not limited solely to an appeal.

**Sec. 70-82 Performance construction bond ~~and Permanent Performance Bond~~.**

- (a) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to this Ordinance, a registrant shall establish in the City's favor a performance construction bond to secure the restoration of the public rights-of-way, and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with a permit and applicable sections of the City Code. The City may require a performance construction bond pursuant to this Ordinance in addition to any bond that may be required in accordance with other permits that may be required based on the nature of the registrant's proposed work in the public rights-of-way, including but not limited to, an excavation bond pursuant to the City Code.
- (b) The performance construction bond must name the City as obligee and be conditioned upon the full and faithful compliance by the registrant with all requirements, duties, and obligations imposed by the permit and provisions of this Ordinance during and through completion of the placement or maintenance project. The performance construction bond shall be in an amount as determined by the City based on one-hundred and ten percent (110%) of the estimated costs of the restoration of the public rights-of-way. No performance construction bond is required if the estimated costs of the restoration of the public rights-of-way is less than one thousand dollars (\$1,000), provided the registrant has a fully replenished permanent performance bond on file with the City. For a consolidated permit, the registrant shall provide a performance construction bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event shall be less than twenty-five thousand dollars (\$25,000). ~~The minimum amount of the performance construction bond for a new or replaced utility pole or ground mounted small wireless facility up to 28 cubic feet shall be twenty five thousand (\$25,000) dollars.~~ The bond shall be issued by a surety licensed to operate in Florida having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the City Attorney and may be administratively accepted by the City Manager. Depending on the nature of construction, location, and utilities in the area, the City Public Works Director may require a cash performance construction bond. Notwithstanding this provision, the City shall accept a letter of credit or similar financial instrument as a construction bond issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made

**Commented [A67]:** This language should be deleted to ensure that the Draft Ordinance is nondiscriminatory and competitively neutral. The City is already covered by the estimated cost of the restoration of the ROW provided above.

by electronic means, including by facsimile. A provider of communications services may add the City to any existing bond, or other relevant financial instrument, and the City shall accept such proof of coverage without any conditions other than consent to venue in Miami-Dade County for purposes of any litigation to which the City is a party.

- (c) In the event a registrant subject to such a performance construction bond fails to complete the work in a safe, timely, and competent manner in accordance with the provisions of the permit or City Code, there shall be recoverable, jointly, and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
- (d) The performance construction bond must be issued as non-cancelable and shall provide the following: "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."
- (e) The performance construction bond shall be for a term of not less than one (1) year but not more than 18 months after the anticipated date of the later of completion of construction, restoration, and City inspection. In the event the term of any performance construction bond expires, or is reasonably expected to expire, prior to one (1) year after the completion of construction, restoration, and City inspection, the registrant shall immediately obtain, pay for, and file with the City a replacement performance bond. No less than one (1) year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request that the City Public Works Department remove the requirement to continue the performance construction bond. In accordance with the current standards of the Public Works Department of the City, and satisfaction of all obligations in accordance with the bond, the City shall eliminate the bond. Notwithstanding, the City may require a new performance construction bond for any subsequent work performed in the public rights-of-way.
- (f) The rights reserved by the City with respect to any performance construction bond established pursuant to this Article are in addition to all other rights and remedies the City may have under the City Code, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance construction bond will affect any other right the City may have.

~~(g) Permanent Performance Bond~~

~~(1) The City is concerned that, based on past experience in the City and throughout the State, the placement and maintenance of communications facilities in the public rights of way has the potential to cause significant damage to the public rights of way and to other utilities within the public rights of way, creating disruption to the City, to businesses to residents and to the traveling public. In addition, the City is concerned that it will not be able to obtain adequate security to~~

**Commented [A68]:** As noted earlier, SB 1000 (2019), together with the prior amendment to Section 202.24, F.S. approved by HB 7087 (2018), make it clear that the City cannot require the maintenance of a security fund or permanent performance bond as a condition to the maintenance of communications facilities in the public rights-of-way. Section 337.401(7)(d), 12, as revised by SB 1000, specifically deletes any reference to a security fund or performance bond from the host of items that the City may include in any ordinance relating to the use of the City's rights-of-way. As such, any provision for a security fund or other bond that is maintained in perpetuity must be deleted from the Draft Ordinance as a condition for the placement of facilities in the public rights-of-way ("ROW").

Further, the permanent performance bond requirement violates the no "exactions" prohibition in Section 610.103, F.S. and must be deleted.

~~address damage to its rights of way or to utilities within the public rights of way, because of restrictions on construction bonds, placement and maintenance of facilities that may occur lawfully or unlawfully without permits, in accurate locates, permits issued by other government entities within the City that could impact City utilities, and other issues associated with such facilities in the public rights of way. Accordingly, pursuant to the City's authority and obligation to manage the public rights of way and to provide for the public safety in the exercise of its police power, and to the extent not inconsistent with applicable law, the City shall require all persons that place or maintain communications facilities in the public rights of way to establish a permanent performance bond in the City's favor.~~

~~(2) — A Registrant or Facility Owner who places or maintains communications facilities in the public rights of way, shall file with the City, for City approval, a permanent performance bond in the amount of fifty thousand dollars (\$50,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a separate account or City account. The letter of credit shall be issued by a United States financial institution that allows drawing on the letter of credit via electronic means including facsimile, agrees to the jurisdiction of the appropriate court within Miami-Dade County, and shall be in a form and issued by a financial institution acceptable to the City Attorney. The permanent performance bond shall be conditioned on the full and faithful performance by the Registrant or Facility Owner of all requirements, duties, and obligations imposed by the provisions of this Ordinance and applicable law, including but not limited to requirements to restore the public rights of way and to guarantee such restoration, to remove any abandoned communications facilities, to indemnify the City as required herein, and to pay for any damage to City or other facilities in the public rights of way. The permanent performance bond shall not constitute a fee, tax or other imposition on a dealer of communications services in its capacity as a dealer of communications services or compensation for use of the public rights of way and shall not be used by the City as such. Should the City draw upon the permanent performance bond, the City shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed by the provisions of this Ordinance, subject to providing prior notice and a reasonable opportunity to cure the failure, there shall be recoverable, jointly and severally from the principal and surety of the permanent performance bond, including a letter of credit, any damages or loss suffered by the City as a result, including the full amount of any damages, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees. The cash deposit or letter of credit shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the person's full and faithful performance at all times. A registrant may change the form of the permanent performance bond on file with the City on an annual basis. A registrant may request that the City return the permanent performance bond or approve the cancellation of the performance bond upon the expiration of a registrant's obligations pursuant to the City Code and in no event while a registrant maintains any obligations with respect to facilities in the public rights of way. If the City~~

~~determines it is appropriate to return the permanent performance bond, a cash deposit retained by the City shall be returned without interest.~~

~~(3) For new registrants seeking to place or to maintain communications facilities in the public rights of way, the permanent performance bond required herein must be filed with the City prior to the placement or maintenance of a communications facility in the public rights of way. For existing registrants, permanent performance bonds currently on file with the City, either in the form of a cash deposit or letter of credit, shall satisfy the requirement of this subsection and shall continue to be maintained by the City. To the extent that a communications services provider, wireless provider, or pass through provider with facilities in the public rights of way, does not have a permanent performance bond filed with the City as required herein, said person shall submit the permanent performance bond as provided herein, within ninety (90) calendar days from the effective date of this Ordinance. No permits shall be issued to a person for placement or maintenance of facilities within the public rights of way without a permanent performance bond filed with the City. For activity that does not require a permit, no placement or maintenance of a communications facility in the public rights of way shall be performed by a person that does not have a permanent performance bond on file with the City. In addition to other remedies provided herein, including but not limited to, revoking a registration, denying or withholding permits, or issuing a stop work order, the City may pursue code enforcement actions against any person who violates this subsection.~~

~~(4)(1) Any person who seeks a waiver of the requirement of a permanent performance bond or seeks to pursue a challenge to such requirement shall submit an appeal to the City Manager setting forth the basis for such person's position pursuant to the procedures set forth in this Ordinance. The City Manager shall render a decision which the person may appeal, pursuant to the procedures set forth herein.~~

**Sec. 70-83 Construction Methods for Placing or Maintaining Communications Facilities in Public Rights-of-Ways.**

- (a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes and must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. For purpose of complying with the notice and approval requirements contained within the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, the registrant shall provide notice and seek approval from the City Public Works Department. All safety practices required by applicable codes and accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida Building Code. 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.

