

**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 II, CHAPTER 70, SECTIONS 70-19 THROUGH 70-75, ENTITLED “CITY OF CORAL GABLES CABLE TELEVISION ORDINANCE” AS PROVIDED HEREIN; AMENDING ARTICLE III, CHAPTER 70, SECTIONS 70-76 THROUGH 70-91, AMENDING THE TITLE OF ARTICLE III TO “CORAL GABLES COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE”; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE CONSTRUCTION BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING FOR THE PRESERVATION OF HISTORIC PROPERTY; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND COMPENSATION; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS AND REPEAL OF ZONING IN PROGRESS; 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 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**, Chapter 610, Florida Statutes, addresses the provision of cable and video service in Florida, and provides in Section 610.102, Florida Statutes, that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality or county may not grant a new franchise for the provision of cable or video service within its jurisdiction; and

**WHEREAS**, Section 610.114(2), Florida Statutes, provides: "Notwithstanding any other provision of law, a municipality may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificateholder that is placing and maintaining facilities in or on a public right-of-way in the municipality or county. In accordance with Section. 337.402, the permit may require the permitholder to be responsible, at the permitholder's expense, for any damage resulting from the issuance of such permit and for restoring the public right-of-way to its original condition before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public right-of-way." 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 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), Florida Statutes ("Wireless Act"); and

**WHEREAS**, the Wireless Act creates new requirements and allowances for local governments relating to the installation of utility poles in the public rights-of-way to collocate small wireless facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way; and

**WHEREAS**, the Wireless Act provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment; and

**WHEREAS**, the Wireless Act also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, and municipal warranties provided such provisions are reasonable and nondiscriminatory; 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**, it is the City's further intent to treat each such communications services providers in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; 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 in order 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 II, Chapter 70, Sections 70-20 through 70-75 of the Code of Ordinances of the City of Coral Gables are hereby amended as follows<sup>1</sup>:

Sec. 70-19. - Short title.

This article shall be known and may be cited as the "City of Coral Gables Cable Television Ordinance."

Sec. 70-20. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words not otherwise defined herein or in any franchise agreement that might be granted hereunder shall be given the meaning set forth in Section 610.103, Florida Statutes, and if not defined therein, the Communications Act of 1934, 47 USC ~~§151524~~ et seq., and the Telecommunications Act of 1996, and as those statutes ~~Acts~~ may hereinafter be amended (collectively the "Communications Act"), and, if not defined therein, the common and ordinary meaning.

~~*Access channel* means any channel on a cable system set aside without charge by the franchisee for public, educational and/or local governmental use.~~

~~*Activated channel* means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public educational, or governmental use. Channels on which signals flow in the direction from the headend to the subscriber are referred to as "downstream channels." Where the signal flows to the headend for redistribution, it shall be referred to as an "upstream channel."~~

~~*Affiliate* means any person which directly or indirectly owns or controls a grantee or franchisee, any person which a grantee or franchisee directly or indirectly owns or which it controls, or any person under common ownership or control with a grantee or franchisee.~~

~~*Applicant* means any person submitting an application within the meaning of this article.~~

~~*Application* means any proposal, submission or request to:~~

- ~~(1) Construct and operate a cable system within the city;~~
- ~~(2) Transfer a franchise or control of the franchisee;~~

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

- ~~(3) — Renew a franchise;~~
- ~~(4) — Modify a franchise; or~~
- ~~(5) — Seek any other relief from the city pursuant to this article, a franchise agreement, the Communications Act, or other applicable law.~~

~~An application includes an initial proposal for an applicant's submission or request, as well as any and all subsequent amendments or supplements to the proposal and relevant correspondence.~~

~~*Basic cable service or basic service* means any service tier that includes the retransmission of local television broadcast signals, and public, educational, or governmental access channels.~~

~~*Cable service* means the transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.~~

~~*Cable system, cable television system, or system*, means any facility consisting of a set of closed transmission paths or other transmission lines or forms of terrestrial transmission and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the city. Such term does not include:~~

- ~~(1) — A facility that serves only to retransmit the television signals of one or more television broadcast stations;~~
- ~~(2) — A facility that serves subscribers without using any public right of way;~~
- ~~(3) — A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on demand services;~~
- ~~(4) — An open video system that complies with section 653 of the Telecommunications Act of 1996; or~~
- ~~(5) — Any facilities of any electric utility used solely for operating its electric utility systems.~~

~~The foregoing definition of "cable system" shall not be deemed to circumscribe the valid authority of the city to regulate the activities of any other communications system or provider of communications services, including but not limited to telephony and open video systems.~~

~~*Certificateholder* means a cable or video service provider that has been issued and holds a certificate of franchise authority from the Florida Department of State.~~

~~*Communications Act* means the Communications Act of 1934, 47 USC §151 et seq., as that Act has and may hereinafter be amended.~~

~~*Control of a franchisee, grantee or applicant* means possession of the ability to direct or cause the direction of the management or policies of a franchisee, grantee or applicant, or the operation of the system of a franchisee, either directly or indirectly, whether through ownership of voting securities, by contract or understanding, or in any other manner.~~

~~*Fair market value* means the price that a willing buyer would pay to a willing seller for a going concern but with no value allocated to the franchise itself.~~

*FCC* means the Federal Communications Commission, or any successor governmental entity thereto.

*Franchise* means the right granted by the city to a franchisee in a franchise agreement to construct, maintain and operate a cable system under, on, and over streets, roads and any other public ways, rights-of-way, or easements within all or specified areas of the city. The term does not include any license or permit that may be required by this article or other laws, ordinances or regulations of the city for the privilege of transacting and carrying on a business within the city or for disturbing or carrying out any work on any street.

*Franchise agreement* means a contract entered into in accordance with the provisions of this article between the city and a franchisee that sets forth the terms and conditions under which the franchise will be exercised.

*Franchisee* means any person granted a franchise pursuant to this article who has entered into a franchise agreement with the city.

~~*Gross revenues* means all revenues recognized in accordance with generally accepted accounting procedures (GAAP) generated directly or indirectly by the franchisee and, any affiliates, subsidiaries or parent of the franchisee from any source whatsoever arising from, attributable to, or in any way derived from the operation of the cable system to provide cable services in the city. The term "gross revenues" includes, but is not limited to, fees charged subscribers for basic service; fees charged subscribers for any optional, premium, per channel or per program service; fees charged subscribers for any tier of service other than basic service; installation, disconnection, reconnection and change in service fees; late fees; leased access fees, payments or other consideration from programmers for carriage of programming on the system (excluding marketing support provided for the launch of new services on the system to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals or sales; revenues from studio and studio equipment rental; revenues from leases of cable or fiber optic lines and other transmission devices and equipment; revenues from transmission of data; revenues from consumer products including, but not limited to, cable guides; advertising revenues allocable to the city based on a percentage of subscriber base in the city divided by the subscriber base of the system. Such percentage will then be multiplied by the total advertising revenue of the system to determine the allocable gross revenue stemming from advertising; revenues from home shopping channels or other sources allocable to the city, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the franchise will allocate the percentage of revenue to the city which is equivalent to the percentage of the population of the city divided by the total population for the allocable franchise areas in question; gross revenues shall be the basis for computing the franchise fee imposed pursuant to section 70-35. The term "gross revenues" shall not include any taxes on services furnished by the franchise which are imposed upon any subscriber or user by the state, county, city or other governmental unit and collected by the franchisee on behalf of said governmental unit and which the franchisee passes on in full to the applicable tax authority. However, it is hereby expressly provided that unless otherwise prohibited by applicable law, franchise fees shall be included in the calculation of gross revenues. Further, franchise fees shall not be paid on subscriber deposits unless said~~

deposit is applied to a customer account for services rendered. The definition of "gross revenues" contained herein is subject to state and federal law, and shall only apply if the city is able to charge and collect franchise fees, pursuant to this article and a franchise agreement.

*Institutional network* means a voice, data and/or video communications system constructed, operated and/or maintained by the franchisee for the city, the transmissions on which are generally available only to, and intended to be sent and received by, persons other than cable subscribers generally. This is meant to define the network itself, and not any peripheral equipment, such as computers and modems, that may be required.

~~Intereconnection means the electronic connection of two or more cable systems for the purpose of sharing programming.~~

*Law* means all duly enacted and applicable federal, state, county and city laws, ordinances, codes, rules, regulations, and orders.

~~Leased access channel means a channel designated in accordance with section 612 of the Communications Act, 47 USC 532, for commercial use by persons unaffiliated with the franchisee.~~

~~Overbuild means a cable system constructed to serve subscribers already served by an existing cable system.~~

*Public Rights-of-Way* means public rights-of-way as defined in Article III, Sec. 70-78, of this Chapter 70.

~~Service tier means a category of cable service provided by a franchisee and for which a separate charge is made by the franchisee.~~

~~State of the art means that level of production facilities, technical performance, capacity, equipment, components and service equal to that which has been developed and demonstrated to be more modern than generally accepted and used in the cable industry for comparable areas of equivalent population. The system shall have, at minimum, the capability of providing no less than the channel capacity, products, services and technology available from a cable system to any other community of equivalent population in the state. In no event shall a system having a bandwidth of less than 750 MHZ be considered state of the art, unless otherwise accepted within the sole discretion of the city. Nothing herein shall be construed to require a franchisee to employ any specific transmission technology.~~

~~Street or streets means the surface, the air space above the surface and the area below the surface of any public street, highway, road, boulevard, concourse, driveway, freeway, thoroughfare, parkway, sidewalk, bridge, tunnel, park, waterway, dock, bulkhead wharf, pier, court, lane, path, alley, way, drive, circle, easement, or any other public right-of-way or public place, including public utility easements dedicated for compatible uses, or any other property in which the city holds any kind of property interest or over which the city exercises any type of lawful control, and any temporary or permanent fixtures or improvements located thereon, as may be ordinarily necessary and pertinent to construct and operate a cable system.~~

~~Subscriber means any person who lawfully receives cable service delivered over the cable system.~~

~~Subscriber base means the total number of residential and commercial subscribers within the city. For purposes of calculating subscribers under bulk or multiuser contracts, the franchisee shall~~

~~count each unit included within a contract for service as one subscriber. Franchisee shall not use any equivalency measures including calculation based on market rate.~~

~~*System malfunction* means any cable system equipment, facility or signal failure or malfunction that results in the loss of satisfactory service on one or more channels to one or more subscribers. A malfunction is major if it affects 50 or more subscribers.~~

~~*Transfer of a franchise* means any transaction in which:~~

- ~~(1) An ownership or other interest in a franchisee or its cable system is transferred from one person or group of persons to another person or group of persons so that control of a franchisee or cable system is transferred; or~~
- ~~(2) The rights and/or obligations held by a franchisee under a franchise agreement are transferred or assigned to another person, group of persons or business entity.~~

~~A transfer shall be considered "pro forma" when it involves a transfer to a person, group of persons or business entity wholly owned by the franchisee and will not result in a change in the control or ownership of the franchisee.~~

~~*Two-way capability* means the incorporation into a cable system of all appropriate design and engineering characteristics and features so that two-way transmission, including but not limited to addressability, over the system can be implemented and activated.~~

~~*Video channel or channel* means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel, including the associated audio signal, as television channel is defined by the FCC by regulation or otherwise.~~

Sec. 70-21. - When article to be in effect.

The provisions of this Article, as amended, shall apply to franchises granted by the City pursuant to this Article. The City reserves the right to require a franchise granted by the City in the event the ability to obtain The provisions of this article shall be in effect only while a certificate of franchise authority from the Florida Department of State state franchise granted pursuant to F.S. ch. 610, pt. I (F.S. § 610.102 et seq.) is not effectrepealed, overturned by a court of competent jurisdiction or preempted by federal law, including the Communications Act.

Sec. 70-22 – Sec. 70-24. – ReservedIntent and purpose.

- ~~(a) It is the intent of the city and the purpose of this article to promote the public health, safety, and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system within the city; to provide for the regulation, to the extent provided for by law, of each cable system within the city in the public interest; to provide for the payment of fees and other valuable consideration by a franchisee to the city for the use of streets by its cable system; to promote the widespread availability of quality cable service to city residents and businesses, the city, and other public institutions; to encourage the development of cable and other communications technologies and cable systems as a means of communication between and among members of the public, city businesses, the city, and other public institutions; to promote competitive cable rates and services; to promote the safe and efficient use of city streets; to enhance and maximize the communicative potential of streets used by cable systems; and to encourage the provision~~

~~of a diversity of information sources to city residents, businesses, the community, the city, and other public institutions by cable technology.~~

- ~~(b) — Recognizing the continuing development of communications technology and uses, it is the policy of the city to encourage experimentation and innovation in the development of cable system uses, services, programming and techniques that will be of general benefit to the community to the extent all such experiments and innovations are consistent with applicable laws.~~

~~Sec. 70-23. — Grant of authority; franchise required.~~

- ~~(a) — The city may grant one or more franchises in accordance with this article.~~
- ~~(b) — No person may construct or operate a cable system or any other communications transmission facilities over, on, or under public streets in the city without a franchise granted by the city unless otherwise authorized by law, and no person may be granted a franchise without having entered into a franchise agreement with the city pursuant to this article or other such ordinance of the city as may be applicable. Any person who operates a cable system or provides cable service in the city without a franchise may be subject to penalties as provided herein and other sanctions as provided by applicable law. Such violations may be punishable as provided in section 1-7, as well as other appropriate sanctions under applicable law.~~
- ~~(c) — Unless otherwise authorized by law, any franchise granted pursuant to this article is solely for the provision of cable service and shall not be constructed to authorize the provision of telephone, non-cable video or other telecommunications service. However, any person including, but not limited to, franchisees shall, unless otherwise prohibited by applicable law, submit an application to the city for the privilege of providing other telecommunications services including, but not limited to telephone service and/or alternative video programming services.~~

~~Sec. 70-24. — Franchise characteristics.~~

- ~~(a) — A franchise authorizes use of city streets for installing cables, wires, lines, optical fiber, underground conduit, ducts, conductors, amplifiers, vaults, and other facilities as necessary and pertinent to operate a cable system to serve subscribers within the city, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines underground conduit, or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to section 621 of the Communications Act, 47 USC 541(a)(2), or to use publicly or privately owned conduits without a separate agreement with the owners.~~
- ~~(b) — A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the city, or affect the right of the city to authorize use of city streets to other persons to operate cable systems or for other purposes as it determines appropriate.~~
- ~~(c) — All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the streets, and the city reserves the right to reasonably designate where a franchisee's facilities are to be placed within the streets. Such designation may include, but not be limited to, consideration of the availability of space in the rights-of-way.~~

- ~~(d) — A franchise shall be a privilege which is in the public trust. No transfer of a franchise shall occur without the prior consent of the city and unless application is made by the franchisee, and city approval obtained, pursuant to section 70-42 hereof and the franchise agreement.~~
- ~~(e) — A franchise granted to an applicant pursuant to this article to construct, operate and maintain a cable television system within a specified franchise area, shall be deemed to constitute both a right and an obligation on the part of the franchisee to provide the services and facilities of a cable television system as required by the provisions of this article and the franchise. The franchise agreement shall incorporate by reference all of the provisions of the application of the franchisee for the franchise that are finally negotiated and agreed upon by the city and the franchisee; and, all relevant representations made by the franchisee in its application and/or public hearings before the city commission shall be deemed to be material and made for the purpose of inducing the city to grant the franchise in the form accepted.~~
- ~~(f) — Notwithstanding anything to the contrary, in the event that franchisee, its parent, affiliate or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a cable system, including but not limited to an "open video system," franchisee shall remain subject to all terms and conditions of the cable television franchise granted pursuant to this article.~~

Sec. 70-25. - Franchisee or certificateholder subject to other laws, police power.