**Commented [A69]:** What is intended by this language? Are you looking for a separate notice and approval than what is outlined in this Ordinance?



- (b) In connection with excavation in the public rights-of-way, a permit issued by the Director of Public Works pursuant to this Ordinance shall satisfy the requirement of a permit for excavation in the public rights-of-way in Chapter 62, Article III, Division 2, Section 62-83(b) of the City Code. In the event of a conflict between requirements of Chapter 62, and this Ordinance, this Ordinance shall control. ~~Pursuant to Chapter 62, Article III, Division 1, Section 62-63 of the City Code, excavation shall not be allowed in the area encompassing the Miracle Mile and Giralda Avenue Streetscape Project consisting of Miracle Mile from Douglas Avenue to LeJeune Road and Giralda Avenue from Galiano Street to Ponce de Leon Boulevard, unless waived by the City Commission. A registrant seeking to excavate in this area of the public rights-of-way to install, to perform maintenance, or to connect backhaul or other communications facilities shall be required to obtain a waiver from the City Commission consistent with Chapter 62, Article III, Division 1, Section 62-63 of the City Code, prior to the time frame required for the City to grant or to deny an application filed pursuant to this Ordinance, or such application shall be denied, if such application requires excavation.~~
- (c) In addition, 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. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.
- (d) To the extent not inconsistent with applicable codes, underground cables, where required, shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for the paved portion of roadways, a twenty-four-inch (24") to thirty-inch (30") depth of cover in all areas except the paved portion of roadways, and shall have a two-foot (2') horizontal clearance from underground gas, water and sewer utilities and their appurtenances. The lowest wire on any poles or micro wireless facility placed in any rights-of-way used by vehicular traffic shall be at a height from the ground in accordance with the National Electrical Safety Code and whenever telephone and electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as all may be amended.
- (e) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and applicable FDOT Standard specifications, comply with the City Public Works Department standards manual, and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.
- (f) The City may require the use of trenchless technology (i.e., horizontal directional

**Commented [A70]:** The City cannot wholesale prohibit the placement of communications services facilities within certain areas of the City. By prohibiting any excavation, the City is effectively prohibiting facilities in the ROW in violation of Section 337.401(3) and (7)(d)3, F.S.

In addition, the new language added from first reading further violates the express provisions of Section 337.401(7)(e), F.S., that allows the excavation without a permit if done for the purpose of restoring service on an existing facility and the work is done in compliance with the 2017 FDOT UAM.

**Commented [A71]:** Revised to include only those utilities where a two foot clearance is most appropriate.

drilling, jack and bore, or micro trenching method) or may prohibit underground missile boring for the installation of facilities underground in the public rights-of-way. The registrant shall be solely liable for the displacement, damage, or destruction of any property, public rights-of-way, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The City may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this Ordinance and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the City. ~~In the event a registrant will be performing excavation without a permit consistent with this Ordinance, the registrant shall provide the City Public Works Department advance notice of at least three (3) business days prior to commencing construction to afford the City an opportunity to require a specific method of construction, as well as a plan for maintenance of traffic or pedestrians. Failure to comply with these requirements may result in a stop work order, the withholding of future permits, and enforcement remedies.~~

(g) In an effort to minimize adverse impacts and disruption in the public rights-of-way and to other municipal improvements, the City may require a communications services provider to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the communications services provider's permit application. The City may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The City may provide a more definite time frame based on specific City construction or maintenance schedules. ~~Within the public rights of way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers consistent with the federal requirements of 47 U.S.C. §224.~~ Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(h) Limits on excavation in restored rights-of-way. ~~To avoid continual disruption and degradation to the public rights of way, and consistent with a registrant's guarantee of restoration of the public rights of way, a specific area of the public rights of way that has been subject to excavation and restored shall not be subject to re-excavation until at least four (4) years following the completion of such restoration, to the extent not inconsistent with applicable law. The City may waive this requirement if a subsequent permittee applies for and the City issues a permit that requires the subsequent permittee to restore the public rights of way to the original condition and such subsequent permittee will warrant such restoration as provided herein.~~ Registrants seeking to place communications facilities in the public rights-

**Commented [A72]:** Consistent with our prior objection, Section 337.401(7)(e).3 provides that the City may require notice of such work *within* 30 days after restoration, not before, and can require an after-the-fact permit for work that would have otherwise required a permit. This language needs to be deleted or rewritten consistent with the statute. To require advance notice of at least three business days to restore service is unreasonable and directly conflicts with the express language of the statute. See also 337.401(3)(g), F.S.

**Commented [A73]:** The City can't effectively seek to enforce federal law via its ordinance. To the extent a carrier seeks to take advantage of 47 U.S.C. 224, they can seek that independently of this Ordinance.

**Commented [A74]:** This is beyond the scope of Section 337.401, F.S. The period of time specified (4 years) is also unreasonable and will severely limit the rollout of new technologies in the City. It is effectively discriminating against new entrants. The provision also would function as an impermissible moratorium against a subsequent carrier seeking to place facilities in the ROW. Such a moratorium is unlawful on its face in violation of Section 337.401(7)(g) and Section 337.401(7)(h), F.S. Furthermore, this express prohibition is discriminatory in violation of Section 337.401(3), F.S. It is also beyond the scope of applicable codes since it would not be adopted to implement a provision of Section 337.401(7), F.S. There is no provision in Section 337.401(7), F.S., and indeed in federal law, that would support such an action.

of-way through excavation are strongly encouraged to contact utilities, other registrants, and communications services providers to coordinate the placement of communications facilities in the public rights-of-way and to engage in joint trenching. ~~For the purpose of this Article III, excavation shall have the meaning set forth in Section 556.102(6), Florida Statutes, as it may be amended.~~

- (i) Trees. A registrant shall not prune, remove, or materially damage trees or tree roots in the public rights-of-way during placement or maintenance of communications facilities, including but not limited to small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way without a tree permit issued in accordance with Chapter 82, of the City Code, as amended. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. A registrant obtaining a permit to perform construction in the public rights-of-way shall be required to protect trees and tree roots as required by Chapter 82 of the City Code, as amended, and as the City may require in a permit. The City may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan and the City Code.
- (j) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way consistent with Chapter 62, Section 62-125 of the City Code, as amended, to ~~at least its~~ original condition before such work in public rights-of-way was initiated, subject to the City's satisfaction upon inspection. If the registrant fails to make such restoration within the completion date specified in the permit as may be required by the City, the City may perform such restoration using City employees, agents or contractors, and pursuant to Section 337.402, Florida Statutes and Chapter 62, Section 62-125 of the City Code, as they may be amended, the registrant shall reimburse the City for any such costs in an amount equal to the sum of the actual cost of any work or other activity undertaken by the City and twenty-five (25) percent of such cost as compensation to the City for general overhead and administrative expenses associated with such work, and shall pay costs as directed by the City no later than twenty (20) calendar days after receipt of an invoice. A registrant shall comply with Section 62-125 of the City Code, as amended, with the exception that a registrant shall warrant restoration of the public rights-of-way for a period of twelve (12) months after completion of such restoration or the time period set forth on a permit, or adopted pursuant to City public works standards if such provides for a shorter time period.
- (k) A registrant shall immediately notify the City of any damage to utilities, including City utilities, City fiber, or other City facilities as a result of a registrant's construction in the public rights-of-way. The registrant shall repair such damage at its expense within the time frame required by the City given the nature of the damage and impact on City services. In its discretion, the City may repair or arrange for the repair of such damage and charge such expense to the registrant.
- (l) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the City to be unreasonably interfering in any way with the safe or continuous use or the maintenance, improvement, extension, or expansion of such public rights-of-way shall, upon

**Commented [A75]:** Any requirement of restoration should be limited to restoration to its original condition. A registrant should not be required to make improvements beyond that which originally existed to the ROW. Such would be considered an impermissible exaction per Section 202.24 and 337.401, F.S.

**Commented [A76]:** Given the amendment to include utilities other than City utilities, should not the obligations for repair for those facilities be guided by Chapter 556, F.S.?

thirty (30) days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under Section 337.403, Florida Statutes. The City may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.

- (m) 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. Subject to Section 337.403, Florida Statutes whenever an order of the City requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the City may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in Section 337.403(1)(a)—(c), Florida Statutes, shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the City.
- (n) Subject to Section 337.403, Florida Statutes whenever it shall be necessary for the City to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the City Commission to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with Section 337.404, Florida Statutes.
- (o) A final order of the City shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's ~~permanent performance bond or construction~~ bond.
- (p) The City retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the City shall attempt to notify the registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.
- (q) The City shall have the right to make such non-intrusive visual inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. In the determination of the City, when practicable, such inspections shall be conducted by non-intrusive means. The City shall have access without charge to any manholes or handholes at any time, of a communications services provider in which the City has facilities, provided the City has given such provider reasonable prior notice so that such provider can have trained personnel present when the accesses such manholes. Notwithstanding the foregoing, the City, in the proper exercise of its municipal police powers and duties

**Commented [A77]:** Revised as permanent performance bonds are not allowed by Section 202.24 and 337.401, F.S.

**Commented [A78]:** Revised to add "non-intrusive" inspections. Due to the sensitive nature of the equipment, any inspections should be limited to visual or other non-intrusive inspections. Opening equipment without the provider's knowledge or personnel present can disrupt the wireless communications network, void warranties and provide a host of other issues.

with respect to the public rights-of-way, shall have access to all manholes and handholes without charge of such provider. In the event the City determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the City will provide registrant ~~no less than three days~~<sup>with</sup> written notice setting forth the violation and ~~requiring~~<sup>requesting</sup> correction ~~by a time specified in the notice, but in no event later than 30 days following notice.~~

- (r) ~~Following the completion of construction to place a new or replace an existing communications facility in the public rights of way, the registrant shall promptly provide revised plans and as built plans upon completion of any installation or construction. The plans shall be in a digitized format, showing the two dimensional location of the facilities, based on the City's geographical database or other format acceptable to the City. The registrant shall provide such plans at no cost to the City. The City shall maintain the confidentiality of such plans and any other information provided in accordance with Section 202.195, Florida Statutes, as it may be amended.~~
- (s) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, fire hydrants, smart city technology, public safety equipment, and other facilities, fiber, 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. To the extent not inconsistent with applicable law, a registrant shall allow City facilities to be collocated within City's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and City and may be subjected to other City rights-of-way requirements. 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.
- (t) 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. The expense of such temporary raising or lowering of wireline 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. If the City requests a temporary raising or lowering of a facility for a public purpose, the City shall not be charged for the temporary raising or lowering of the facility to the extent not inconsistent with applicable law.
- (u) This Ordinance does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

**Commented [A79]:** See earlier comment and discussion regarding as-builts. Furthermore, to the extent the registrant is merely replacing equipment with similar sized equipment or wireline facilities with replacement wireline facilities within the same communications space, this requirement should not apply.

**Commented [A80]:** Revised as, historically, this language applied to permits obtained by parties moving large structures in the ROW and the need to temporarily move wireline facilities to allow the structure to pass. This language should not be applied to SWF.

- (v) Abandonment. Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-way is to be abandoned, the provider shall notify the City no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The City may independently establish that a communications facility has been abandoned. In reaching such determination, the City may request documentation and/or affidavits from the communications services provider or registrant regarding the active use of the facility. If the provider or registrant fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned constitutes a public nuisance and shall be removed by the registrant or communications services provider at its expense within thirty (30) days of receipt of notice from the City. Failure to remove an abandoned facility within the thirty (30) days' period shall be deemed to be the registrant's or communications provider's consent for the City to remove the facility at the registrant's or provider's expense or for the City to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection.
- (w) If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the 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 facility requires removal of the facility only and does not require the removal of the existing structure.

**Commented [A81]:** Why is there an automatic removal rather than some determination that the Facility cannot be reused?

**Sec. 70-84 Preservation of Historic Property.**

- (a) Consistent with Section 337.401(7)(k), Florida Statutes, this Ordinance preserves the City's full authority to enforce historic preservation regulations adopted by ordinance in effect on April 1, 2017, consistent with the preservation of local zoning authority under 47 U.S.C. §332(c)(7), the requirements for facility modifications under 47 U.S.C. §1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws. The City hereby confirms its intention to enforce its local codes, administrative rules, and regulations, including the City Historic Preservation Ordinance, pursuant to Article 3, Division 11 of the City's Zoning Code, as amended, which applies to historic designation by the City and the review by the City, as a Certified Local Government, of national register nominations.
- (b) Pursuant to Section 3-1106 of the City Zoning Code, as amended, no building, structure, improvement, landscape feature, or archaeological site within the City, which has been designated an historic landmark or historic landmark district, shall

be erected, altered, restored, rehabilitated, excavated, move, reconstructed or demolished until an application for a Certificate of Appropriateness regarding any architectural features, landscape features, or site improvements has been submitted and approved by the City pursuant to the procedures in Article 3, Division 11 of the Zoning Code, as amended. Unless otherwise specified, exterior alterations, additions, demolitions to non-contributing structures or properties within historical landmark districts shall be reviewed and approved by the City Historic Preservation Board and/or City Historical Resources Department. ~~Whenever a registrant applies for~~ ~~seeks~~ a permit to locate a communications facility in public rights-of-way that would impact an historic landmark or historic landmark district, the ~~applicant~~ ~~registrant~~ shall either simultaneously or prior to filing the application ~~or request~~ with the public works department, provide a copy of the application to the City's Historical Resources Department and confirm receipt of such application copy. A registrant shall apply for such Certificate of Appropriateness concurrently with or prior to submitting an application ~~or request~~ for a permit. The ~~registrant~~ ~~applicant~~ shall be responsible for all ~~application~~ fees of general applicability for such approval or Certificate of Appropriateness. ~~The city manager shall deny a permit application or request filed pursuant to this Ordinance if the required Certificate of Appropriateness is denied or is not obtained by the deadline for the City to process the request or application. If a permit is not required for such communications facility pursuant to this Ordinance, the registrant shall apply for and obtain a required Certificate of Appropriateness if required, prior to the placement or maintenance of such facility in the public rights of way that would impact an historic landmark or historic district. By way of example, placement of aerial utility lines that would not require a permit may require a Certificate of Appropriateness if it would impact historic property.~~