- (a) A franchisee or certificateholder shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A franchisee or certificateholder shall at all times be subject to all lawful exercise of the police power of the city.
- (b) Subject to applicable laws, except as may be specifically provided in this article or under the terms of a franchise agreement and subject to the Communications Act, the failure of the city, upon one or more occasions, to exercise a right or to require compliance or performance under this article or a franchise agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance.

Sec. 70-26. - Interpretation of franchise terms; conflicts.

- (a) The provisions of this article shall apply to a franchise agreement as if fully set forth in the franchise agreement, and the express terms of this article will prevail over conflicting or inconsistent provisions in a franchise agreement unless such franchise agreement expresses an explicit intent to waive a requirement of this article.
- (b) Except as to matters which are governed by federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the state.

Sec. 70-27– Sec. 70-31. – Reserved. Applications for grant, renewal, modification or transfer of franchises.

- ~~(a) — A written application shall be filed with the city for the following:~~
  - ~~(1) — Grant of a new franchise;~~
  - ~~(2) — Renewal of a franchise in accordance with section 626 of the Communications Act, 47 USC 546;~~
  - ~~(3) — Modification of a franchise agreement;~~

- ~~(4) — Transfer of a franchise; or~~
- ~~(5) — Any other relief from the city pursuant to this article or a franchise agreement.~~
- ~~(b) — To be acceptable for filing, a signed original of the application shall be submitted together with seven copies, be accompanied by the required nonrefundable application filing fee as set forth in subsection (i) of this section, conform to any applicable request for proposals, and contain all reasonably required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.~~
- ~~(c) — All applications accepted for filing shall be made available by the city for public inspection.~~
- ~~(d) — An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by the city or on an unsolicited basis. The city, upon receipt of an unsolicited application, may issue a request for proposals. If the city elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the city that its unsolicited application should be considered in response to the request for proposals or may withdraw its unsolicited application. An application which does not conform to the reasonable requirements of a request for proposals may be considered nonresponsive and denied on that basis.~~
- ~~(e) — An application for the grant of an initial franchise shall contain, at minimum, the following information:
  - ~~(1) — Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five percent or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; and any other cable system ownership or other communication ownership interest of each named person;~~
  - ~~(2) — An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five percent or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;~~
  - ~~(3) — A demonstration of the technical, legal and financial ability of the applicant to construct and/or operate the proposed cable system, including identification of key personnel;~~
  - ~~(4) — A statement prepared by a certified public accountant or duly authorized financial officer of the applicant regarding the financial ability of the applicant to complete the construction and operation of the cable system proposed;~~
  - ~~(5) — A description of the prior experience of the applicant in cable system ownership construction and operation, and identification of communities in which the applicant or any person controlling the applicant or having more than a ten percent ownership interest in the applicant has, or has had a cable franchise or license or any interest therein;~~
  - ~~(6) — Identification of the area of the city to be served by the proposed cable system, including a description of service area boundaries;~~~~

- ~~(7) A description of the physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon request, the applicant shall make information on technical design available for inspection;~~
  - ~~(8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;~~
  - ~~(9) For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the ownership interest of the applicant in any proposed program services to be delivered over the cable system;~~
  - ~~(10) A demonstration of how the proposal of the applicant will reasonably meet the future cable-related needs and interest of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the city;~~
  - ~~(11) A description of any noncable telecommunications services offered by the applicant or its parent, affiliate or subsidiary and plan of the franchisee with respect to the availability of such services to subscribers in the city;~~
  - ~~(12) Pro forma financial projections for the first five years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;~~
  - ~~(13) If an applicant proposed to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the streets to accommodate an additional system;~~
  - ~~(14) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this article and information that the city may request of the applicant that is relevant to the consideration of the city of the application; and~~
  - ~~(15) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the proposal meets all federal and state law requirements.~~
- ~~(f) An application for modification of a franchise agreement shall include, at minimum, the following information:~~
- ~~(1) The specific modification requested;~~
  - ~~(2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;~~

- ~~(3) A statement whether the modification is sought pursuant to section 625 of the Communications Act, 47 USC 545, and if so, a demonstration that the requested modification meets the standards set forth in 47 USC 545;~~
- ~~(4) Any other reasonable information necessary for the city to make an informed determination on the application for modification; and~~
- ~~(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.~~
- ~~(g) An application for renewal of a franchise shall comply with the requirements of section 70-41 hereof.~~
- ~~(h) An application for approval of a transfer of a franchise shall comply with the requirements of section 70-42 hereof.~~
- ~~(i) To be acceptable for filing, an application shall be accompanied by a nonrefundable filing fee in the amount established by the city commission.~~
- ~~(j) The purpose of the filing fee is to defray a portion of the cost of the city in processing an application. Such fee shall be credited against amounts due under subsection (f) herein. The filing fee is therefore intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of section 622(g)(2)(D) of the Communications Act, 47 USC 542(g)(2)(D), and may not be deducted from the franchise fee imposed in a franchise agreement.~~

~~Sec. 70-28.— Grant of franchises.~~

- ~~(a) The city may grant a franchise for a period not to exceed 15 years.~~
- ~~(b) The city may make the grant of a franchise conditioned upon the completion of construction within a reasonably prescribed time or upon the performance of other specific obligations which are to be set forth in the franchise agreement, specifying that failure to comply with the condition will cause the franchise to become null and void, or may require the franchisee to pay liquidated damages as specified in a franchise agreement.~~
- ~~(c) In evaluating an application for a franchise, the city may consider, among other things, the following factors: the technical, financial, and legal qualifications of the applicant to construct and operate the proposed system; the adequacy of the proposed construction arrangements, facilities, equipment, and services based on the public convenience, safety and welfare; the experience of the applicant in constructing and operating cable systems and providing cable service in other communities, if any; the ability of city streets to accommodate the proposed system; the potential disruption to users of city streets and any resultant inconvenience to the public; and whether the proposal will meet reasonably anticipated community needs and serve the public interest. Evaluation by the city shall not be based on the content of the programming the applicant proposes to provide.~~
- ~~(d) The city shall hold a public hearing to consider an application or applications. The applicant shall be notified of the hearing and shall be given an opportunity to be heard. Based upon the application, the testimony presented at the public hearing, any recommendations of the city or staff, and any other information relevant to the application, the city shall decide by resolution~~

~~whether to grant or deny a franchise application and decide the terms and conditions of any franchise granted. Upon the grant of a franchise, the application of the grantee shall become an integral part of said franchise, and the grantee shall be bound by the representations therein made. This subsection shall satisfy the public notice requirements of 47 USC 546. Following at least ten days prior notice to the grantee and the public, the city commission may hold a public hearing at which it will receive comment on the proposed franchise.~~

- ~~(e) After complying with the above requirements, the city commission shall approve or disapprove the proposed franchise agreement by resolution, or may direct that it be subject to further negotiation.~~
- ~~(f) Franchisee shall reimburse the city for all reasonable expenses incurred by the city in considering and processing the application, including but not limited to consulting and legal costs, less the amount of the filing fee up to an amount not to exceed \$50,000.00 for each transaction. Within 30 calendar days from the date of the resolution approving or denying the franchise agreement or renewal or modification or transfer thereof by the city commission, the city shall bill the grantee for the amount of the processing fee and its method of calculation. If the processing fee is not paid to the city within 60 calendar days of the date of the city commission resolution approving or denying the franchise agreement or a modification or transfer thereof, any approval granted by such resolution will be null and void. This processing fee is intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of section 622(g)(2)(D) of the Communications Act, 47 USC 542(g)(2)(D), and may not be deducted from the franchise fee imposed in a franchise agreement or the communications services tax and shall not be passed through to subscribers.~~

~~Sec. 70-29. Insurance; surety; indemnification.~~

- ~~(a) A franchisee shall maintain, and by its acceptance of the franchise, specifically agrees that it will maintain, throughout the entire term of the franchise including any renewals thereof, insurance coverage insuring the franchisee with respect to the construction, operation and maintenance of the cable system, and the conduct of the franchisee's business in the city, as described below and as required to satisfy all requirements of state law.
  - ~~(1) Comprehensive general liability insurance including contractual liability, explosion, collapse and underground property damage, bodily injury and broad form property damage, personal and advertising injury and products/completed operations coverage. The franchisee will carry limits with a combined single limit of no less than \$3,000,000.00 per occurrence naming the city as an additional insured. The franchisee will require any subcontractors to provide adequate insurance as determined by the city and provide proof of insurance to the city as well.~~
  - ~~(2) The franchisee will carry workers compensation and employers liability insurance in compliance with F.S. ch. 440. The franchisee will require any subcontractors to provide workers compensation insurance for all the subcontractors' employees.~~
  - ~~(3) Automobile liability insurance covering all owned, hired and nonowned vehicles used in connection with any activities arising out of this agreement. Such insurance shall afford coverage with a combined single limit of no less than \$1,000,000.00 per occurrence. The franchisee will require any subcontractors to provide automobile liability insurance for all of the vehicles used by subcontractors as respects this agreement.~~~~

- (b) ~~All insurance policies shall be with insurance companies authorized to do business in the state and shall be with insurance companies with a minimum Best's Rating of AV11.~~
- (c) ~~A franchisee shall keep on file with the city certificates of insurance which certificates shall indicate evidence of payment of the required premiums and shall indicate that the city, its officers, boards, commission, commissioners, agents and employees are listed as additional insureds, and that this insurance is primary over any other insurance or self insurance program available to the city whether collectible or not. In the event of a potential claim such that the city claims insurance coverage, franchisee shall immediately respond to all reasonable requests by the city for information with respect to the scope of the insurance coverage.~~
- (d) ~~All insurance policies shall name the city, as additional insured and shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days prior written notice thereof has been given to the city. A franchisee shall not cancel any required insurance policy without submission of proof that the franchisee has obtained alternative insurance satisfactory to the city which complies with this article.~~
- (e) ~~A franchisee shall, at its sole cost and expense, indemnify, hold harmless, waive subrogation and defend the city, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses arising out of the construction, maintenance or operation of its cable system, the conduct of franchisee's business in the city, or in any way arising out of the franchisee's enjoyment or exercise of a franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article or a franchise agreement. However, the obligation of the franchisee shall not extend to any claims caused by the sole gross negligence of the city, its officials, boards, commissioners, agents or employees. This provision includes, but is not limited to, the reasonable attorney's fees of the city incurred in defending against any such claim, suit or proceedings; and claims arising out of copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the cable system, claims arising out of section 638 of the Communications Act, 47 USC 558, and claims against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation. Notwithstanding the foregoing, franchisee may select counsel to represent the city. The city agrees to notify franchisee, in writing, within ten days of city receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel if in the reasonable belief of the city there exist or may exist a conflict, potential conflict or appearance of a conflict.~~
- (f) ~~Notwithstanding anything to the contrary, a franchisee shall be responsible for all actions of the subcontractors and shall agree to indemnify and hold harmless the city for any and all claims against the city or arising out of the activity of such subcontractors.~~

~~Sec. 70-30. — Security fund/corporate guarantee.~~

- (a) ~~A franchise agreement may provide that, prior to the franchise becoming effective, the franchisee shall post with the city a cash security deposit, letter of credit, or in the alternative~~

~~a corporate guarantee in a form acceptable to the city as provided for in a franchise agreement, to be used as a security fund to ensure the faithful performance of the franchisee and compliance with all provisions of this article, the franchise agreement, and other applicable law, and compliance with all orders, permits and directions of the city, and the payment by the franchisee of any claims, liens, fees, or taxes due the city which arise by reason of the construction, operation or maintenance of the system. The amount of the security fund or corporate guarantee shall be the amount that the city determines, under circumstances existing at the time, that is necessary to protect the public, to provide adequate incentive to the franchisee to comply with this article and the franchise agreement, and to enable the city to effectively enforce compliance therewith. In no event shall such fund be less than \$100,000.00. The franchise agreement shall provide for the procedures to be followed with respect to the security fund or corporate guarantee. Neither the posting of the security fund or corporate guarantee with the city, nor the receipt of any damages by the city thereunder, shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under the terms of its franchise for damages either to the full amount of the security fund or otherwise.~~

- ~~(b) — In any franchise agreement entered into before October 14, 1997 (the effective date of the ordinance from which this article is derived), a franchisee may, in lieu of the security fund, file and maintain with the city a bond or letter of credit with an acceptable surety in the amount not less than \$500,000.00 to indemnify the city against any losses it may suffer in the event the franchisee fails to comply with one or more of the provisions of its franchise. Said bond or letter of credit shall be obtained at the sole expense of the franchisee and shall be renewed for the full term of the franchise plus an additional six months thereafter. The franchisee and its surety shall be jointly and severally liable under the terms of the bond or letter of credit for any damages or loss suffered by the city as a result of the nonperformance of the franchisee, including the full amount of any compensation, indemnification or cost of removal of any property of the franchisee in the event of default, a reasonable allowance for attorney's fees and costs, up to the full amount of the bond or letter of credit. The bond or letter of credit shall provide for 30 days' prior written notice to the city of any intention on the part of the grantee to cancel, fail to renew, or otherwise materially alter its terms. Neither the filing of an indemnity bond or letter of credit with the city, nor the receipt of any damages recovered by the city thereunder, shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under the terms of its franchise for damages, either to the full amount of the bond or otherwise.~~
- ~~(c) — The rights reserved to the city with respect to the security fund or an indemnity bond or letter of credit are in addition to all other rights of the city, whether reserved by this article or authorized by other law or the franchise agreement, and no action, proceeding or exercise of a right with respect to such security fund or indemnity bond or letter of credit will affect any other right the city may have.~~
- ~~(d) — Notwithstanding anything to the contrary, where a franchise provides the city with a corporate guarantee then the city shall not require a surety bond from the franchisee.~~

~~Sec. 70-31. — Construction bond.~~

- ~~(a) — A franchise agreement may provide that, prior to any cable system construction, upgrade, rebuild or other significant work in the streets a franchisee shall establish in the favor of the~~

~~city a construction bond in an amount specified in the franchise agreement or other authorization as necessary to ensure the faithful performance of the franchisee of the construction, upgrade, rebuild or other work, but the amount of the construction bond shall not be less than \$100,000.00.~~

- ~~(b) In the event a franchisee subject to such a construction bond fails to complete the cable system construction, upgrade or other work in the streets in a safe, timely and competent manner in accord with the provisions of the franchise agreement, 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 franchisee, or the cost of completing or repairing the system construction, upgrade or other work in the streets, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The city may also recover against the bond any amount recoverable against the security fund pursuant to section 70-29 hereof where such amount exceeds that available under the security fund.~~
- ~~(c) The franchise agreement may specify that upon completion of the system construction, upgrade, rebuild or other work in the streets and payment of all construction obligations of the cable system to the satisfaction of the city, the city may eliminate the bond or reduce its amount. However, the city may subsequently require an increase in the bond amount for any subsequent construction, upgrade, rebuild or other work in the streets.~~
- ~~(d) The construction bond shall be issued by a surety 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 shall provide that:~~
- ~~"This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."~~
- ~~(e) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this article, the franchise agreement, or at law or equity.~~

Sec. 70-32. - Minimum facilities and services.

- (a) The following minimum requirements for facilities and services apply to all franchises granted by the city. To the extent not inconsistent with applicable law or inconsistent with the terms of a franchise agreement, the city hereby clarifies its intention that facilities provided for the city pursuant to a franchise agreement shall continue to be owned by the city following the termination or expiration of the franchise agreement unless the city otherwise abandons or removes such facilities. The city may require in a franchise agreement that a franchisee exceed these minimum requirements where it determines, under circumstances existing at the time of the application, that the additional requirements are necessary to meet the future cable related needs of the city and interests or to serve the public interest. Notwithstanding anything to the contrary, a franchisee shall make available facilities, services, products, benefits, and a level of technology to all subscribers in the city no less than that offered by the franchisee, its parent, affiliate, or subsidiary to any community of equivalent or smaller population within 12 months

of same being offered to any other city in the state. However, the city hereby reserves the right to waive the aforesaid time for good cause. Good cause shall be determined by the city commission if, in its sole discretion, determines such waiver is warranted for good cause. Notwithstanding anything to the contrary, a franchisee shall not have any obligation pursuant to this section for a period of 12 months after the effective date of the ordinance from which this article is derived.

- (1) Any cable system that commences construction pursuant to a franchise granted by the city, including but not limited to initial construction, rebuild, upgrade, or reconstruction after the effective date of this article shall have a minimum capacity of at least 750 MHz providing no less than 78 video channels available for immediate use. A franchise agreement may provide for a larger minimum channel capacity requirement and for future upgrade of the system.
- (2) The city may require ~~in a franchise agreement~~ that a franchisee or certificateholder provide access channels, facilities and other support for public, educational and/or governmental use, in accordance with this article or Section 610.109, Florida Statutes, as it may be amended.
- (3) A cable system shall provide leased access channels as required by applicable federal law.
- (4) Consistent with Section 610.112, Florida Statutes, as it may be amended, a ~~A franchisee~~ certificateholder shall, upon request of the city, provide, within 90 days after receipt of the request, one active basic cable or video service outlet to K-12 public schools, public libraries, or local government administrative buildings, to the extent such buildings are located within 200 feet of the certificateholder's activated video distribution plant. At the request of the city, the certificateholder shall extend its distribution plant to serve such buildings located more than 200 feet from the certificateholder's activated video distribution plant. In such circumstances, the governmental entity owning or occupying the building is responsible for the time and material costs incurred in extending the certificateholder's activated video distribution plant to within 200 feet adjacent to the building. The cable or video services provided under this section shall not be available in an area viewed by the general public and may not be used for any commercial purpose. ~~at least one cable television service outlet and when technically feasible, at least one additional outlet equipped for on-line access to all city buildings and all public and private schools within its franchise area that are passed by its cable system at no cost to the city or school involved, and shall charge no more than its time and material costs for any additional service outlets to such facilities.~~
- (5) To the extent not prohibited by applicable law, a ~~franchisee~~ certificateholder shall design its system to allow the city or other appropriate government body, to interrupt cable service in an emergency to deliver necessary information to subscribers.

- ~~(6) — A franchisee shall make available to its subscribers equipment capable of decoding closed circuit captioning information for the hearing impaired. A franchisee may impose a reasonable charge for such equipment.~~
- ~~(7) — Standard installation shall consist of a drop, not exceeding 125 feet from the cable plant to the nearest part of a subscriber's residence. Residential drops in excess of 125 feet may be charged according to the rate schedule of the franchisee.~~
- ~~(b) — A franchisee shall make cable service available to every residential dwelling within the city within five years of the effective date of a franchise unless prohibited by a private property owner from doing so. This provision shall not apply to structures located on property considered a part of the University of Miami campus located within the city.~~
- ~~(e) — A franchise agreement may specify the construction schedule that will apply to any required construction, upgrade or rebuild. The schedule shall provide for prompt completing of the project, considering the amount and type of construction required, as well as for liquidated damages if the schedule is not met.~~

Sec. 70-33. - Technical standards.

- (a) Any cable system within the city shall at minimum meet the technical standards of the FCC or other applicable federal or state technical standards, including any such standards as hereinafter may be amended or adopted including but not limited to digital transmission, HDTV or other advanced technologies. Specifically, all cable systems shall satisfy the FCC's technical standards contained in 47 CFR §76.605, as such standards may be amended. All television signals transmitted on a cable system shall include any closed circuit captioning information for the hearing impaired. Antennas, supporting structures, and outside plants used in the system shall be designed to comply with all generally accepted industry practices and standards and with all federal, state, county, city ordinances, rules and regulations, including but not limited to the city zoning code.
- (b) All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electrical Code, the Florida Building Code, all local and state codes and ordinances, and all laws and accepted industry practices, and as hereinafter may be amended or changed.
- (c) ~~At the times specified in the franchise agreement or as required by FCC rules, the franchisee shall perform at its expense proof of performance tests designed to demonstrate compliance with the requirements of this article, the franchise agreement, and FCC requirements. The franchisee shall provide, upon written request, the proof of performance test results to the city within 30 days after completion. The city shall have the right to inspect the cable system facilities during and after construction to ensure compliance with the requirements of the franchise agreement, this article, and FCC standards.~~
- (d) ~~The city may require any other tests as specified in a franchise agreement or applicable law or regulation, to be performed at the expense of the franchisee. The~~

~~franchisee shall provide the test results to the city within 30 days of completion of the proof of performance or other tests.~~

- ~~(e) The franchisee shall provide the city ten days advance written notice when a proof of performance test required in subsections (c) and (d) of this section is scheduled in order that the city may have an observer present.~~
- ~~(f) A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.~~
- ~~(g) In any franchise granted pursuant to this article, a franchisee shall agree to maintain that level of technology to satisfy the state of the art as defined in section 70-20.~~
- ~~(h) Franchisee shall provide access channels, equipment and facilities, and financial support, in accordance with section 70-34, as well as such other benefits and services as provided in a franchise agreement.~~

Sec. 70-34. Reserved. ~~Public, education and government support.~~

- ~~(a) It is the purpose and intent of the city to require that all franchisees provide access channels, facilities, equipment and support sufficient to meet the needs and interests of the community with respect to public, education and government activities.~~
- ~~(b) A franchisee granted a franchise pursuant to this article shall pay quarterly to the city, an amount equal to two percent of its gross revenues. The funds shall be disbursed at the sole discretion of the city commission to be primarily utilized for cable related programming, events, equipment, services, personnel and supplies and any other cable related expenses.~~
- ~~(c) A franchisee shall provide, at the request of the city, access channels to be allocated to public, education and government use at the sole discretion of the city.~~
- ~~(d) During the term of a franchise, a franchisee shall provide at the request of the city, such equipment, facilities and technical support as the city commission may determine is useful for the production and cablecasting of programming on the public, education and government channels. Applications for initial or renewed franchises shall include a proposal to provide such support.~~
- ~~(e) A franchisee shall provide for live and repeat cablecasting of all city commission meetings to all subscribers within the city.~~
- ~~(f) At the request of the city, a franchisee shall provide for live and repeat cablecasting of events at the Miracle Theater and/or such successor or alternate venue as may be designated by the city.~~
- ~~(g) Applications for an initial or renewed franchise may, and at the request of the city, shall include proposals for the provision of an institutional network interconnecting city, educational institution, and/or other public facilities as designated by the city from time to time.~~
- ~~(h) Applications for an initial or renewed franchise, shall include a proposal for the interconnection of franchisee to any or all other cable systems operating within the county.~~
- ~~(i) A franchise may provide for a financial grant in lieu of or in addition to some or all of the facilities, equipment, and services referenced in this section.~~

~~(j) A franchisee shall agree that the facilities, equipment, monetary grant, and all other support to be provided by franchisee pursuant to this section constitutes capital costs which are required by the franchise to be incurred by franchisee for public, educational, or government access facilities within the meaning of section 622(g)(2)(C) of the Cable Act, 47 USC 542(g)(2)(C); that such grant does not constitute a franchise fee or tax within the meaning of Cable Act, state law, city Code, or a franchise agreement; and that the franchisee shall waive, and will not assert in any proceeding, any claim to the contrary.~~

~~Sec. 70-35 – Sec. 70-36. Reserved. Franchise fee.~~

~~This section and any franchise fee provision in a franchise agreement, shall not apply during such time as state law prohibits the city from collecting franchise fees or similar compensation. During the period state law prohibits the city from collecting franchise fees, a franchisee shall pay the tax required by state law to the state. If the city is legally entitled to charge franchise fees or similar fees, a franchisee will pay the highest fee legally authorized or as provided in a franchise agreement.~~

- ~~(1) A franchisee, as compensation for the privilege granted under a franchise for the use of the streets of the city to construct and operate a cable system, shall pay to the city a franchise fee in an amount up to a maximum of either:
  - a. Five percent of the franchisee's gross revenues derived directly or indirectly from the operation of its cable system within the city during the term of its franchise;
  - b. In the event the Communications Act or other applicable law is amended to permit the city to assess a franchise fee of a greater amount than that specified in subsection (1)a of this section, the franchisee agrees to pay to the city the new amount after a public hearing in which the public and franchisee are given an opportunity to comment on the impact of the higher fee; or
  - e. Moreover, franchisee shall conclude any such agreement with respect to a fee increase with the city prior to finalizing an agreement with the county.~~
- ~~(2) A franchisee shall pay the franchise fee due to the city on a quarterly basis. Payment for each quarter shall be made to the city not later than 30 calendar days after the end of each calendar quarter.~~
- ~~(3) A franchisee shall file with the city, on a quarterly basis with the payment of the franchise fee, a financial statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding quarter and a detailed explanation of the method of computation. The statement shall be certified by a certified public accountant or the chief financial or other duly authorized officer of the franchisee. The franchisee will bear the cost of the preparation of such financial statements.~~
- ~~(4) Subject to applicable law, no acceptance by the city of any franchise fee payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for additional sums payable.~~
- ~~(5) The franchise fee payment is not a payment in lieu of any other tax, fee or assessment.~~

- ~~(6) The city may, from time to time, and upon reasonable notice, inspect and audit any and all books and records of the franchisee relevant to the determination of gross revenues and the computation of franchise fees due, and may recompute any amounts determined to be payable under the franchise. The cost of the audit will be borne by the franchisee if, as a result of the audit, the city determines that the franchisee has underpaid the franchise fees owed in an amount equal to or exceeding two percent of the franchise fees actually paid. A franchisee shall make all books and records necessary to satisfactorily perform the audit readily available to the auditors in the county, for inspection and copying or in the alternative, franchisee shall pay all costs necessary for the city to perform the audit at a location outside of the county.~~
- ~~(7) In the event that a franchise fee payment is not received by the city on or before the due date set forth in subsection (2) of this section, or is underpaid, the franchisee will pay a late charge of 18 percent per annum of the amount of the unpaid or underpaid franchise fee payment, provided, however, that such rate does not exceed the maximum amount allowed under state law. Any interest and/or late charges paid by franchisee is intended to be a charge incidental to the enforcing of a franchise within the meaning of section 622(g)(2)(D) of the Communications Act, 47 USC 542(g)(2)(D), and may not be deducted from the franchise fee imposed by this article or any franchise agreement.~~
- ~~(8) When a franchise terminates for any reason, the franchisee shall file with the city within 90 calendar days of the date its operations in the city cease a financial statement, certified by a certified public accountant or the chief financial officer of the franchisee, showing the gross revenues received by the franchisee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the franchisee's operations ceased.~~

Sec. 70-36. Reports and records.

- (a) ~~Within six months of the close of its fiscal year, the franchisee shall provide the city an annual report to the city that includes the following information:~~
- ~~(1) Upon written request by the city, a summary of the activities of the previous year in development of the system, including but not limited to, services initiated or discontinued, number of subscribers for each tier or type of service (including gains and losses), homes passed, and miles of cable distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the city, as well as rate and charge increases and/or decreases for the previous fiscal year.~~
  - ~~(2) Upon written request by the city, an annual financial report to include a balance sheet of income and expenses, and a statement of sources of revenues. The franchisee shall provide an audited financial report if franchisee has a report in its normal course of business. If not, the statements shall be certified by the chief financial officer of the franchisee or other duly authorized financial officer of the franchisee. The financial report shall include notes to the financial statements that specify all significant accounting policies and practices upon which it is based.~~
  - ~~(3) Upon written request, a copy of updated maps depicting the location of all cable plants, showing areas served and locations of all trunk lines and feeder lines in the city. At such time as such maps become available in digitized form, same will be provided to the city at expense of the franchisee.~~
  - ~~(4) A summary of subscriber or resident complaints, identifying the number and nature of complaints and their disposition. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified. More detailed information concerning complaints shall be submitted upon written request of the city.~~
  - ~~(5) Upon written request, a summary of the number of outages, number of planned outages, number of outages during prime viewing hours (8:00 p.m. — 11:00 p.m. daily), and number of outages by duration.~~
  - ~~(6) Upon written request by the city if the franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the franchisee or parent corporation stock or ownership interests are publicly traded, a copy of its most recent annual report.~~
  - ~~(7) Upon written request by the city if the franchisee is a partnership, a list of the partners, including any limited partners, and addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or parent corporation ownership interests are publicly traded, a copy of its most recent annual report.~~
  - ~~(8) Upon written request by the city a list of all persons holding five percent or more ownership or otherwise cognizable interest in the franchisee pursuant to 47 CFR 76.501.~~

- ~~(9) — A copy of the rules and regulations of the franchisee applicable to subscribers of the cable system, upon written request.~~
  - ~~(10) — Upon written request by the city a report on the number of senior citizen, economically disadvantaged or disabled subscribers receiving any rate discounts, the number of multiple dwelling buildings and units therein receiving any discount pursuant to section 70-39(a) hereof, and the amount of any such discounts for specific services if franchisee offers separate rates or discounts for those categories of subscribers.~~
  - ~~(11) — Upon written request a full schedule and description of services, service hours and location of the customer service office of the franchisee or offices available to subscribers, and a schedule of all rates, fees and charges for all services provided over the cable system.~~
  - ~~(12) — Upon written request a report on the number of total subscribers served by the franchisee in the cable system, with a breakdown by the types of services received by the subscribers.~~
- ~~(b) — Upon written request by the city, a franchisee shall provide, on an annual basis, the following documents to the city as received or filed, without regard to whether the documents are filed by the franchisee or an affiliate:~~
- ~~(1) — Annual financial report of the franchisee or its parent or any affiliate of franchisee which controls franchisee and issues an annual financial report;~~
  - ~~(2) — Copyright filings reflecting the operation of the system;~~
  - ~~(3) — FCC Forms 325 and 395A for the system, or successor forms;~~
  - ~~(4) — Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as "filings") submitted by or on behalf of the franchisee to the FCC, SEC or any state or federal agency, court or regulatory commission which filings may impact the operation of the cable system of the franchisee in the city or that may impact the rights or obligations of the city under this article of the franchise agreement issued pursuant to this article and any and all responses, if any, to the above mentioned filings;~~
  - ~~(5) — Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the system, franchisee, or any affiliate of franchisee, provided, however, that any such notice or documents relating to an affiliate of franchisee need be provided only to the extent the same may directly or indirectly affect or bear on operations of the franchisee in the city. For example, a notice that an affiliate which has a management contract for the city's system was not in compliance with FCC EEO requirements would be deemed to affect or bear on operations in the city;~~
  - ~~(6) — Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy;~~
  - ~~(7) — Notwithstanding anything to the contrary, the franchisee agrees to provide the city, within 30 days of filing or receipt of such, any document that may adversely impact the construction, operation or maintenance of the cable system of the franchisee.~~

- ~~(c) A franchisee shall make a complete set of books and records available for inspection, copying and audit by the city, for purposes of ascertaining compliance with requirements of this article and the franchise agreement. Such inspection, copying and audit shall be upon reasonable notice and during normal business hours.~~
- ~~(d) Any materials requested by city which are deemed proprietary and confidential by the franchisee shall be made available for review and inspection by the city (but not copying or removal), but shall not be required to be filed with the city unless such filing is required by applicable law.~~

Sec. 70-37. - Customer service requirements.