- (c) Any proposed material amendments to the City Plan, including but not limited to, the closing of streets and any developments that would affect such City Plan, shall be in accordance with the procedures set forth in Article 3, Division 11, Section 3-1104 of the Zoning Code, as amended, notwithstanding any provisions in Article 3 to the contrary. Whenever a registrant ~~applies for~~ ~~seeks~~ a permit to locate a communications facility in public rights-of-way that is within the City Plan, the registrant shall either simultaneously or before filing the application ~~or request~~ with the public works department, provide a copy of the application to the City's Historical Resources Department and confirm receipt of such application copy.
- (d) If a registrant seeks to place or to maintain a communications facility in a proposed location within the public rights-of-way that would constitute a material amendment to the City Plan, the registrant shall apply for and obtain appropriate approval, including but not limited to, a Special Certificate of Appropriateness from the City pursuant to Article 3, Division 11, Section 3-1104 of the City Zoning Code, as amended, at the registrant's expense, prior to submitting a permit application ~~or request~~. A registrant shall apply for such approval or Special Certificate of Appropriateness, as applicable, concurrently with or prior to submitting an application ~~or request~~ for a permit. The ~~registrant~~ ~~applicant~~ shall be responsible for all ~~application~~ fees of general applicability for such approval or Special Certificate of Appropriateness. ~~The city manager shall deny an application or request for a permit if the registrant does not obtain the approval or a Special Certificate of~~

**Commented [A82]:** While Section 337.401(k) preserve's the City authority to enforce historic preservation regulations, there is nothing in the state law that eliminated the City's requirement to consider the application for a SWF, including any utility pole to support a SWF, within the timeframes provided by that section.

**Commented [A83]:** Please advise the nature and amount of any permit fees the City believes are of "general applicability" so we may properly respond.

**Commented [A84]:** This language violates Section 337.401(7)(e), F.S. There is no exception in Florida Statutes from the permitting exemption for historic properties.

**Commented [A85]:** We have review Section 3-1104. Please explain how either a permit to collocate on an existing utility pole or placement of a new utility pole would "affect the City Plan" given what comprises the City Plan.

**Commented [A86]:** Please advise what, in the City's opinion, would constitute a material amendment to the City Plan.

**Commented [A87]:** See request in preceding subsection (b) for nature and amount of any such fees.

Appropriateness that is required pursuant to the Zoning Code. If a permit is not required for such communications facility pursuant to this Ordinance, the registrant shall apply for and obtain appropriate approvals from the City, including if applicable, a Special Certificate of Appropriateness, prior to the placement of such facility in historic property within the public rights-of-way.

**Commented [A88]:** Same comment and objection as in the preceding subparagraph (b).

- (e) Registrants are encouraged to consult with the City’s Historical Resources Department prior to ~~applying~~filing for a permit to place or to maintain a communications facility in an area of the public rights-of-way that has been designated as historic property, including but not limited to, within the City Plan.
- (f) The City may waive the requirements of Article 3, Division 11 of the Zoning Code. In addition to the procedures of waiver set forth in this Ordinance, such waiver shall require the approval of the City Historical Resources Department, which may seek the approval of the City’s Historic Preservation Board. Unless waived by the City, an application or request for a permit for a proposed communications facility pursuant to this Ordinance that requires approval, Certificate of Appropriateness, or Special Certificate of Appropriateness of the City Historic Resources Department or Historic Preservation Board shall be denied by the city manager if the ~~registrant~~applicant has not obtained such approval or Certificate by the deadline required for City action pursuant to this Ordinance and applicable law.
- (g) Without waiving any remedies available to the City under applicable law, the City may require a registrant that does not obtain appropriate approvals pursuant to this Section, to remove its communications facility and to restore the public rights-of-way to the original condition, at the registrant’s cost. If the registrant fails to do so, the City may remove the facility, restore the public rights-of-way, and charge the costs to the registrant, and pursue all remedies available, including terminating a registration, withholding permits, and code enforcement remedies.

**Sec. 70-85 Development And Objective Design Standards for the Placement Or Maintenance Of Communications Facilities In The Public-Rights-Of-Way.**

- (a) Terms and conditions for collocation on City utility poles.
  - (1) The City shall not enter into an exclusive arrangement with any person for the right to attach ~~facilities~~equipment to City utility poles. The City reserves the right to enter into agreements for collocation on City utility poles in its discretion.
  - (2) Reservation of space on a City utility poles. The City hereby reserves the top one-third of the useable space of the vertical pole component of all City utility poles in the public rights-of-way for future public safety uses. The city manager may waive the reservation of space on City utility poles. The City may reserve additional space on City utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the City utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, as well as the City’s existing uses of the utility



pole, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use, as well as the City existing uses. The replaced pole shall continue to be owned by the City, subject to the City's acceptance of a replaced pole that complies with these requirements.

- (3) The rate to collocate a small wireless facility on a City utility pole shall be one-hundred fifty dollars (\$150) per pole annually, which is the maximum amount currently authorized pursuant to Section 337.401(7)(f)3., Florida Statutes, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the City. The fee shall be paid upon the City's issuance of a permit to collocate a small wireless facility on a City utility pole and annually thereafter. By establishing the maximum amount currently allowed pursuant to Section 337.401(7), F.S., the City is not indicating that such amount provides full compensation for the taking of City property and does not waive any rights under the Florida Constitution.
- (4) Agreements between the City and wireless providers that were 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 City utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this Ordinance for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- (5) For a City utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations. The good faith estimate of the City for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- (6) 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 necessary pole replacement, within sixty (60) days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within sixty (60) days after written acceptance of the good faith estimate by the applicant, or such application shall be deemed denied. 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 pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The City

may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall accommodate the City's equipment and intended function and shall remain the property of the City, subject to the City's acceptance of the replaced or altered pole that complies with these requirements.

- (7) The City may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, 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.
- (8) A collocation of a small wireless facility on a City utility pole shall comply with all applicable codes ~~including and~~ this Ordinance, and shall not compromise the City utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.
- (9) A registrant collocating a small wireless facility on a City utility pole or replacing a City utility pole to accommodate a collocation of a small wireless facility shall not impair, damage or affect the City's equipment that may be on the pole, including public safety equipment, smart city technology, or other City equipment. The registrant shall ensure that the altered or replaced utility pole accommodates the City's equipment and functionality. A registrant performing installation or maintenance of a small wireless facility on a City utility pole shall provide the City with at least three (3) business days' notice so the City may have an observer present. The City may require the registrant or its contractor to apply for and obtain at its cost a security clearance from the City's Police Department if the City utility pole supports City public safety equipment. Without waiving any rights including the right to pursue criminal charges for interfering with emergency or public safety communications, impairing or affecting the operation of the City's equipment on a City utility pole shall be grounds for terminating a registrant's registration. A registrant shall maintain for four years accurate records identifying the date, time, location and identity of persons accessing facilities collocated on a City utility pole and shall make such records available to the City for inspection and copying promptly upon request.
- (10) Registrants placing or maintaining small wireless facilities on ~~a~~ City utility poles shall be responsible for all costs of placing, maintaining and operating its small wireless facilities, including but not limited to, costs of electric service for such facilities. A registrant that damages a City utility pole shall be responsible for the cost of repair or replacement of the City utility pole.