- (a) To the extent not inconsistent with applicable law, including Section 610.108, Florida Statutes, and the City's police powers, the following customer service standards shall apply to franchiseescertificateholders operating within the city and the city may enforce such standards. In addition to complying with the customer service standards set forth in this Article, a certificateholder shall comply with all customer service standards of the FCC applicable to cable systems and any other applicable federal, state or county law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.~~To provide franchisees a reasonable opportunity to make necessary changes to their operations, the amendments to the customer service requirements contained within this article will be enforced beginning 90 days after the effective date of this article. A franchisee shall satisfy other customer service requirements established by the city from time to time by article. In addition, a franchisee shall at all times comply with any additional or stricter requirements established by applicable law, including, without limitation, FCC customer service standards and state and federal consumer protection laws. In addition, franchisee shall at all times comply with any additional or stricter requirements established by applicable law, including, without limitation, FCC customer service standards and state and federal consumer protection laws.~~

(1) Maintenance shall be conducted as follows:

- a. A certificateholderfranchisee shall maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate, and prompt service for all of its customers and facilities.
- b. To the extent not inconsistent with applicable law, i~~n~~ the event of a disaster that results in a major service interruption, a certificateholderfranchisee shall undertake diligent efforts, including but not limited to, allocating employees and equipment from other areas, having employees work overtime, and hiring contractors, to restore service as promptly as possible to affected subscribers. In no event shall such restoration take longer than reasonably necessary after electric service is restored to affected subscribers unless such extension is approved by the city manager.

~~Franchisees~~Certificateholders shall develop a hurricane preparedness plan ("HPP"), which shall be provided to the city, with proprietary information redacted. The HPP shall at a minimum contain procedures to provide for maintenance of service to ~~certificateholder~~franchisee's headend including at least 24-hours backup power supply and shall contain procedures to restore service in the field of the event of disaster as quickly as possible. If a ~~franchisee~~certificateholder updates or revises the HPP, the ~~certificateholder~~franchisee shall submit the revised HPP to the city. In recovering from a disaster, the city manager may issue emergency orders to a ~~certificateholder~~franchisee regarding restoration of cable facilities in the public rights-of-way and service and repair and restore~~work on~~ the cable system in the interest of the health, safety and welfare of the city's residents and the ~~certificateholder~~franchisee shall comply with the city manager's emergency orders within the time frame specified. If the ~~franchisee~~certificateholder does not provide the HPP, the city may provide a notice of violation after which time the ~~certificateholder~~franchisee shall have 30 days to provide the HPP to the city, or shall be subject to a fine in the amount of \$500.00 per day for each day that the violation continues. Because of the serious consequences of not repairing and restoring cable facilities and service and complying with emergency orders of the city manager following a disaster as required herein, a ~~certificateholder~~franchisee that violates this provision shall be subject to a fine in an amount up to \$100.00 per affected subscriber or \$500 per day, as applicable. In determining whether to impose a fine and the amount of the fine, the city shall take into consideration the length of the failure to comply with orders of the City Manager~~service interruption~~ and the numbers of affected subscribers, the nature and extent of the disaster, the efforts by ~~certificateholder~~franchisee to take appropriate steps to prevent its cable facilities from threatening the health, safety and welfare of residents and major service interruptions in the event of a disaster, the ~~certificateholder~~franchisee's efforts to restore service as quickly as possible, and ~~franchisee's~~ efforts to comply with the city manager's emergency orders.

- (2) A ~~franchisee~~certificateholder shall maintain at least one conveniently located business office and service center within the city limits or in the alternative, at such location outside of the city ~~as approved by the city manager~~, to which subscribers may telephone without incurring added message units or toll charges. This business office shall be open at a minimum from 8:30 a.m. to 6:00 p.m., Monday through Friday, and some weekend and evening hours. Further, ~~certificateholder~~franchisee shall locate, construct, design, staff, operate, and maintain said office so as to provide all subscribers, including but not limited to those subscribers who

may be elderly, disabled, or otherwise impaired, with access to its office. The office shall make available for all customers parking within reasonable proximity of the office and sufficient covered waiting areas and adequate seating capacity.

- (3) ~~Franchisee~~Certificateholder (or an affiliate), shall maintain a listed local, toll-free telephone number under the business name familiar to subscribers and employ a sufficient number of telephone lines, personnel, and answering equipment or service to allow reasonable access by subscribers and members of the public to contact the certificateholder~~franchisee~~ on a full-time basis, 24 hours per day, seven days per week including holidays. Knowledgeable, qualified ~~franchisee~~-representatives will be available to respond to customer telephone inquiries, 24 hours per day, seven days per week including holidays.
- (4) ~~Franchisee~~Certificateholder shall answer all customer service and repair telephone calls made under normal operating conditions within 30 seconds, including wait time and within an additional 30 seconds to transfer the call. Customers shall receive a busy signal less than three percent of the time. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.
- (5) A ~~franchisee~~Certificateholder shall employ and maintain sufficient qualified personnel and equipment to be available to:
  - a. Accept payments;
  - b. Exchange or accept converters or other equipment;
  - c. Receive subscriber complaints or requests for service or repairs on a full-time basis, 24 hours per day, seven days per week;
  - d. Initiate service installations, undertake normal repairs, initiate action with respect to any subscriber service complaints within 24 hours;
  - e. Enable a service technician to respond to service calls 24 hours per day, seven days a week including holidays when more than 25 subscribers served from the same nearest active electronic device, such as an amplifier or node, call with the same complaint.
- (6) ~~Franchisee~~Certificateholder must meet each of the following standards no less than 95 percent of the time under normal operating conditions as measured on a quarterly basis:
  - a. Standard installation work shall be performed within seven calendar days after an order has been placed except in those instances where a subscriber specifically requests an installation date beyond the seven calendar day period. Standard installations are up to 125 feet from the existing distribution system. If scheduled installation is neither started nor completed as scheduled, the subscriber will be telephoned by an employee ~~of the franchisee~~ the same day. Evening

personnel shall also attempt to call subscribers at home between the hours of 5:30 p.m. and 8:00 p.m. If the call to the subscriber is not answered, an employee of ~~the franchisee~~ shall telephone the subscriber the next day;

- b. ~~Franchisee~~Certificateholder will respond to service interruptions promptly and in no event later than 24 hours after the interruption becomes known. Other service problems will be responded to promptly and in no event later than 48 hours after the problem becomes known. All service interruptions, and service problems within the control of grantee, will be corrected within 72 hours after receipt of a complaint;
- c. The appointment window alternatives made available for installations, service calls, repairs, and other installation activities will be either a specific time, a four-hour time block during normal business hours, or at the election and discretion of the subscriber, "all day";
- d. ~~Franchisee~~Certificateholder may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment; and
- e. If at any time an installer or technician is running late for a scheduled appointment, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time which is convenient for the customer.

(7) Subscribers who have experienced one missed installation or service appointments due to the fault of ~~certificateholder franchisee~~ shall receive installation free of charge. If the installation was to have been provided free of charge or if the appointment was for service or repair, the subscriber shall receive a credit on its bill of not less than \$20.00.

(8) Disconnection shall be subject to the following:

- a. *Voluntary disconnection.*
  - 1. A subscriber may terminate service at any time.
  - 2. A ~~franchisee~~certificateholder shall promptly disconnect any subscriber who so requests from the cable system of ~~the franchisee~~. No period of notice prior to voluntary termination of service may be required of subscribers by any franchisee. So long as the subscriber returns equipment within three business days of the disconnection, no charge may be imposed by any ~~certificateholder franchisee~~ for such voluntary disconnection, or for any cable services delivered after the date of disconnect request.
  - 3. A subscriber may be asked, but not required, to disconnect the equipment of the ~~franchisee~~certificateholder and return it to the business office.

4. Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment including all converters but excluding wiring have been recovered by the certificateholder~~franchisee~~. The refund process shall take a maximum of 30 days from the date disconnection was completed to the date the customer receives the refund.
- b. *Involuntary disconnection.* If a subscriber fails to pay a monthly subscriber or other fee or charge, the ~~franchisee~~certificateholder may disconnect the service outlet of the subscriber; however, such disconnection shall not be effected until 35 days after the due date of the monthly subscriber fee or other charge, and ten days advance written notice of intent to disconnect to the subscriber in question. If the subscriber pays within 35 days of the due date and after notice of disconnection has been given, the ~~franchisee~~certificateholder shall not disconnect. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the ~~franchisee~~certificateholder shall promptly reinstate service. ~~Franchisee~~Certificateholder reserves the right to deny service to any customer who has been repeatedly disconnected for nonpayment of services to the extent that such rights are consistent with applicable state and federal law.
  - c. *Removal of from premises.* Nothing in this article shall be construed to prevent the ~~franchisee~~certificateholder from removing its property from a premises of a subscriber upon the termination of service consistent with FCC rules and regulations and any other applicable law. At the request of a subscriber, a ~~franchisee~~certificateholder shall remove all of its facilities and equipment from the premises of the subscriber within 30 calendar days of the request. Where removal is impractical, such as with buried cable or internal wiring, facilities and equipment may be disconnected and abandoned rather than removed, unless there is a written agreement stating otherwise, provided, however, that such agreement must be consistent with applicable law and FCC rules.
- (9) ~~Certificateholder~~Franchisee shall intentionally interrupt service only for good cause and for the shortest time possible. ~~Certificateholder~~Franchisee shall use its best efforts to insure that such interruptions shall occur only during the hours of 1:00 a.m. to 6:00 a.m., except during a rebuild or upgrading of the cable system. ~~Certificateholder~~Franchisee shall maintain a written log for all intentional service interruptions.
  - (10) ~~Franchisee~~Certificateholder shall notify the city manager immediately if a service interruption affects 50 or more subscribers for a time period greater than one hour.

- (11) ~~Franchisee~~Certificateholder's employees shall furnish identification and additional information as follows:
- a. ~~Franchisee~~Certificateholder shall cause all of its field employees and field contractors to wear a picture identification badge indicating employment by certificateholder~~franchisee~~. This badge shall be clearly visible to the public.
  - b. Upon request, employees must provide a supervisor's name and telephone number for city employees and subscribers to contact.
  - c. All company vehicles shall prominently display the name under which the certificateholder ~~franchisee~~ is doing business, and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall prominently display the contractor name, contractor license number, if applicable, and the certificateholder~~franchisee's~~ name. There must be a listed local telephone number for the names displayed.
  - d. ~~When any work is performed by or on behalf of the franchisee in the public rights of way where the work involves cutting or trenching, or requires more than one hour to perform, each franchisee will post a sign that prominently displays the name under which the franchisee is doing business in the city, and franchisee's telephone number.~~
  - e. ~~The telephone number posted must be a local or toll free number. The phone must connect to persons trained to receive and respond to calls regarding employees, construction and problems (including repair problems) associated with construction.~~
- (12) A certificateholder~~franchisee~~ shall develop written procedures for the investigation and resolution of all subscriber or city resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be subject to the review and approval by the city manager. A subscriber or city resident who has not been satisfied by following the procedures of the ~~franchisee~~certificateholder may file a written complaint with the office of the city manager, who will investigate the matter and, in consultation with the certificateholder~~franchisee~~ as appropriate, attempt to resolve the matter. ~~The good faith or lack thereof of the franchisee in attempting to resolve subscriber and resident complaints in a fair and equitable manner will be considered in connection with the renewal application of the franchisee. Franchisee shall maintain a complete list of all complaints not resolved within seven days of receipt and the measures taken to resolve those complaints. This list shall be compiled in a form to be approved by the city. It shall be compiled on a monthly basis. The list for each calendar month shall be supplied to the city no later than the 15th day of the next month. Franchisee shall also maintain a list of all complaints received, which list will be available to the city.~~

- (13) ~~Franchisee Certificateholder~~ shall permit the city designee to inspect ~~and test~~ the technical equipment and facilities of the system in the public rights-of-way upon reasonable notice not to be less than 48 hours, consistent with Article III of this Chapter 70.
- (14) ~~Franchisee Certificateholder~~ shall abide by the following requirements governing communications with customers, bills and refunds:
- a. Each franchisee shall provide to subscribers written information in each of the following areas at the time of installation, at least once annually, and at any future time upon request by the subscriber:
    1. How to use the cable service;
    2. Installation and service maintenance policies;
    3. The products and services offered;
    4. Prices and service options;
    5. Channel positions of programming carried on the system;
    6. The procedures of the franchisee for the receipt and resolution of customer complaints, the address of the franchisee and telephone number to which complaints may be reported, and the hours of operation;
    7. ~~Reserved. The telephone number and address of the city and as required by county ordinance, the county office designated to handle cable television complaints and inquiries shall be printed on the back of the bill;~~
    8. The availability of a "lock-out" device;
    9. The information of the franchisee, collection, and disclosure policies for the protection of the privacy of the subscriber.
  - ~~b. In addition, each franchisee shall provide written notice in its monthly billing, at the request of the city, of any city meeting regarding requests or applications by the franchisee for renewal, transfer or modification of its license or change in service, rates or charges to subscribers. The city shall make such a request in writing, no less than 45 days prior to the mailing of any billing by franchisee. Said notices shall be made at expense of the franchisee and said expense shall not be considered part of the franchise fee assessed pursuant to this article and shall not be regarded as a franchise fee, as the term is defined in section 622 of the Communications Act, 47 USC 542.~~
  - ~~e. Franchisee bills will be clear, concise and understandable.~~
  - ~~d. Refund checks will be issued promptly, but no later than the earlier of 30 days or the next billing cycle of the customer following the resolution of a refund request, or the return of the equipment supplied by the franchisee if service is terminated.~~
  - ~~e. Credits for service will be issued no later than the next billing cycle of the customer following the determination that a credit is warranted.~~
  - ~~f. A franchisee shall provide subscribers, the city commission, and the city manager with at least 30 days' advance written notice of any changes in rates, charges, channel~~

~~lineup, or initiations or discontinuations or changes of service offered over the cable system whenever practicable.~~

~~(15) A franchisee shall provide a pro-rated 24-hour credit to the account of the subscriber for any period of eight hours or more within a 24-hour period during which a subscriber experienced an outage of service or substantial impairment of service, whether due to a system malfunction or other cause.~~

~~(16) Billing shall be conducted as follows:~~

~~a. The first billing statement of the franchisee after a new installation or service change shall be pro-rated as appropriate and shall reflect any security deposit.~~

~~b. The billing statement of the franchisee must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Invoices will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.~~

~~c. The billing statement of the franchisee must show a specific due date not earlier than ten days after the date of the beginning of the service period. Any balance not received within ten days after the due date may be assessed an administrative charge. The charge will appear on the billing statement of the following month.~~

~~1. Any administrative charge applied to unpaid bills shall be subject to regulation by the city consistent with applicable law.~~

~~2. Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the franchisee, its employees, or contractors, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.~~

~~d. The franchisee must notify the subscriber that payment can be remitted in person at the office of the franchisee in the city and inform the subscriber of the address of that office where payment can be made.~~

~~e. The franchisee shall not charge subscribers an additional fee for paying bills by either telephone or on-line by credit card unless such charges are related to franchisee's costs. To implement such a fee, franchisee shall provide the city with an analysis of its costs of processing such payments and the city commission must approve the additional fee at a public hearing. If an additional fee is approved by the city commission, the franchisee shall provide at least 60 days' written notice of adoption of the fee to all subscribers.~~