Unauthorized use of City facilities and resources, including without limitation, electric power, constitutes theft, punishable under Florida Statute §812.014, and shall be grounds to terminate a registrant's registration or to revoke a permit.

- (11) A collocation of a small wireless facility on a City utility pole shall not affect the City's ability to remove or to replace the pole in its sole discretion. If a City utility pole is damaged or destroyed, the City may, in its sole discretion, remove the utility pole, notwithstanding the collocation of a small wireless facility on such pole. Within thirty (30) days after receiving notification that the City intends to remove or to replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost. In no event shall the City be liable for damage, destruction, theft, or removal of a small wireless facility collocated on a City utility pole or any small wireless facility or utility pole within the City public rights-of-way.

**Commented [A89]:** Observation for City: This language, as written, does not incentivize providers to collocation on existing or replaced City Utility Poles if the City can remove them at any time.

- (12) The City reserves the right in its sole discretion to refuse to allow the attachment of any equipment to a City-owned utility pole that does not constitute the collocation of a wireless facility. In addition, subject to City Commission approval, the City reserves the right to charge a rate that may be negotiated between the City and a person requesting to attach a communications facility that does not constitute a small wireless facility to a City-owned utility pole.

- (b) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements unless waived by the City. In conjunction with granting such waiver, the City may require conditions on the permit approving such facility.

- (1) A registrant shall comply with and abide by all applicable provisions of the state law and City ordinances, applicable codes and regulations, quasi-judicially approved conditions for approvals, settlement agreements, applicable contracts, applicable court orders, and applicable provisions of federal statutes, FCC regulations and PSC regulations in placing or maintaining a communications facility in the public rights-of-way. ~~Wireless support structures and utility poles for the collocation of small wireless facilities shall comply with the Florida Building Code, including wind velocity standards for risk categories III and IV for buildings and structures, specified in Chapter 16 Section 1620 of the 2017 Florida Building Code, as amended.~~

**Commented [A90]:** What is included/intended by this language? What quasi-judicial approved condition could be imposed on something that does not require a quasi-judicial hearing?

- (2) Communications facilities shall not be placed or maintained in a location in the public rights-of-way where they would violate or cause the City to violate the Americans with Disabilities Act or the Settlement Agreement between the United States of America and the City of Coral Gables, Florida Under the Americans with Disabilities Act, DJ 204-18-182, effective October 1, 2004, as it may be amended.

**Commented [A91]:** Duplicative. Already stated previously in the Draft Ordinance. Further, inherent in the fact that any application much comply with Applicable Codes.

- (3) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual or physical obstruction to the traveling public's use of the public rights-of-way or the use of bicycle lanes or multi-use trails. Whenever practicable, communications facilities should be placed in public rights-of-way in ~~an~~ alleys where the facilities would not interfere with other uses of the alley to avoid placing and maintaining such facilities in a roadway, on a sidewalk or within other areas of the public rights-of-way used by the travelling public. ~~If there is an alley that would serve as an alternative to a location for a facility proposed to be located in a roadway, sidewalk or other location that would impact the travelling public, to the extent not inconsistent with applicable codes, the applicant should include information in its application, including but not limited to material from a licensed engineer, as to why the alley is not practicable as an alternative to placing the facility in a roadway, sidewalk or other area that would impact the travelling public. To avoid~~ obstructions to the travelling public and public safety hazards, no utility poles for collocation of small wireless facilities or ground mounted small wireless facilities shall be located within traffic circles.
- (4) For public safety purposes, aboveground communications facilities, including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on multi-use trails.
- (5) Communications facilities shall be placed between the property line and the curb line of a street and shall not be located within a clear zone. ~~If a registrant places a communications facility in a swale or sidewalk, the registrant, as opposed to the owner or occupant of the property abutting an area of the swale or public rights of way, shall be responsible for maintaining the area of the swale or public rights of way in a manner consistent with City Code Chapter 62, Article IV, Sections 62-149 et. seq.. Notwithstanding Chapter 62, Article IV, the owner or occupant of property abutting an area of the swale or public rights of way shall not be required to maintain the area where a communications facility has been allowed to be placed or maintained. A registrant shall comply at its expense with any notice issued by the City with respect to maintenance of any swale or public rights of way.~~
- (6) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights, access, and safety of property owners who abut any of the public rights-of-way, ~~including but not limited to, blocking permitted signs and address information.~~ A registrant shall comply with the City's noise regulations contained in Chapter 34, Article VI of the City Code, as amended. The zoning district for such purposes shall be determined by the property abutting the location of the communications facility in the public rights-of-way.
- (7) A registrant shall not place or maintain its communications facilities in a

**Commented [A92]:** This language should be deleted. While we appreciate the aspirational language of the preceding sentence, this language that requires information as to why a facility was not placed in an alley versus the roadway is objectionable. If an alley is a potential, viable alternative location in the City's view, it can invoke the negotiation process and propose the relocation. There is nothing in Section 337.401 that requires that a provider place its facilities in an alley, especially where other facilities within its network are located in the ROW within the same node.

**Commented [A93]:** Please identify examples of multi-use trails within the City.

**Commented [A94]:** This language would effectively provide that all swale areas within the City are to be maintained by the CSPs. Furthermore, it does not take account for multiple providers within the same swale area. Certainly the provider should be responsible for maintaining its equipment, but to require the further maintenance of the swale area goes beyond that allowed by Section 337.401, F.S.

**Commented [A95]:** This language should be deleted or clarified further as any above ground facility can, depending on the vantage point, obscure in part signage or address information.

manner that would interfere with, restrict access to, displace, damage, or destroy any facilities, including but not limited to, sewers, gas or water mains, fire hydrants, storm drains, pipes, cables or conduits of the City, news racks, smart city technology, public safety equipment, or any other person's facilities lawfully occupying the public rights-of-way of the City. Wireless services related to communications facilities placed or maintained in the public rights-of-way pursuant to this Ordinance shall not interfere with City communications services. In the event that wireless services interferes with City communications services, it shall be the responsibility of the wireless provider that creates such interference to pursue all necessary action to alleviate such interference at its expense and to hold the City harmless in this instance. The City reserves the right to pursue appropriate action, including but not limited to, seeking an injunction, pursuing criminal sanctions pursuant to Sections 843.025 and 843.165, F.S., as applicable, terminating a registration, or revoking a permit.

**Commented [A96]:** Object to any language regulating interference issues that is preempted by the FCC which has established protocols to resolve.

- (8) The City may prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities and utilities in the proposed location of the public rights-of-way, to safely accommodate additional installations at any location, for the protection of existing facilities and utilities in the public rights-of-way, or to accommodate approved and funded City plans for public improvements, other approved capital improvements projects as part of the City Comprehensive Plan or projects the City determines are in the public interest.

**Commented [A97]:** Object to any language regulating interference issues that is preempted by the FCC which has established protocols to resolve.

- (9) Facilities to be installed underground.

a) All facilities shall be subject to the City's non-discriminatory undergrounding requirements that prohibit above-ground structures in the public rights-of-way. All new fiber, cable, conduit, and similar communications facilities shall be placed underground, to the extent that new utilities other than fire hydrants are required to be located underground, including new electric and communications utilities. In addition, to the extent required by applicable PSC rules and regulations, applicable codes, restrictive covenants, quasi-judicially approved conditions of a development, planned unit development, community development district, or court order, a registrant shall install its facilities underground. Additionally, a registrant shall endeavor to place all new facilities underground unless prevented from doing so by existing technology or by the physical characteristics of the installation location.