~~(17) A franchisee may not substantially alter the service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) without the express permission of such subscriber, unless it complies with this subsection.~~

~~a. If a franchisee wishes to alter the service being provided to a subscriber (including by re-tiering, restructuring a tier or otherwise) in such a way that the subscriber will no longer be able to obtain the same package of services, then the franchisee must provide the subscriber with 30 days notice of such alteration, explain the substance and the full effect of the alteration, and provide the subscriber the right within the~~

~~30-day period following notice, to opt to receive any combination of services offered by the franchisee.~~

~~b. Except as provided herein, or under applicable federal or state law, no charge may be made for any service or product which the subscriber has not affirmatively indicated, in a manner separate and apart from payment of the regular monthly bill, that wishes to be received.~~

~~(18) Franchisee shall certify in writing to the city on January 1 and July 1 of each year based upon internal due diligence by the franchisee that to the best of knowledge of the franchisee it is in substantial compliance with the standards set forth in this section. At the request of the city, the franchisee shall submit such documentation, as may be required, to demonstrate compliance of the franchisee with this section. This documentation shall be submitted within 45 days of the receipt of the franchisee of the request of the city.~~

~~(19) Responsibility for the administration of this article and any franchise granted hereunder and for the resolution of all complaints against a franchisee regarding the quality of service, equipment malfunctions, and related matters, including the authority to order refunds or fees, is hereby delegated to the city manager, who is empowered, among other things, to settle, or compromise any controversy arising from operations of the franchisee, either on behalf of the city, the franchisee or any subscriber, in accordance with the best interests of the public. In cases where requests for service have been ignored or in cases where the service provided is unsatisfactory for whatever reason, the city manager or his designee, hereafter referred to jointly as city manager, shall have the power to require the franchisee to provide service if in the opinion of the city manager or his designee such request for service is reasonable. Provided, that any person aggrieved by a decision of the city manager, including the franchisee, may appeal the matter to the city commission for hearing and determination. The city commission may accept, reject or modify the decision of the city manager. No adjustment, settlement, or compromise, whether instituted by the city manager or by the city commission shall be contrary to the provisions of this article or any franchise agreement issued pursuant to this article, and neither the city manager nor the city commission, in the adjustment, settlement, or compromise of any controversy shall have the right or authority to add to, modify or delete any provision of this article or of the franchise, or to interfere with any rights of subscribers or any franchisee under applicable federal, or state law or private contract.~~

~~(20) In addition to the powers delegated in subsection (19) of this section, the city manager shall have the authority to order refunds from a franchisee to individual cable television subscribers who have submitted a written complaint to the city and to assess fines against a franchisee for any violation of this article or any franchise issued pursuant to this article, which fines will be paid to the city.~~

- a. ~~In ordering refunds to cable television subscribers, the city manager shall be governed by the schedule set out below in which the refund indicated is expressed as a percentage of the monthly bill of the subscriber. The refunds listed are to be made on a per violation basis with each day of a continuing violation constituting a separate violation. The refund ordered by the city manager pursuant to this section shall not exceed 100 percent of a monthly bill of the subscriber, unless a violation has continued at least 30 days from the date first reported to the franchisee.~~

*Schedule of Refunds to Subscribers*

Single violation of:	Maximum refund (percent of subscriber's monthly bill)
Failure to comply with subsection (2)	10
Failure to comply with the telephone availability requirements of subsection (3) and (4)	10
Failure to comply with the repair and installation requirements of subsection (6)	50

- b. ~~In assessing fines against a franchisee, the city manager shall be governed by the schedule set out below. The fines listed are to be assessed on a per violation basis with each day of a continuing violation constituting a separate violation.~~

*Schedule of Fines*

Single violation of:	Maximum fines:
Subsection (1)	\$500.00
Subsection (2)	\$500.00

Subsection (3)	\$500.00
Subsection (4)	\$500.00
Subsections (5) and (6)	\$500.00
Subsections (7) and (8)	\$300.00
Subsection (9)	\$500.00
Subsection (10)	\$300.00
Subsection (11)	\$300.00
Subsection (12)	\$500.00
Subsection (13)	\$500.00
Subsections (14)a.1 — a.9	\$300.00
Subsection (14)b	\$500.00
Subsections (14)c — f	\$300.00
Subsection (15)	\$300.00
Subsections (16) and (17)	\$300.00
Subsection (18)	\$500.00

~~e. Prior to ordering a refund and/or assessing a fine, the city manager shall mail to the franchisee a written notice by certified or registered mail of the proposed refund and/or fine, specifying the violation at issue. The franchisee shall have 30 days from the date of receipt of the written notice to file a written response to the notice of the city manager. Written response of the franchisee shall be signed by management level personnel of franchisee and all statements contained therein will be regarded as material representations to the city. Fines shall begin to accrue on the first business day after the 30 day cure period has terminated.~~

- d. ~~Prior to ordering a refund and/or assessing a fine, the city manager shall consider any justification or mitigating factor advanced in the written response of the franchisee, including but not limited to rebates or credits to the subscriber or a cure of the violation. The city manager may, after consideration of the response of the franchisee, waive or reduce any proposed refund or fine. In the case of a complaint from a single subscriber or a violation of this article or any franchise issued pursuant to this article in which only a single subscriber has been affected, the city manager may not assess any fine if the franchisee has reasonably resolved the complaint or cured the violation within a reasonable time frame not to exceed three days. However, said subscriber may be entitled to a credit/refund as provided herein.~~
- e. ~~Subsequent to the notice of proposed refund and/or fine to franchisee and consideration of the response of the franchisee, if any, the city manager may issue an assessment of refund or fine. The refund and/or fine shall be paid within 30 days of written notice to the franchisee. This refund and/or fine shall constitute liquidated damages to the subscriber and city for the violation and the city may enforce payment of the refund or fine in any court having jurisdiction. It is the intent of the city to determine fines/refunds as a reasonable estimate of the damages suffered by the city and/or its subscribers, whether actual or potential, and may include without limitation, increased costs of administration and other damages difficult to measure.~~
- f. ~~Franchisee may appeal any decision of the city manager directly to the city commission within 30 days of notice of the decision to the franchisee.~~
- g. ~~Any person who intentionally files a false complaint against a franchisee shall be subject to a fine in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation.~~
- h. ~~Intentional misrepresentation by a franchisee in any response to a notice of proposed refund and/or fine shall be grounds for license revocation.~~
- (21) ~~In addition to complying with the customer service standards set forth in this article or in any franchise issued pursuant to this article, a franchisee certificateholder shall comply with all customer service standards applicable to cable systems of the FCC and any other applicable federal, state or county law concerning customer service standards, consumer protection, and unfair or deceptive trade practices.~~
- (b) ~~The city expressly reserves the right to consider violations of the customer service requirements in evaluating any renewal, modification or transfers of any franchise agreement.~~

Sec. 70-38. - Subscriber privacy.

- (a) ~~A certificateholder franchisee shall at all times protect the privacy of all subscribers to the full extent required by section 631 of the Communications Act, 47 USC §551 and state law. A franchisee shall not condition subscriber or other service on the grant of permission of the subscriber to disclose information which, pursuant to federal or state law, cannot be disclosed without the explicit consent of the subscriber. No penalties or extra charges may be invoked by the franchisee for a failure of the subscriber to grant consent.~~

- (b) Unless otherwise permitted by federal or state law, neither the certificateholder~~franchisee~~ nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell, or otherwise make available for commercial purposes the names, addresses or telephone numbers of any subscriber, or any information which identifies the individual viewing habits of any subscriber.

Sec. 70-39. - Discrimination prohibited.

- (a) No ~~franchisee~~certificateholder may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor subject any such persons or group of persons to any undue prejudice or any disadvantage. A franchisee or certificateholder shall not deny, delay, or otherwise burden service or discriminate against subscribers or users on the basis of age, race, creed, religion, color, sex, sexual orientation, handicap, national origin, marital status, or political affiliation, except for discounts for senior citizens, the economically disadvantaged or disabled that are applied in a uniform and consistent manner. A certificateholder~~franchisee~~ may also offer bulk discounts to multiple dwelling buildings to the extent such discounts are otherwise permissible by law.
- (b) A certificateholder~~franchisee~~ shall not deny cable service to any potential subscriber because of the income of the residents of the area in which the subscriber resides.
- (c) A certificateholder~~franchisee~~ with respect to operations in the City, shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, sexual orientation, disability, national origin, marital status, or political affiliation. The certificateholder~~franchisee~~ shall comply with federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

Sec. 70-40. - Use of public rights-of-way~~streets~~.

- ~~(a) A franchisee~~ certificateholder shall, at all times, comply with Article III of this Chapter or as such may hereafter be amended.
- ~~(b) Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a franchisee shall be done under the supervision and direction of the city under permits issued for work by the proper officials of the city, and shall be completed in such manner as to give the least inconvenience to the inhabitants of the city. A franchisee shall, at its own cost and expense, and in a manner approved by the city, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also prepare, maintain and provide to the city public works full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways, and easements of the city.~~
- ~~(c) Except to the extent required by law, a franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove, any of its property when required by the city by reason of traffic conditions, public safety, street construction, street resurfacing or widening, change of street grade, installation or sewers, drains, water pipes, power lines, signal lines,~~

tracks, or any other type of municipal or public utility improvements; provided, however, that the franchisee shall, in all such cases, have the privilege of abandoning any property in place.

- (d) ~~A franchisee shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the city, in which case no such payment shall be required. The franchisee shall be given not less than five calendar days advance notice to arrange for such temporary wire changes.~~
- (e) ~~A franchisee shall upon notice to the city of not less than seven days, emergency situations excepted, have the authority to trim the trees or other natural growth upon and overhanging the streets so as to prevent the branches of such trees from coming in contact with the wires, cables and other equipment of the franchisee, except that, at the option of the city, such trimming may be done by it or under its supervision and direction at the expense of the franchisee.~~
- (f) ~~A franchisee shall use, with the permission of the owner, existing underground conduits (if applicable) or overhead utility facilities whenever feasible. Copies of agreements between a franchisee and third party for use of conduits or other facilities shall be filed with the city provided that the franchisee shall have the right to redact proprietary and confidential information in such agreements as it pertains to financial arrangements between the parties.~~
- (g) ~~All wires, cable lines, and other transmission lines, equipment and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners. The city may issue such rules and regulations concerning the installation and maintenance of a cable system installed in, on, or over the streets, as may be consistent with this article and the franchise agreement.~~
- (h) ~~All safety practices required by law shall be used during construction, maintenance and repair of a cable system. A franchisee shall not place facilities, equipment or fixtures where any gas, electric, telephone, water, sewer or other utility facilities will interfere, or obstruct or hinder in any manner the various utilities serving the residents of the city of the use of any street or any other public right-of-way.~~
- (i) ~~A franchisee shall, at all times:
  - (1) ~~Install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the Florida Building Code and Electrical Safety Ordinances and any other applicable Building or Electrical Safety Code, and in such manner that the installations of the city shall not receive interference.~~
  - (2) ~~Keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures, lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the city, wherever situated or located.~~~~
- (j) ~~On streets where electrical or telephone utility wiring is located underground, either at the time of initial construction of a cable system or at any time thereafter, the cable of a franchisee shall also be located underground at the expense of the franchisee only if the utilities in the area are also required to relocate facilities underground at expense. Between a street and a residence of a subscriber, the cable of the franchisee must be located underground if both~~

~~electrical and telephone utility wiring are located underground. The city shall encourage, to the extent feasible, that the public utility and the franchisee cooperate in opening of trenches and making such trenches available to all parties with the understanding that the costs of opening and refilling of such trenches would be shared equally by all users of such trenches.~~

- ~~(k) In the event the use of any part of a cable system is discontinued for any reason for a continuous period of six months, or in the event such system or property has been installed in any street without complying with the requirements of this article or a franchise agreement, or the franchise has been terminated, canceled or expired, the franchisee, within 30 days after written notice by the city, shall commence removal from the streets of all such property as the city may require.~~
- ~~(l) The city may extend the time for the removal of equipment of the franchisee and facilities for a period not to exceed 180 days, and thereafter such equipment and facilities may be deemed abandoned.~~
- ~~(m) In the event of such removal or abandonment, the franchisee shall restore the area to as good a condition as prior to such removal or abandonment.~~
- ~~(n) In accordance with section 82-1 of the city Code, the city shall evaluate all trenching activities that might be necessary for the installation of underground facilities to protect tree roots. The city may require that a franchisee employ trenchless or other means such as directional bore or relocate its facilities so as to protect root systems of existing trees. No franchisee shall, without an appropriate permit from the city, disturb or remove any tree or vegetation in a street, park or other public property in the course of installation, construction or repair of its cable system.~~

~~Sec. 70-41 – Sec. 70-46. Reserved. Enforcement remedies.~~

~~Renewal shall be conducted in a manner consistent with section 626 of the Communications Act, 47 USC 546. To the extent such additional requirements are consistent with applicable law, the following requirements shall apply:~~

- ~~(1) Upon completion of the review and evaluation process set forth in section 626(a)(1)(2) of the Communications Act, 47 USC 546, should that process be invoked, the city shall notify the franchisee, by certified or registered mail that it may file a renewal application including a renewal proposal. The notice shall specify the information to be included in the renewal application and the deadline for filing the application, which shall be no earlier than 30 calendar days following the date of the notice.
  - ~~a. The application shall comply with the requirements of section 70-27 hereof and provide the specific information requested in the notice. If the franchisee does not submit a renewal application by the date specified in the notice by the city to the franchisee given pursuant to this subsection, the franchisee will be deemed not to be seeking renewal of its franchise.~~
  - ~~b. Upon receipt of the renewal application, the city shall publish notice of its receipt and make copies available to the public. The city, following prior public notice, may hold one or more public hearings on the renewal application.~~~~

- ~~(2) In the event a public hearing on the renewal application is held, or in the event that the city commission considers the renewal application without a public hearing, the city commission will either pass a resolution:~~
- ~~a. Agreeing to renew the franchise, subject to the negotiation of a franchise agreement satisfactory to the city and the franchisee; or~~
  - ~~b. That makes a preliminary assessment that the franchise should not be renewed.~~
- ~~(3) If a preliminary assessment is made that a franchise should not be renewed, at the request of the franchisee or on its own initiative, the city will commence a proceeding in accordance with section 626(e) of the Communications Act, 47 USC 546(e) to address the issues set forth in section 626(e)(1)(A)–(D) of the Communications Act, 47 USC 546(e)(1)(A)–(D). Any denial of a proposal for renewal that has been submitted in compliance with 47 USC 546(b) shall be based on one or more adverse findings made with respect to the factors described in 47 USC 546(e)(1)(A)–(D), pursuant to the record of proceedings under 47 USC 546(e). The city shall not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under 47 USC 546(e)(1)(A) or on events considered under 47 USC 546(e)(1)(B) unless the city has provided the franchisee with notice and opportunity to cure, or in any case in which it is documented that the city has waived its right to object, or the franchisee gives written notice of a failure or inability to cure and the city fails to object within a reasonable time after receipt of such notice.~~
- ~~(4) Any request to initiate a renewal process or proposal for renewal not submitted within the time period set forth in section 626(a) of the Communications Act, 47 USC 546(a), shall be deemed an informal proposal for renewal and shall be governed in accordance with section 626(h) of the Communications Act, 47 USC 546(h). The city may hold one or more public hearings or implement other procedures under which comments from the public on an informal proposal for renewal may be received. Following such public hearings or other procedures, the city commission shall determine whether the franchise should be renewed and the terms and conditions of any renewal.~~
- ~~(5) If the city commission grants a renewal application, the city and the franchisee shall agree on the terms of a franchise agreement, pursuant to the procedures specified in section 70-28 before such renewal becomes effective.~~
- ~~(6) If renewal of a franchise is lawfully denied, the city may acquire ownership of the cable system or effect a transfer of ownership of the system to another person upon approval of the city commission. Any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself. The city may not acquire ownership of the system while an appeal of a denial for renewal is pending in any court pursuant to 47 USC 546(e).~~
- ~~(7) If renewal of a franchise is lawfully denied and no appeal to a court is pending, and the city does not purchase the cable system or approve or effect a transfer of the cable system to another person, the city may require the former franchisee to remove its facilities and equipment at the former expense of the franchisee. If the former franchisee fails to do so within a reasonable period of time, the city may have the removal completed at the expense of the franchisee and/or surety.~~