**Commented [A98]:** These undergrounding requirements should only apply where facilities have actually been placed underground or where the City, at least 90 days prior to the submission of any application, has required all public utility lines to be placed underground.

b) A registrant shall not place or maintain utility poles for the collocation of small wireless facilities or small wireless facilities in a location in the public rights-of-way where new electric and communications utilities are required to be installed underground.

except as otherwise provided herein.

- c) New proposed wireline fiber or coaxial backhaul facilities for small wireless facilities shall be installed underground, to the extent existing wireline facilities are located underground, consistent with applicable codes, unless waived by the City.
- d) For purposes of this subsection, adoption of a final resolution by the City Commission shall constitute an undergrounding requirement over any area of the public rights-of-way. This subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that if the City notifies the registrant of the micro wireless facility that aerial communications or electric distribution utilities will be converted to underground utilities, the registrant shall remove its micro wireless facility at its expense within the time frame required by the City.
- e) Conversion of overhead utilities to underground. No utility poles for the collocation of small wireless facilities, micro wireless facilities, ground mounted small wireless facilities, or small wireless facilities collocated on utility poles shall be placed in a location in the public rights-of-way where the City Commission has determined that existing above-ground electric and communications utilities should be removed and relocated underground. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the City's requirements to convert above-ground utilities to underground. To the extent not inconsistent with applicable law, to comply with the City's undergrounding requirements, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within sixty (60) days of being notified by the City that such facilities must be removed. The City may remove such facilities at the registrant's expense if the registrant fails to do so, to the extent not inconsistent with applicable law. For small wireless facilities installed before the City adopts requirements that public utility lines must be placed underground, the City shall either: (a) allow a wireless provider to maintain the small wireless facility in place subject to any applicable pole attachment agreement with the pole owner; or (b) allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with the objective design standards contained within this Ordinance.
- f) Notwithstanding the provisions of this subsection, the City may approve a permit for a new utility pole for collocation of a small wireless facility in an area where all public utility lines must be placed underground, if a wireless provider satisfies the following:

**Commented [A99]:** Revised to ensure language is not discriminatory against new entrants. This should apply to all wireline communications facilities, not just those that service SWF. Section 337.401(3)(a).

**Commented [A100]:** This sentence needs to be clarified to make it clear that any final resolution applies only to that area of the ROW where the City Commission has required all public utility lines to be placed underground.

1. The wireless provider provides information from a licensed engineer that the City has not allowed structures to remain above ground that are reasonably available to the wireless provider for the collocation of small wireless facility and that may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;
  2. The proposed utility pole otherwise complies with this Ordinance; and
  3. The wireless provider provides information from a licensed engineer that it is not reasonably able to provide wireless service by collocation on a remaining utility pole or other structure in the rights-of-way.
- (10) Prohibition against placement in violation of OSHA, NESC or NERC rules and regulations. Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities, shall not be placed or maintained in a location which violates rules and regulations set by Occupational Safety and Health Administration, the National Electrical Safety Code, applicable codes, or the North American Electric Reliability Corporation standards.
- (11) No communications facilities, including but not limited to small wireless facilities or utility poles for the collocation of small wireless facilities shall be placed or maintained in any location that is subject to or that would interfere with the City's drainage plan, as it may be amended, unless waived by the City.
- (12) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be place in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. For purposes of this subsection, a location in a public right of way that abuts parcels within a homeowners' association on both sides of its width shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.
- (13) Placement in relation to adjacent ~~uses of~~ property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design standard, or such spaces do not exist in those locations on existing properties, new communication facilities and new utility poles for collocation of small wireless facilities shall be placed to the extent possible, in-line with the common, interior side lot lines or within the virtual side

**Commented [A101]:** Is this language necessary given the fact that any permit for a SWF is to be revised against and consistent with applicable codes, that include all these uniform codes already?

**Commented [A102]:** This sentence expands the restriction set forth in Section 337.401(7)(q), F.S. The statutory provision regarding HOAs is limited to those instances where the HOA controls the streets and roads. HOAs do not control public ROW, hence the statutory provision does not apply. The City cannot draft its ordinance to make it so.

setback line within the public rights-of-way and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building located on adjacent property that abuts the public-rights-of-way.

- (14) Specific locations, capital improvement projects, districts and community redevelopment agency areas.

~~a) Consistent with the City's capital improvement Miracle Mile and Giralda Avenue Streetscape Project, as described in Ordinance No. 2017 32, which created Section 62-101 of the City Code, new utility poles for the collocation of small wireless facilities, small wireless facilities, and micro wireless facilities shall not be placed within the public rights of way on Miracle Mile from Douglas Avenue to LeJeune Road and on Giralda Avenue from Galiano Street to Ponce de Leon Boulevard, unless waived by the City. In conjunction with granting such waiver, the City may require conditions on the permit approving such facility so as to minimize the impact on the Miracle Mile and Giralda Avenue Streetscape Project. No backhaul facilities shall be located within this area unless approved by the City Commission consistent with Section 62-101 of the City Code.~~

~~b) To accommodate the City's Neighborhood Renaissance Program, which the City has fully funded, new utility poles for collocation of small wireless facilities and ground mounted small wireless facilities shall not be permitted in areas of the public rights of way that are subject to improvements, as outlined in the Neighborhood Renaissance Program. The City may prohibit additional communications facilities and excavation in the public rights of way where such activities would impede or interfere with the Neighborhood Renaissance Program. Information about the specific projects and locations of the Neighborhood Renaissance Program, as it may be amended, is available on the City's website, or by contacting the City.~~

e)a) Small wireless facilities, utility poles for collocation of small wireless facilities, backhaul facilities, and aerial communications facilities shall not be permitted in an area within the public rights-of-way that would interfere with the City's Art in Public Places program. The City may notify a registrant to relocate at its cost a utility pole used for collocation of a small wireless facility or ground mounted small wireless facility if such location interferes with a planned installation of Art in Public Places. A registrant that damages an object of art installed pursuant to the Art in Public Places program, shall be responsible for the costs of the art and shall indemnify the City as required in this Ordinance. The City reserves the right to require an additional performance bond in conjunction with an application to place or maintain a communications facility in an area where an art object has been or will be located.

**Commented [A103]:** As noted above, the City cannot wholesale prohibit the placement of communications services facilities within certain areas of the City. By prohibiting any excavation, the City is effectively prohibiting facilities in the ROW in violation of Section 337.401(3) and (7)(d)3, F.S. As an industry, we are sensitive to the unique aesthetic considerations of the City in this ROW. However, an outright prohibition clearly violates federal law and Section 337.401(3).

**Commented [A104]:** Same objection as the preceding comment. Our understanding is that this program encompasses large segments of the City.

**Commented [A105]:** We need to better understand what this program entails to be able to fully comment and suggest language to ensure that the Draft Ordinance complies with state and federal law.



(15) A structure granted a permit and installed pursuant to this Ordinance shall comply with Chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protections.

(c) Objective design standards.

(1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed in such a manner to maximize compatibility with the surrounding neighborhood and to minimize any negative visual impact on the surrounding neighborhood. The objective design standards contained in this Ordinance regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the City. A waiver of the objective design standards contained herein may require approval of the City's Board of Architects (Architectural Review Board).

**Commented [A106]:** Noting that a waiver request, regardless of whether it is to be considered by the BOA (ARB) must still be considered within 45 days of any request.

(2) Applicants shall not place or maintain signage on communications facilities, including small wireless facilities or utility poles for collocation of small wireless facilities, in public rights-of-way, unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.

(3) A ~~small wireless communications~~ facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, a permit issued by the City, or state and federal laws and regulations or as permitted by the City.

(4) Design standards for Utility Poles. All proposed new or replaced utility poles for collocation of small wireless facilities shall meet the design standards contained in this subsection unless waived by the City. To limit the number of new utility poles installed for collocation of small wireless facilities, registrants are encouraged to share utility poles and to accommodate more than one small wireless facility on each utility pole.

(a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be in substantially the same hole or location as the original utility pole.

(b) The replaced or restructured utility pole shall be substantially similar in design and color in terms of finish, base and pole design, diameter, material and height as the original pole being replaced, unless the City ~~requires~~adopts a different design, color or composition to be consistent with applicable City standards for new utility poles, as they may be amended.

**Commented [A107]:** Revised as, to accommodate the SWF and as allowed by Section 337.401, the diameter and height may be larger than the original pole to accommodate the equipment. Alternatively, suggest deleted the word "substantially."

- (c) Unless waived by the City, the height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, other than a utility pole for which a waiver has previously been granted, in the same right-of-way, measured from grade, in place within five hundred (500) feet of the proposed location of the small wireless facility. If there is no utility pole within five hundred (500) feet in the same public right-of-way as of July 1, 2017, the height shall be limited to fifty (50) feet measured from grade. ~~Height shall include only the height of the utility pole and shall not include any light, antennas, masts, or other attachments to the utility pole.~~
- (d) Unless waived by the City, a new utility pole shall be designed to be substantially similar in location context and design to the predominant type of other utility poles at the proposed location in the same block or vicinity of the public rights-of-way. Such design aspects to follow include the material, base, ~~pole diameter~~ and style, location and style of attachments, finish, color, and cap, as applicable. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed substantially similar to such light poles and to the extent consistent with location context regulations, and located, to the extent practicable, equidistant between existing poles. Unless waived by the City, to the extent not inconsistent with applicable law, any such stealth designed utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the City Code, at the expense of the registrant. By way of example, if a registrant installs a utility pole for collocation small wireless facility to resemble a nearby light pole, the facility should include a light that is operated in the same manner as other light poles, at the applicant's expense.
- (e) Notwithstanding this subsection, if the proposed location of a new utility pole for collocation of a small wireless facility is within a public right-of-way that is within a particular zoning district, planned unit development, community development district, community redevelopment agency, historic property, or a homeowners' association that has design standards applicable to utility poles, such proposed utility pole shall substantially comply with such design standards.
- (f) If there are no existing utility poles in close proximity to a new utility pole for collocation to resemble or any applicable design standards based on the location, the new utility pole shall be designed to follow the City's design standards. The following required sections of the pole shall be consistent in proportion and detail with Coral Gables Mediterranean design standards:
- a. Forest green color finish and metal material,

**Commented [A108]:** Outside the scope of the language provided in Section 337.401(7)(d).5, F.S.

**Commented [A109]:** See previous comment regarding replacement poles. This language should be deleted or revised to account for a slightly larger pole if structurally necessary or needed to properly stealth the SWF.

**Commented [A110]:** Spacing for utility poles is not contemplated by Section 337.401(7)(r), F.S.; alternative location negotiation process is laid out in Section 337.401(d)(4).

- b. Ornamental base, which shall include the words “Coral Gables, FL”,
- c. Fluted shaft, and
- d. Ornamental capital, designed to conceal wires and equipment.

(g) This subsection does not authorize the installation of a new utility pole for collocation of a small wireless facility in a location that is otherwise prohibited pursuant to ~~court order, or applicable codes, or City Code including but not limited to this Ordinance.~~

**Commented [A111]:** Please advise of any such court orders.

(5) Stealth design for collocation of small wireless facilities.

(a) ~~Consistent with the design of existing utility poles in the City,~~ Wires, cables, and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a ~~conduit shroud~~ that does not extend more than six inches beyond the pole. No exposed wires or cables are permitted. No conduit shall be installed on the exterior of utility poles. No equipment boxes shall be mounted on a utility pole. No small wireless facilities shall be attached to or collocated on a utility pole in the public rights-of-way less than eight (8) feet above ground level.

**Commented [A112]:** Given the context, this appears to be the more appropriate term. If not, what is the City contemplating by a shroud?

(b) ~~If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility.~~ Unless consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a utility pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.

**Commented [A113]:** Nothing in Section 337.401, F.S. authorizes the City to dictate the type or configuration of the SWFs that are used to provide communications services. Section 337.401(3), F.S. requires the City to be technologically neutral. Nothing in Section 337.401(7), F.S. authorizes any limits or requirements on the type of SWFs that are deployed. The City may not require that a light fixture be placed on a pole as part of its stealth requirements. Such a requirement is a violation of the in-kind contribution prohibitions outlined in Section 337.401(7), F.S. The language, as proposed, violated the express provisions of state and federal law by violating the volumetric allowances in Section 337.401(7), F.S. Finally, this language discriminating amongst providers who may deploy equipment that can not fit into an existing light feature.

(c) ~~Subject to the size allowed for small wireless facilities contained in this Ordinance,~~ slim design of a small wireless facility up to six (6) cu. ft. shall be used wherein the top mounted antenna or small wireless facility does not exceed the diameter of the supporting utility pole at the level of the antenna or small wireless facility attachment by more than six (6) inches, unless waived by the City. A small wireless facility up to six (6) cu. ft. collocated on a utility pole that does not contain an existing side-mounted fixture shall be mounted ~~other than on the side on the top~~ of the utility pole and shall be finished in the City’s standard forest green color finish and, to the extent consistent with the technology of the small wireless facility,

of metal material to match the utility pole.

**Commented [A114]:** This assumes the collocation is on an existing forest green utility pole. What if the collocation is on an existing concrete pole?

- (d) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.
- (6) Small wireless facilities not collocated on utility poles or existing structures.
  - (a) Ground-mounted small wireless facilities up to twenty-eight (28) cu. ft. in dimension shall be located within a ten (10) foot radius of the existing structure or utility pole for the collocated small wireless facility. ~~A ground-mounted small wireless facility shall not be located within five hundred (500) feet of another ground-mounted small wireless facility, unless waived by the City.~~
  - (b) The ground-mounted small wireless facility shall be architecturally designed consistent with the City's Mediterranean design style. Ground-mounted small wireless facilities up to twenty eight (28) cu. ft. shall be of forest green metal and placed on a forest green ornamental base. The small wireless facility shall have a metal or concrete ornamental top or capital to match the ornamental base. Alternatively, the registrant may propose a small wireless facility that would be substantially similar in terms of material, design and color finish to other at-grade City-owned infrastructure within a five hundred (500) feet radius of the proposed location in the public rights-of-way such as waste receptacles or City rights-of-way infrastructure. A waiver of the design standards herein or a proposed small wireless facility that does not satisfy these design guidelines shall be submitted to the City's Board of Architects (Architectural Review Board) for review and approval prior to the registrant submitting an application. The city manager reserves the right to submit an application for an above-ground communications facility to the City's Board of Architects (Architectural Review Board) with notice to the applicant, to determine if such proposed facility is consistent with the City's objective design standards.
  - (c) ~~To the extent not inconsistent with applicable codes, at the City's direction the registrant of a ground-mounted small wireless facility in the public rights-of-way shall conceal the facility with landscaping and plantings consistent with other landscaping in the area. In areas with landscaped swales, the small wireless facility must be within the swale and concealed with consistent landscaping. Landscaping and plantings pursuant to this subsection shall be subject to the City's approval and be maintained by the registrant at its sole cost and~~

**Commented [A115]:** As with any new Utility Poles, the related ground mounted SWF is also subject to reasonable location context, color and concealment requirements. Meaning, a new ground mounted facility should not be required to be of forest green metal with an ornamental base if other existing ground mounted equipment in the adjacent ROW does not comply with this requirement.