~~Sec. 70-42.—Transfers.~~

- ~~(a) — No transfer of a franchise shall occur without prior approval of the city.~~
- ~~(b) — All applications for a transfer of a franchise shall be filed at least 120 calendar days prior to the effective date of the transfer, shall meet the requirements of section 70-27 hereof, and provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. Except in the case of a pro forma transfer, the application shall provide, at a minimum, the information required in subsections 70-27(e)(1) — (e)(5) and (e)(14) with respect to the proposed transferee. The information required in subsections 70-27(e)(6) — (e)(13) shall also be provided whenever the proposed transferee expects material changes to occur in those areas.~~
- ~~(c) — An application for approval of a pro forma transfer of a franchise shall be considered granted on the 61st calendar day following the filing of such application with the city unless, prior to that date, the city notifies the franchisee to the contrary. An application for approval of a pro forma transfer of a franchise shall clearly identify the application as such, describe the proposed transaction, and explain why the applicant believes the transfer is pro forma. Unless otherwise requested by the city within 30 calendar days of the filing of an application for a pro forma transfer, the applicant shall be required only to provide the information required in subsections 70-27(e)(1), (3) and (14) with respect to the proposed transferee.~~
- ~~(d) — In making a determination on whether to grant an application for a transfer of a franchise, the city commission shall consider the legal, financial, and technical and other qualifications of the transferee to operate the system; whether the incumbent cable operator is in substantial compliance with the material terms of its franchise agreement and this article and, if not, the proposed commitment of the transferee to cure such noncompliance; and whether operation by the transferee would adversely affect cable services to subscribers, or otherwise be contrary to the public interest.~~
- ~~(e) — No application for a transfer of a franchise shall be granted unless the transferee agrees in writing to abide by and accept all terms of this article and the franchise agreement, and all obligations and liabilities of the previous franchisee under this article and the franchise agreement will be assumed.~~
- ~~(f) — Approval by the city of a transfer of a franchise does not constitute a waiver or release of any of the rights of the city under this article or the franchise agreement, whether arising before or after the date of the transfer.~~
- ~~(g) — A brief summary of the proposed transferee's plans for at least the next five years regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of cable services, and any other changes affecting or enhancing the performance of the cable system.~~
- ~~(h) — The city may impose a processing fee to cover its actual out-of-pocket expenses in excess of the filing fee in considering an application for transfer of a franchise.~~

~~Sec. 70-43.—Revocation or termination of franchise.~~

- ~~(a) — A franchise may be revoked by the city commission for failure of the franchisee to construct, operate or maintain the cable system as required by this article or the franchise agreement, or for any other material violation of this article or material breach of the franchise agreement. To invoke the provisions of this subsection (a) of this section, the city shall give the franchisee written notice, by certified mail at the last known address, that franchisee is in material violation of this article or in material breach of the franchise agreement and describing the nature of the alleged violation or breach with specificity. If within 30 calendar days following receipt of such written notice from the city to the franchisee, the franchisee has not cured such violation or breach, or has not commenced corrective action and such corrective action is not being actively and expeditiously pursued, the city may give written notice to the franchisee of its intent to revoke the franchise, stating reasons.~~
- ~~(b) — Prior to revoking a franchise under subsection (a) of this section, the city commission shall hold a public hearing, upon 30 calendar days notice, at which time the franchisee and the public shall be given an opportunity to be heard. Following the public hearing the city commission may determine whether to revoke the franchise based on the evidence presented at the hearing, and other evidence of record. If the city commission determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the franchisee.~~
- ~~(c) — Notwithstanding subsections (a) and (b) of this section, any franchise may, at the option of the city following a public hearing before the city commission, be revoked 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that 120-day period such:~~
- ~~(1) — Assignment, receivership or trusteeship has been vacated; or~~
  - ~~(2) — Assignee, receiver or trustee has fully complied with the terms and conditions of this article and the franchise agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this article and the franchise agreement.~~
- ~~(d) — In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the city may revoke the franchise, following a public hearing before the city commission, by serving notice upon the franchise and the successful bidder at the sale, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate 30 calendar days after serving such notice, unless the:~~
- ~~(1) — City has approved the transfer of the franchise to the successful proposal; and~~
  - ~~(2) — Successful proposal has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise agreement and this article.~~
- ~~(e) — If the city revokes a franchise, or if for any other reason a franchisee abandons, terminates or fails to operate or maintain service to its subscribers for a period of six months, the following procedures and rights are effective:~~
- ~~(1) — The city may require the former franchisee to remove its facilities and equipment at the expense of the former franchisee. If the former franchisee fails to remove facilities and/or~~

equipment within a reasonable period of time, the city may have the removal done at the expense of the former franchisee and/or surety.

- (2) ~~The city, by resolution of the city commission, may acquire ownership, or effect a transfer, of the cable system at an equitable price.~~
- (3) ~~If a cable system is abandoned by a franchisee, the city may sell, assign or transfer all or part of the assets of the system.~~
- (f) ~~Where the city has issued a franchise specifically conditioned in the franchise agreement upon the completion of construction, system upgrade or other specific obligation by a specified date, failure of the franchisee to complete such construction or upgrade, will result in the automatic forfeiture of the franchise without further action by the city where it is so provided in the franchise agreement, unless the city, at its discretion and for good cause demonstrated by the franchisee, grants an extension of time.~~
- (g) ~~No franchisee will construct or activate a system upgrade in any community served by the same system prior to activating the upgrade for all subscribers within the city, without prior authorization from the city.~~
- (h) ~~Except as provided in subsection (f) of this section, no adverse action against a franchisee may be taken by the city pursuant to this section except after a noticed public hearing at which the franchisee is given an opportunity to participate.~~

~~Sec. 70-44.— Continuity of service mandatory.~~

- (a) ~~It is the right of all subscribers to receive all available services requested from the franchisee as long as all financial and other obligations to the franchisee are satisfied.~~
- (b) ~~In the event of a termination or transfer of a franchise for whatever reason, the franchisee shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. The franchisee shall cooperate with the city to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six months without the written consent of the franchisee. During such period the cable system shall be operated under such terms and conditions as the city and the franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and provide reasonable compensation to the cable operator.~~
- (c) ~~In the event a franchisee fails to operate the system for seven consecutive days without prior approval of the city or without just cause, the city may, at its option, operate the system or designate an operator until such time as the franchisee restores service under conditions acceptable to the city or until a permanent operator is selected. If the city is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the city for all costs or damages resulting from the failure of the franchisee to perform that are in excess of the revenues from the system received by the city. Additionally, the franchisee will cooperate with the city to allow city employees and/or city agents free access to the facilities and premises of the franchisee for purposes of the franchisee of continuing system operation.~~

~~Sec. 70-45.— Rates.~~

- (a) ~~Nothing in this article shall prohibit the city from regulating rates for cable services to the full extent permitted by law.~~
- (b) ~~Any rate or charge established for cable television service, equipment, repair and installation shall be reasonable to the public. Upon written request from the city or its agent, franchisee shall provide all requested data, records and documentation to show the reasonableness of the rates or to comply with FCC guidelines. Where such information is designated proprietary and confidential, it shall not be copied or removed or otherwise subject to public inspection, to the extent the city is permitted to protect such information from public inspection under applicable law.~~
- (c) ~~Subject to the regulation of rates by the city as permitted under applicable state and federal law, should a franchisee desire to change any rate or charge, it shall submit a written proposal for the amounts and effective date of such change to the city manager who shall evaluate the proposal in a manner consistent with Federal Communications Commission cable television rate regulation standards or other applicable law in effect at the time and report of this evaluation to the city commission. The report by the city manager shall be placed before the city commission at a duly noticed public hearing. The city will provide written notice of the public hearing to the franchisee no later than five days prior to the public hearing. The city may require the franchisee to notify each subscriber, by placing an announcement of not less than one quarter page in a newspaper of general circulation and/or via the cable system, of the proposed rate change and the date and time of the public hearing, with such notice commencing no later than 48 hours prior to time of the public hearing. At such hearing, the franchisee and members of the public will be given an opportunity to present respective views on the proposed rates. Upon conclusion of the public hearing, the city commission shall decide the matter by majority vote and adopt a resolution approving, disapproving, or modifying the proposed rate changes and providing such further relief as is appropriate and authorized by Federal Communications Commission rate regulation standards. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the determination of the city commission.~~

~~Sec. 70-46. Performance evaluation.~~

~~The city will conduct periodic performance evaluations of a franchisee as the city determines is necessary. A franchisee shall cooperate with these evaluations reasonably and in good faith. If the city implements a survey of cable subscribers in connection with a performance evaluation, the city may require a franchisee to distribute a city questionnaire to its subscribers at city expense. Upon request and upon reimbursement of city copying costs, the franchisee may receive copies of all responses.~~

~~Sec. 70-47. - Administration.~~

- (a) The city manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this article and franchise agreements. The city manager shall be empowered to take all administrative actions on behalf of the city, except for those actions specified in this article that are reserved to the city commission. The city manager may recommend that the commission take certain actions with respect to the franchise. The city manager shall keep the commission apprised

of developments in cable and provide the city commission with assistance, advice and recommendations as appropriate.

- (b) Subject to federal and state law, the city commission shall have the sole authority to regulate rates for cable services, grant franchises, authorize the entering into of franchise agreements, modify franchise agreements, renew or deny renewal of franchises, revoke franchises, and authorize the transfer of a franchise.

Sec. 70-48. - Force majeure.

- (a) In the event the performance of the franchisee or compliance with any of the provisions of this article or the franchise agreement is prevented by a cause or event not within the control of the franchisee or certificateholder, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that franchisee or certificateholder uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article and any franchise agreement granted or renewed hereunder, causes or events not within the control of the franchisee or certificateholder 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.
- (b) Causes or events within control of the franchisee or certificateholder, and thus not falling within this section, shall include, without limitation, the financial inability of the franchisee to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of directors, officers, employees, contractors or agents of the franchisee.

Sec. 70-49. - Applicability.

- (a) This article shall be applicable to all cable franchises granted or renewed after the effective date of the ordinance from which this article is derived, and shall apply to all cable franchises granted prior to the effective date of the ordinance from which this article is derived, and to all certificateholders to the full extent permitted by state and federal law.
- (b) Any cable franchisee whose franchise agreement predates the effective date of the ordinance from which this article is derived shall notify the city in writing within 30 calendar days of the passage of the ordinance from which this article is derived, or any subsequent amendment thereof, of:
  - (1) Any provision which it believes should not be applicable to it by reason of the pre-existing franchise agreement or the continuing applicability of the prior ordinance; and
  - (2) The reason for each such claim of nonapplicability.
- (c) Failure to notify the city as provided in subsection (b) of this section shall constitute a waiver of any right to object.
- (d) This article shall be construed in accordance with the laws of the state and is subject to applicable state and federal Law.

Sec. 70-50. - Municipal cable system ownership authorized.

- (a) To the full extent permitted by law, the city may acquire, construct, own, and/or operate a cable system.
- (b) Nothing in this article shall be construed to limit in any way the ability or authority of the city to acquire, construct, own, and/or operate a cable system to the full extent permitted by law.

Sec. 70-51. - Reservation of rights.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) Any additional regulations adopted by the city shall be incorporated into this article and complied with by all franchisees within 30 days of the date of adoption of such additional regulations unless imposition of such regulations would be otherwise prohibited by applicable law.
- (c) The city reserves the right to exercise the power of eminent domain to acquire the property of the cable system of the franchisee, consistent with applicable federal and state law. Notwithstanding anything to the contrary, this section shall not enlarge or restrict the exercise of eminent domain of the city except to the extent provided by applicable law.
- (d) The city shall at all times have the right, upon reasonable notice and during normal business hours, to examine records and to inspect the facilities of the franchisee to the extent needed to monitor the compliance of the franchisee with and performance under this article and the franchise agreement.

Secs. 70-52—70-75. - Reserved.

**SECTION 3.** 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>2</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.~~**

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

<sup>2</sup> Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

service provider after the effective date of this section. In regulating its public rights of way, the city shall be governed by and shall comply with all applicable federal, state and local laws and regulations.

**Sec. 70-78.—Definitions.**

For the purpose of this section, the following terms, phrases, words and derivations shall have the meanings given herein. When 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 herein or in any permit that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 USC 151 et seq., as amended (collectively the "Communications Act"), and, if not defined therein, as defined by Florida Statute; and, if not defined therein, be construed to mean the common and ordinary meaning.

*Abandon or abandonment* means the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be an "abandonment" of a facility in the public rights of way.

*Communications service* shall include, without limitation, 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 and through electronic, radio, satellite, cable optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term "communications service", as contemplated herein, does not include the provision of service via an open video system, cable provider or wireless provider which shall require separate authorizations from the city.

*Communications service provider* shall refer to any person making available or providing communications services, as defined herein, through the placement or maintenance of a communications facility in the public rights of way.

*Communications facilities, facilities or systems* means any facility, equipment or property, including, but not limited to, cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, located, to be located, used, or intended to be used, in the public rights of way of the city to transmit, convey, route, receive, distribute, provide or offer communications services.

*Law* means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirements, as amended, now in effect or subsequently enacted or issued including, but not limited to, the Communications Act of 1934, 47 USC 151 et seq. as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104—101(a), 110 Stat. 70, and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto.

~~Place or maintain or placement or maintenance or placing or maintaining means 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. 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 means the state public service commission.~~

~~Public rights of way means the surface, the airspace above the surface and the area below the surface of any public street, alley, viaduct, elevated roadway, bridge, public easement, or any other public 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. The term "public rights of way" shall not include any real or personal city property except as described above and shall not include city buildings, fixtures, or other structures or improvements, regardless of whether they are situated in the public rights of way.~~

~~Registrant or facility owner means a communications service provider or other person which seeks to use or occupy the public rights of way that has registered with the city in accordance with the provisions of this article.~~

~~Registration and register means the process described in section 70-79 whereby a communications service provider provides certain information to the city.~~

### **Sec. 70-79. -- Registration.**

~~(a) — Any person, entity or communications service provider that desires to place or maintain a communications facility in the city shall be required to first register with the city in accordance with the terms of this article.~~

~~(b) — Any person, entity or communications service provider desiring to use the public right-of-way shall file a registration with the city which shall include, as applicable, the following information:~~

~~(1) — Identity of the applicant and name, address and telephone number of applicant's primary contact person in connection with the registration;~~

~~(2) — A statement of whether the applicant presently serves any communications services customers at retail within the jurisdictional limits of the city at the time of registration or whether the applicant simply intends to lease its facilities to other telecommunication service providers who will be providing direct service to retail customers within the jurisdictional limits of the city. This information will allow the city to follow up, with the registrant, at the time the registrant begins to make physical use of the public rights of way, and allow the city to determine whether a linear mile charge is applicable in accordance with section 70-75(b);~~

~~(3) — Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article;~~

(4) — A copy of any applicable federal and/or state certification authorizing the applicant to provide communications services;

(5) — A security fund in accordance with this article.

(c) — The city will review the information submitted by the applicant. Such review will be by the city manager or his designee. If the applicant submits information in accordance with subsection (b) of this section, the registration shall be effective and the city shall notify the applicant of the effectiveness of registration in writing. If the city determines that the information has not been submitted in accordance with subsection (b) of this section, the city shall notify the applicant of the noneffectiveness of registration, and reasons for the noneffectiveness, in writing. The city shall so reply to an applicant within 45 days after receipt of registration information from the applicant. Upon notification of the noneffectiveness of the registration, nothing herein shall preclude the applicant from filing a subsequent application addressing the basis for the noneffectiveness. If the applicant disputes the determination of noneffectiveness for the particular application submitted, the applicant may file an appeal under subsection 70-83. Failure to comply with the appeals article for the particular application found to be noneffective shall be sufficient grounds for the city to reject that particular application in the future. A registrant may cancel a registration upon written notice to the city noticing that it will no longer maintain facilities in the public right of way and will no longer need to pull permits to perform work in public right of way. Within 30 days of any change in the information required to be submitted pursuant to subsection (b), registrant shall provide updated information to the city.

(d) — A registration shall not convey title, equitable or legal, in the public right of way. Registrants may only occupy public rights of way for communications facilities. Registration does not excuse a communications provider from obtaining appropriate access or pole attachment before locating its facilities on another person's facilities. Registration does not excuse a provider from complying with all applicable city ordinances, including this article.

(e) — Unless specifically prohibited by applicable law, each application for registration or transfer shall be accompanied by a nonrefundable application fee in the amount established in section 1-8. The fee amount shall approximate the city's costs and expenses incurred in connection with approving the registration or transfer. If the application fee is insufficient to cover all costs or expenses incurred by the city in connection with approval of the registration or transfer the applicant shall reimburse the city for any such costs and expenses in excess of the application fee.

(f) — Registration with the city shall be nonexclusive. Registration does not establish any priority for the use of the public right of way by a registrant or any other registrants. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted during the term of the registration.

(g) — A registrant shall renew its registration with the city by April 1 of even numbered years in accordance with the registration requirements in this article, 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, at the city's discretion, result in the city restricting the issuance of additional permits, and

~~any other remedies available to the city, until the communications services provider has complied with the registration requirements of this article.~~

**~~Sec. 70-80. -- Compensation.~~**

~~(a) — A registrant that places or maintains communications facilities in the public rights of way shall be required to pay compensation to the city as required by applicable law and ordinances of the city.~~

~~(b) — A registrant that places or maintains communications facilities in the public rights of way and who is not providing communications services as defined in F.S. § 203.011(1) within the jurisdictional limits of the city at the time the registrant begins to place or maintain communications facilities in the public right of way, as a condition for occupying or using the public rights of way shall pay to the city annually a fee as established in section 1-8. Such payment shall be made prior to the city issuing permits and annually thereafter. A registrant shall provide the city with information as to the linear miles of facilities.~~

~~(c) — Notwithstanding anything herein to the contrary, the city shall at all times hereby require the maximum compensation allowed under applicable law.~~

~~(d) — Except to the extent prohibited by applicable law:~~

~~(1) — The fee payments to be made pursuant to this article shall not be deemed to be in the nature of a tax;~~

~~(2) — Such fee payments shall be in addition to any and all taxes of a general applicability;~~

~~(3) — A registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said city taxes or other fees or charges of general applicability which registrant is required to pay to the city, except as required by law; and~~

~~(4) — The fee specified herein is the consideration for use of the public rights of way, including all public easements, for the purpose of placing and maintaining a communications facility.~~

**~~Sec. 70-81. -- Reports and records.~~**

~~(a) — The city may, at its option, upon 60 days' notice to the registrant, but in no event more often than once per year, examine the records and accounting files, and such other books and records, if such records relate to the calculation of fee payments. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions, and requirements of this article shall be during regular hours of business of the registrant at an office of the registrant located within the county, or at another location satisfactory to the city.~~

~~(b) — Upon reasonable request, a registrant shall provide the following documents to the city as received or filed:~~

~~(1) — Any pleadings, petitions, notices, and documents, regarding any legal proceeding involving any provisions of this article which are reasonably necessary for the city to protect its interests under this article.~~

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

~~(3) — Nothing in this article shall affect the remedies the registrant has available under applicable law.~~

~~(c) — In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.~~

~~(d) — The city shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.~~

**Sec. 70-82. — Underground installation; relocation.**

~~(a) — A registrant shall install its facilities underground. This provision shall have primacy unless expressly preempted by federal law, state law or applicable PSC rules and regulations.~~

~~(b) — Every registrant which places or maintains communications facilities underground shall maintain appropriate participation in the regional notification center for subsurface installations.~~

~~(c) — 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 convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon written notice to the registrant or its agent, be removed or relocated, within 30 days of such notice, by such registrant at its own expense in accordance F.S. § 337.403. The city manager may extend the time within which a registrant shall remove or relocate a communications facility, for good cause shown.~~

~~(d) — The registrant shall not in any way displace, damage, or destroy any facilities, including, but not limited to, gas, sewer, water main, pipe cable, conduit, fiber optic, or other pathway or any other facilities belonging to the city. The registrant shall be liable to the city for the costs of any repairs made necessary by any such displacement, damage or destruction, of facilities belonging to the city, and the registrant shall pay such costs upon demand. In the case of an emergency, the city may commence repairs without any prior notice to the registrant. The term emergency shall mean a condition that may affect the public's health, safety or welfare. In the event of an emergency the city may cause the repairs to be made at the facility's owner expense, utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 14 calendar days after the submission of the bill by the city to the registrant. After 30 days, the city may obtain reimbursement from the security fund. In all other nonemergency circumstances, the registrant shall be given prior written notice. If such repairs are not performed in a reasonable and satisfactory manner within the 14 calendar days after receiving notice, the city may, cause the repairs to be made at the facility's owner expense, utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the city to the registrant. Again, after 30 days, the city may obtain reimbursement from the security fund.~~

~~(e) — Subject to F.S. § 337.403, 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 change the same at its own expense to conform to the directive within the time stated in the notice, the city may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. § 337.403(1)(a) — (e), shall be paid out of any money available therefor, and such expense shall be charged against the owner of the communications facility and levied, collected and paid to the city.~~

~~(f) — Subject to F.S. § 337.404, whenever it shall be necessary for the city to remove or relocate any communications facility, the owner of the communications facility, or the owner's chief~~

agent, shall be given written notice of such removal or relocation and requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than 20 nor more than 30 days in which to file an appeal with the city commission to contest the reasonableness of the order. Upon receipt of a written appeal, the city commission shall place the matter on the commission's agenda for consideration within 45 working days. Should the owner or the owner's representative not appear, the determination of the cost to the owner shall be final, in accordance with F.S. § 337.404.

(g) — A final order of the city imposed pursuant to Florida Statutes, and applicable provisions of the city Code, if any, shall constitute a lien on any property of the owner and may be enforced as provided therein.

(h) — If the city manager declares an emergency and requests the removal or abatement of facilities, by written notice, a registrant shall remove or abate the registrant's facilities by the deadline provided by the city manager. A registrant and the city shall cooperate to the extent possible to assure continuity of service. If a registrant, after notice, fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the registrant, without paying compensation to the registrant and without the city incurring liability for damages.

(i) — Upon abandonment of a facility within the public rights of way of the city, the owner of the facility shall notify the city within 90 days. The facility owner shall remove all or any portion of the facility, unless the city determines that such nonremoval will be in the best interest of the public health, safety and welfare. In the event that the city does not direct the removal of the abandoned facility by the owner of the facility, then such owner, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

(j) — 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 facilities shall be paid by the person requesting same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days' advance notice to arrange for such temporary relocation.

### **Sec. 70-83. — Use of rights-of-way.**

(a) — A facility owner agrees at all times to comply with and abide by all applicable provisions of the state statutes and local laws including, but not limited to, applicable zoning regulations not inconsistent with state and federal laws.

(b) — Except in the case of an emergency, no communications service provider shall construct any facility on, over, above, along, upon, under, across, or within any public right of way which disrupts the public rights of way without first filing an application with and obtaining a permit from the city therefor, pursuant to applicable permitting requirements of the city, and other applicable city Code requirements, except as otherwise provided in this article. The term "emergency" means a condition that affects the public's health, safety or welfare, which includes unplanned out of service condition of a pre-existing service. Registrant shall still be required to provide prior notice to the city in the event of an emergency. For the purposes of the notice requirements herein, the city shall provide the registrant with a city contact. The city may waive the permit requirement in nonemergency cases where there will be no disruption of the public rights of way. When work is performed on an emergency basis, the registrant must still apply for a permit by the following business day in accordance with public works department

~~permitting guidelines. In all instances, the registrant shall restore all damaged property and indemnify the city from any and all damages caused by the registrant's emergency work. The city may waive the permit requirement in cases where there will be no disruption of the public rights of way.~~

~~(e) — As part of any permit application, with respect to new or existing facilities, where applicable, in the public rights of way, the registrant shall furnish to the director of public works and the city manager a proposal for construction of the communications facility that sets forth at least the following:~~

~~(1) — An engineering plan signed and sealed by a state registered professional engineer or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003 identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in, on, over, or above the public rights of way, and the linear mileage of such facilities for the purpose of determining compensation to be paid to the city.~~

~~(2) — Maps showing the routing of new construction that involves an alteration to the surface or subsurface of the public right of way. A registrant may not begin construction until the plans and drawings have been approved in writing by the director of public works and a permit is issued.~~

~~(3) — A description of the manner in which the facility will be installed (i.e. anticipated construction methods and/or techniques).~~

~~(4) — The time required to place the facility.~~

~~(5) — A maintenance of traffic plan for any disruption of the public rights of way.~~

~~(6) — Information on the ability of the public rights of way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other users of the public rights of way).~~

~~(7) — If appropriate, given the facility proposed, an estimate of the cost of restoration to the public rights of way.~~

~~(8) — And, such plan shall include the timetable for construction for each phase of the project, and the areas of the city which will be affected.~~

~~(9) — The city may request such additional information as it finds reasonably necessary to review an application for a permit to perform work in the public rights of way.~~

~~(d) — The city shall have the power to prohibit or limit the placement of new or additional facilities within the public rights of way, if there is insufficient space to accommodate all of the requests to occupy or use the rights of way, for the protection of existing facilities in the public rights of way, or for city plans for public improvements or development projects which have been determined by the city to be in the public interest.~~

~~(1) — In case of conflict or interference between the facilities of different registrants, the registrant whose facilities were first permitted shall have priority over a competing registrant's use of the public rights of way.~~

~~(2) — There may be from time to time within the city various easements and streets which the city does not have the unqualified right to authorize registrant to use; therefore, the city does not warrant or represent as to any particular easement, rights of way, or portion of a right of way or easement, that it has the right to authorize the registrant to install or maintain portions of its facilities therein, and in each case the burden and responsibility for making such determination in advance of the installation shall be upon the registrant. The city shall not be required to assume any responsibility for the securing of any rights of way, easements or other rights which may be required by the registrant for the installations of its facilities, nor shall the city be responsible for securing any permits or agreements with other persons or utilities.~~

~~(3) — Nothing in this article shall affect the city's authority to add, vacate, or abandon public rights of way, and the city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights of way for communications facilities.~~

~~(4) — Upon request of the city, a registrant may be required to coordinate the placement or maintenance of facilities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights of way, and registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights of way.~~

~~(e) — All facilities shall be installed, located and maintained so as not to unreasonably interfere with the use of the public rights of way by the public and to cause unreasonable interference with the rights and convenience of property owners who adjoin any of the public rights of way. The registrant shall be liable for costs and expenses for the displacement, damage or destruction of any irrigation system or landscaping within the public rights of way. The registrant shall make such repairs upon request of the affected property owner. In the event the registrant fails to make the appropriate repairs, to restore such property to as good a condition as existed prior to commencement of work, the affected property owner may file a complaint with the city manager or his designee. In this instance, the registrant shall be given prior written notice of the necessary repairs by the city manager or his designee. If such repairs are not performed in a reasonable and satisfactory manner within the 30 calendar days after receiving notice, the city may cause the repairs to be made at the facility's owner expense, utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the city to the registrant. After 30 days, the city may obtain reimbursement from the security fund. The "prior written notice" described in this subsection shall be considered a final written decision for purposes of the appellate rights outlined in subsection (p) of this section.~~

~~(f) — The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights of way as well as joint trenching and/or the collocation of facilities in existing conduit is strongly encouraged, and should be employed wherever possible. The director of public works may waive the requirement of trenchless technology if the director determines that field conditions warrant the waiver.~~

~~(g) — The city manager may issue such additional rules and regulations concerning the placement or maintenance of a communications facility in the public rights of way, as may be consistent with applicable law and not inconsistent with this article.~~

~~(h) — All safety practices required by applicable law or accepted industry practices and standards shall be used during construction, maintenance, and repair of the communications facilities. Registrant's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares or other devices as are required by the Manual on Uniform Traffic Control Devices (FDOT) and/or any requirements of the public works department to protect all members of the public having occasion to use the portion of the streets involved or adjacent property.~~

~~(i) — In the event that at any time during the term of the rights granted herein the city shall lawfully elect to alter, or change the grade of, any public rights of way, upon reasonable notice by the city, the registrant shall make any necessary removals, relaying and relocations of its communications facilities at its own expense, in accordance with applicable law. The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications or other types of facilities, cables or conduits, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in the public rights of way occupied by the registrant.~~

~~(j) — A registrant shall obtain any and all required permits and pay any and all required fees before commencing any construction on or otherwise disturbing any public rights of way as a result of its construction.~~

~~(1) — The registrant shall, at its own expense, restore such property to as good a condition as existed prior to commencement of work. A registrant shall guarantee its restoration in accordance with current public works standards. If such restoration is not performed in a reasonable and satisfactory manner within 30 calendar days after the completion of construction, the city may, after prior written notice to registrant, cause the repairs to be made at the facility's owner expense, utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the city to the registrant.~~

~~(2) — A permit from the city constitutes authorization to undertake only certain activities on public rights of way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights of way.~~

~~(k) — All ongoing installation, construction and maintenance of a communications facility located in the public rights of way shall be subject to the city's periodic inspection for compliance with this article, or any applicable provisions of the city code.~~

~~(l) — The city makes no warranties or representations regarding the fitness, suitability or availability of the city's public rights of way for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk.~~

~~(m) — The registrant shall, at no cost to the city, produce and provide a complete set of as-built plans including, but not limited to, horizontal and typical vertical profiles, within 60 days after construction of any portion of the system to the city manager, with copies to the public works department. A registrant shall also cooperate with the city by providing in a timely and complete manner any additional information requested under this subsection. Upon completion of any installation or construction of new facilities in public right of way and at no cost to the city, the~~

~~registrant shall provide such additional information, as may be requested, showing the exact location of its facilities and structures, including but not limited to, maps, geographical information systems, plats, construction documents, drawings and any other information the city may find reasonably necessary. Such plans shall be provided in digitized format showing the two dimensional location of the facilities based on the city's geographical database data, or other format acceptable to the city manager. All information required by this article shall be maintained in accordance with the public record laws of the state.~~

~~(n) — Suspension or denial of permits. Subject to subsection (p) of this section, the city manager or his designee may suspend an existing permit or deny an application for a permit for work in the public rights of way for one or more of the following reasons:~~