**Commented [A116]:** Revised to ensure consistency with Section 337.401(3) and (7)(r). The Draft Ordinance needs to account for all other at grade facilities, and not just facilities that are owned by the City.

~~expense consistent with the City Code for so long as the small wireless facility remains in the public rights-of-way.~~

- (d) The city manager is authorized to create or to revise a manual showing figures of acceptable and unacceptable designs for above-ground communications facilities to be placed or maintained in the public rights-of-way.
- (7) Development standards for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities. When possible within technical considerations, communications provider are encouraged to consolidate equipment within one (1) equipment cabinet or to install equipment below grade.
  - (a) Dimensional limits. No communications facility other than small wireless facilities located above ground, excluding utility poles, having exterior dimensions greater than four (4) feet high, by four (4) and one-half (1/2) feet long, by two and one-half feet wide, or having a total volume exceeding forty five (45) cubic feet, shall be granted a permit for construction or installation nor shall be constructed within the corporate limits of the City on any public rights-of-way unless:
    - (1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network or that the larger communications facility is necessary to consolidate equipment in one cabinet; and
    - (2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and
    - (3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize

**Commented [A117]:** If landscaping is not required of other communications facilities, the inclusion of it for SWF is discriminatory in violation of Section 337.401(3)(a). There is nothing significantly different in terms of technology of SWF from other ground mounted communications equipment.

adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians at the proposed site and does not negatively impact or violate location and other regulations contained in this Ordinance; and

(4) The communications facility proposed by the communications provider does not otherwise create a hazard to the public health, safety, and welfare.

(5) Unless waived by the City, a communications cabinet shall not be located within five hundred (500) feet of another above ground communications cabinet.

(b) Notice to residential areas. Whenever a communications service provider subject to this subsection submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection within residentially-zoned districts in the City, the applicant shall provide notice by posting an 18" x 24" sign, satisfactory to the City, at the proposed location advising residents that they may review the permit application at the City and provide their comments to the City. The sign shall be posted a minimum of fourteen (14) days prior to any decision being made on the permit application to allow adequate time for input by residents and so as not to unduly delay the processing of any application.

**Sec. 70-85. Fees for Access to Public Rights-of-Way.**

- (a) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay fees and taxes as required by applicable law and ordinances of the City, including this Ordinance.
- (b) Pass-through providers shall pay to the City on an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Ordinance shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands, or fibers.
- (c) The City shall discontinue charging pass-through provider fees to a person that has ceased being a pass-through provider. any annual amounts charged shall be reduced for a prorated portion of any twelve (12)month period during which the pass-through provider remits communications services taxes imposed by the City pursuant to Chapter 202, Florida Statutes, as amended.
- (d) The initial amount of pass-through provider fees shall be paid prior to issuance of a permit to a pass-through provider based on the facilities authorized to be installed

**Commented [A118]:** As the City has elected to collect the higher tax rate, it is advisable to recognize as such so that there is no issue in implementation that registration, permit or other fees are applicable.

in the public rights-of-way pursuant to the permit. The amount due may be modified based upon the as built plans submitted by the pass-through provider. Subsequent annual payments of pass-through provider fees shall be due and payable on October 1, of each year. Fees not paid within thirty (30) days after the due date shall bear interest at the rate of one-half (1/2) 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. The City shall require a pass-through provider to provide an annual notarized statement identifying the total number of linear miles of pass-through facilities in the City's rights-of-way. Upon request from the City limited to no more than once annually, a pass-through provider must provide reasonable access to maps of pass-through facilities located in the rights-of-way of the City. The scope of the request shall be limited to only those maps of pass-through facilities from which the calculation of the linear miles of pass-through facilities in the rights-of-way can be determined. The request shall be accompanied by an affidavit that the person making the request is authorized by the City to review tax information related to the revenue and mileage calculations for pass-through providers.

- (e) If the payments required by this Section are not made within ninety (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, in addition to any other remedies available pursuant to this Ordinance and applicable law, including but not limited to drawing upon a registrant's security fund and/or performance bond.
- (f) To the extent consistent with applicable law, the City reserves the right to establish fees for registrations and permits pursuant to this Ordinance.

**Sec. 70-86. Enforcement Remedies.**

- (a) Nothing in this Ordinance shall affect or limit the remedies the City has available under applicable law. In addition to any other remedies available at law, including but not limited to Section 166.0415 and Chapter 162, Florida Statutes, or equity or provided in this subsection, the City may apply any one or combination of the following remedies in the event a registrant violates this Ordinance, or applicable local law or order related to the public rights-of-way.
- (b) In addition to the City's ability to terminate a registration pursuant to this Ordinance or to deny, suspend, or revoke permits for a person who fails to comply with this Ordinance, the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible person to the City in an amount of not less than \$500.00 per day or part thereof that the violation continues or the highest

amount allowed pursuant to applicable law. A registrant's or person's failure to obtain a permit before commencing work, except where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the City in an amount of not less than \$500.00 per day or part thereof that the violation continues.

**Commented [A119]:** Please note, the penalties/fines exceed the statutory maximum for an initial violation. See Section 162.09.

- (c) In addition to or instead of any other remedy, the City may seek legal or equitable relief from any court of competent jurisdiction.
- (d) Before imposing a fine, the City shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the person shall have thirty (30) days to either:
  - i. Cure the violation to the City's satisfaction, and the City shall make good faith reasonable efforts to assist in resolving the violation; or
  - ii. File an appeal with the City to contest the alleged violation pursuant to this Section, which shall govern such appeal. If no appeal is filed and if the violation is not cured within the thirty (30) day period, the City may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.
- (e) In determining which remedy or remedies are appropriate, the City or hearing officer shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required to prevent further violations, and such other matters as the City or hearing officer determines are appropriate to the public interest.
- (f) Failure of the City to enforce any requirements of this Ordinance 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.
- (g) In any proceeding before the City where there exists an issue with respect to a registrant's performance of its obligations pursuant to this Ordinance, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The City may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Ordinance.
- (h) *Force majeure.* In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a *force majeure* 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 cure or correct any such inability to comply expeditiously



**SECTION 3.** It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the City Code, which provisions may be renumbered or re-lettered and the ordinance be changed to “section,” “article,” or other appropriate word to accomplish such intention.

**SECTION 4.** If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

**SECTION 5.** All ordinances or parts of ordinances inconsistent or in conflict herewith are hereby repealed to the extent of any conflict.

**SECTION 6.** This Ordinance shall become effective immediately upon the date of its adoption herein.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2019.

APPROVED:

\_\_\_\_\_  
RAÚL VALDÉS-FAULI  
MAYOR

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
BILLY Y. URQUIA  
CITY CLERK

\_\_\_\_\_  
MIRIAM RAMOS  
CITY ATTORNEY