~~(1) — Violation of permit conditions, including conditions set forth in this article or other applicable provisions of the city code or regulations governing use of public rights of way; or~~

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

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

~~(4) — Failure to relocate or remove facilities as may be lawfully required by the city; or~~

~~(5) — Failure of registrant, its employees, agents or subcontractors, in connection with the subject permit, to place barricades or signs around the work area, take reasonable safety precautions to alert the public of work at the work site, or repair, replace and restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature. In the event of such failure, the city may perform the work utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the city to registrant.~~

~~Upon payment to the city for the violations that gave rise to a suspension or denial of permit, the suspension or denial shall be lifted.~~

~~(o) — Immediately after the suspension or denial of permit pursuant to this article, the city shall provide written notice of the violation, which notice shall contain a description of the violation. A final written decision of the city manager suspending a permit or denying an application is subject to appeal. Upon correction of any violation that gave rise to a suspension or denial of permit, the suspension or denial shall be lifted.~~

~~(p) — All decisions of the city manager may be appealed to the city commission within 30 days, by filing a written notice of appeal with the city clerk 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 to be established by administrative order of the city manager. 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. Within the time prescribed by the appropriate Florida Rules of Appeal Late Procedure, a party aggrieved by a decision of the city commission may appeal an adverse decision to the circuit court in and for the county or applicable federal or district court. The party making the appeal shall be required to pay to the city clerk a fee to be established by administrative order of the city manager, to defray the costs of preparing the record on appeal. Said fee shall be effective upon approval by the commission.~~

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

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

~~(s) — The involuntary termination of a registration may only be accomplished by an action of the city commission. The city may declare the registration terminated and revoke and cancel all privileges granted under that registration if a federal or state authority suspends, denies, or revokes a registrant's certification to provide communications service, the registrant is adjudicated bankrupt by a United States District Court or through any legal proceeding of any kind, or that a receiver is appointed to take possession of the assets of the registrant, the registrant abandons all of its facilities. Prior to such termination by the city resulting from a violation of any of the provisions of this subsection, the registrant shall be notified by the city manager with a written notice setting forth all matters pertinent to such violation, and describing the action of the city with respect thereto. The registrant shall have 60 days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the city commission, to accomplish the same. In the event of an emergency, the city may take appropriate action in accordance with section 70-82(d). In the event of a vote by the city commission to terminate, the registrant shall, within a reasonable time following such termination, remove or abandon the facilities and take such steps as are necessary to render every portion of the facilities remaining within the public right of way of the city safe. If the registrant has either abandoned its facilities or chooses to abandon its facilities, the city may either require the registrant's bonding company to remove some or all of the facilities from the public right of way and restore the public right of way to its proper condition or the city may require that some or all of the facilities be removed and the public right of way restored to its proper condition at the registrant's expense, utilizing city employees, agents or contractors, and charge any and all costs, and require reimbursement. The obligations of the registrant and the bonding company hereunder shall survive, for a period of 24 months from, the termination of the registration. In the event of a termination of registration, this provision does not permit the city to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification with the applicable governing federal and/or state agencies and is properly registered with the city, for such certificated service.~~

**~~Sec. 70-84. Compliance with other laws; police power.~~**

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

**~~Sec. 70-85. Transfer of control; sale or assignment.~~**

~~(a) — If the registrant transfers or assigns its registration incident to a sale or other transfer of the registrant's assets, the transferee or assignee shall be obligated to comply with the terms of this article. Written notice of any transfer, sale or assignment shall be provided to the city within 20 days of the effective date of the transfer, sale or assignment. In order for the transfer of registration to be effective, the transferee or assignee must comply with the registration requirements under section 70-79.~~

~~(b) — Notwithstanding anything in this article, pledges in trust or mortgages or other hypothecations of the assets of the registrant to secure the construction, operation or repair of its communications facilities may be made to any person without notice to the city. Any mortgage, pledge, lease or other encumbrance of the communications facilities shall be subject and subordinate to the rights of the city by virtue of this article or other applicable law.~~

**~~Sec. 70-86. Insurance; indemnification.~~**

~~(a) — The registrant shall provide, pay for and maintain, throughout the term of its registration, and with companies 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 and having a financial rating in Best's Insurance Guide of AX or better. The insurance coverage obtained by the registrant shall be approved by the risk management division. All liability policies shall provide that the city is an additional insured as to the operations under the registration and shall provide the severability of interest provision. The required coverage must be evidenced by properly executed certificates of insurance. The certificates must be manually signed by the authorized representative of the insurance company. Thirty days' advance written notice must be given to the city of any cancellation or intent not to renew or reduction in the policy coverage, which notice shall be sent by registered or certified mail to the city manager. Companies issuing the insurance policies shall have no recourse against the city for payment of any premiums or assessments, and the same shall be the sole responsibility of the registrant.~~

~~(b) — The limits of coverage of insurance required shall be not less than the following:~~

~~(1) — Worker's compensation within statutory limits and employers liability insurance with limits of not less than \$500,000.00 This coverage must be evidenced by a certificate of insurance that requires at least 30 days' advance written notice of cancellation, nonrenewal or material change to the city manager.~~

~~(2) — Commercial general liability insurance including premises/operations; independent contractors; contractual liability; products/completed operations; XCU coverage; and personal injury coverage for limits of no less than \$1,000,000.00 per occurrence combined single limit and \$2,000,000.00 in the aggregate. The coverage must be evidenced by a certificate of insurance that names the city as an additional insured and provides the city manager with at least 30 days' advance written notice of cancellation, nonrenewal or material change.~~

~~(3) — Commercial automobile liability coverage for all owned, nonowned and hired vehicles for limits of no less than \$1,000,000.00 per occurrence combined single limit. This coverage must be evidenced by a certificate of insurance that names the city as an additional insured, and provides the city manager with at least 30 days' advance written notice of cancellation, nonrenewal or material change.~~

~~(4) — Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability. This coverage must be evidenced by a certificate of insurance that names the city as an additional insured and provides the city manager with at least 30 days' written notice of cancellation renewal or material change.~~

~~(e) — The city may, at its option, allow a registrant to be self-insured for one or more lines of insurance coverage. In such instances, the company shall demonstrate to the administration and risk management division of the city that it has adequate financial resources to defend and cover claims in the amounts and categories as required by the administration and risk management division of the city.~~

~~(d) — Upon the effective date of a registration, the registrant shall submit to the city proof that it has obtained the insurance required under this article, including a certificate of insurance signed by the insurance agent.~~

~~(e) — The city shall have the authority to increase or decrease the policy limits set forth above upon 60 days' written notice to the registrant. Within 60 days from receipt of a notice to increase its policy limits, the registrant shall submit to the city proof of such increased coverage. The city shall not increase the policy limits required of the registrant unless it increases the requirements for every other registrant operating in the city pursuant to this article. The city may decrease the required policy limits for the registrant whether or not policy limits have been decreased for other registrant.~~

~~(f) — The registrant shall file and maintain proof of insurance with the risk management division. An insurance certificate obtained in compliance with this article is subject to city approval, and in addition to all other requirements under this article, the insurance certificate must contain the following provisions provide that:~~

~~(1) — Notice of claims shall be provided to the city manager by certified mail; and~~

~~(2) — The terms of this article which impose obligations on the registrant concerning liability, duty and standard of care, including the indemnity section, are included in the policy and that the risks are insured within the policy terms and conditions.~~

~~The city may require the certificate to be changed to reflect changing liability limits. A registrant shall immediately advise the city of actual or potential litigation that may develop that would affect insurance coverage herein.~~

~~(g) — An insurer has no right of recovery against the city. The required insurance policies shall protect the registrant and the city. The registrant's insurance shall be primary coverage for losses covered by the policies.~~

~~(h) — The policy clause "other insurance" shall not apply to the city where the city is an insured under the policy.~~

~~(i) — The registrant shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the city for payment of a premium or assessment. Insurance policies obtained by a registrant must provide that the issuing company waive all right of recovery by way of subrogation against the city in connection with damage covered by the city.~~

~~(j) — The registrant shall provide proof to the city of compliance with this article no later than 60 days from the date of registration. Failure to provide the city with proof of insurance within the prescribed time period will render the registration null and void without further action by the city.~~

~~(k) — Indemnification shall be conducted pursuant to the following:~~

~~(1) — The registrant shall, at its sole cost and expense, indemnify, hold and defend the city and its officers, directors, agents, servants, employees, successors, and assigns harmless from and against any and all claims suits, actions, damages and causes of action for personal injury, death or property damage, any other losses, damages, charges of death or property damage, any other losses, damages, charges or expenses, including attorneys' fees, witness fees, court costs and any orders, judgments or decrees which may be entered which rise out of, in connection with or attributable to, registrant construction, maintenance, occupation, placement, repair, relocation, removal or operation by the registrant of any portion of the communications system or business excepting only those claims resulting from the gross negligence of the city. The registrant shall undertake at its own expense, the defense of any action which may be brought against the city for damages, injunctive relief or for any other cause of action arising or alleged to have arisen out of, in connection with or attributable to, the foregoing and, in the event any final judgment therein should be rendered against the city resulting from the foregoing, the registrant shall promptly pay the final judgment together with all costs relating thereto; the registrant being allowed, however, an appeal or appeals to the appropriate court or courts from the judgment rendered in any such suit or action upon the filing of such superseded bond as shall be required to prevent levy or judgment against the city during such appeal or appeals.~~

~~(2) — Nothing in this article shall prohibit the city from participating in the defense of any litigation by its own counsel and obtaining indemnification of the reasonable costs associated therewith upon a court order awarding such costs.~~

~~(3) — The city manager shall give prompt written notice to a registrant of any claim for which the city seeks indemnification. The registrant shall have the right to investigate, defend and compromise these claims subject to prior city approval. Failure of the city to provide written notice shall not waive the requirement of subsection (k)(1) of this section.~~

~~(4) — Nothing contained in this provision shall be construed or interpreted as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28.~~

**~~Sec. 70-87. — Construction bond.~~**

~~(a) — Except in the case of an emergency, as described in section 70-83(b), prior to performing any work in the public rights-of-way, a registrant shall establish in the city's favor a construction bond in an amount specified in an engineering permit or other authorization as necessary to~~

~~ensure the registrant's faithful performance of the construction in the public rights of way, in accordance with applicable sections of the city Code. The amount of the construction bond shall be as set forth in the engineering permit, and may be modified in the city manager's reasonable discretion, based on the cost of the restoration to take place in the public rights of way, and any previous history of the registrant concerning restoration within the public rights of way of the city. The city, in its discretion, may request a certified estimate of the cost of restoration by a state registered professional civil engineer or certified by a person who is exempt from such requirements as provided in F.S. § 471.003.~~

~~(b) — In the event a registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, 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 attorneys' fees, up to the full amount of the bond.~~

~~(c) — 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 bond for any subsequent work performed in the public right of way.~~

~~(d) — The construction bond shall be issued by a surety 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 shall provide that:~~

~~"This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew".~~

~~(e) — The rights reserved by the city with respect to any construction bond established pursuant to this article are in addition to all other rights and remedies the city may have under this article, or at law or equity.~~

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

**Sec. 70-88. — Security fund.**

~~At the time of registration, the registrant shall file with the city, for city approval, a cash security, a bond, or irrevocable letter of credit, in the sum of \$50,000.00, in a form acceptable to the city manager or his designee. For purposes of the bond and irrevocable letter of credit, the registrant must have as a surety a company qualified to do business in the state. The cash security, bond, or irrevocable letter of credit, shall be to secure the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this article, and to pay any taxes, fees or liens owed to the city. The bond or irrevocable letter of credit shall be furnished annually, or as frequently as necessary, and shall provide a continuing guarantee of the registrant's full and faithful performance at all times. Should the city draw upon the cash security, bond, or irrevocable letter of credit, the city shall promptly notify the registrant, and the registrant shall within 30 calendar days restore the cash security, annual bond, or irrevocable letter of credit, to full required amount. In the event a registrant fails to perform its~~

~~duties and obligations imposed upon the registrant by the provisions of this article, subject to section 70-90, 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 or indemnification, plus a reasonable allowance for attorneys' fees, up to the full amount of the fund. The cash security, bond or letter of credit may be waived by the city where the city determines in its sole discretion that the security fund is not necessary to secure the required performance under this article. The city may from time to time increase the amount of the security fund to reflect the increased risks to the city and to the public.~~

**~~Sec. 70-89. – Enforcement remedies.~~**

~~(a) — In addition to any other remedies available at law or equity or provided in this article, the city may apply any one or a combination of the following remedies in the event a registrant violates this article, or applicable local law or order related to use of the public rights of way. It shall be unlawful to violate any provision of this article. Each day a violation of this article occurs constitutes a separate and distinct offense:~~

~~(1) — Failure to comply with the provisions of this article or other law applicable to users and/or occupants of the public rights of way, may result in imposition of penalties to be paid by the registrant to the city in an amount established in section 1-7.~~

~~(2) — A registrant's failure to obtain a permit before commencing work, except in cases of an emergency, may result in imposition of penalties to be paid to the city in an amount established in section 1-7.~~

~~(3) — In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.~~

~~(b) — Before imposing a fine pursuant to this article, 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 registrant shall have a reasonable period of time to either:~~

~~(1) — Cure the violation and the city shall make good faith reasonable efforts to assist in resolving the violation; or~~

~~(2) — File an appeal in accordance with section 70-83(p).~~

~~If the violation is not cured within that reasonable period of time provided, and no appeal is filed, the city may collect all fines owed, beginning with the first day of the violation, either by removing such amount from the security fund or through any other means allowed by law.~~

~~(c) — In determining which remedy or remedies are appropriate, the city 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 in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.~~

~~(d) — Failure of the city to enforce any requirements of this article shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.~~

~~(e) — In any proceeding before the city commission wherein there exists an issue with respect to a registrant's performance of its obligations pursuant to this article, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with~~

~~the terms of the article. The city commission may find a registrant that does not demonstrate compliance with the terms and conditions of this article in default and apply any one or combination of the remedies otherwise authorized by this article.~~

~~(f) — The city manager or his designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law.~~

~~(g) — Nothing in this article shall affect the remedies the registrant has available under applicable law.~~

**Sec. 70-90. — Force majeure.**

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

**Sec. 70-91. — Reservation of rights.**

~~(a) — The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.~~

~~(b) — This article shall be applicable to all communications facilities permitted to be placed in the public rights of way, on or after June 21, 2001, and shall apply to all existing communications facilities in the public rights of way prior to the effective date of this article, to the full extent permitted by state and federal law. Providers with existing lines and cables have 120 days from the effective date of this article to comply with the terms of this article, or be in violation thereof.~~

~~(c) — The city reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this article. Registrant agrees to advise city of any such suits.~~

**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, 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 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. 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 in the public rights-of-way. 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 or to wireless facilities owned by a person, including the City or electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis by said person.

(2) This Ordinance implements *inter alia*, the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), Florida Statutes ("Wireless Act"). 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 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 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.. 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.

- (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.

**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 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 or 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, National Electrical Code, National Electrical Safety Code, 2010

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 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. The term also includes 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 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 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.

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

***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 structures within the public rights-of-way.

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

**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.** Any 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.

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

***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 to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

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

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

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

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

**Sec. 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 with the City in accordance with this Ordinance before being eligible to receive a permit. Subject to the terms and conditions prescribed in this

Ordinance and approval of a permit, 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 maintain 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 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 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 registrant is a communications facility provider, wireless infrastructure provider, or pass-through provider, 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 of the registrant's 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, the FCC, or other federal authority. A copy of federal or state certification authorizing the registrant to provide communications services, if any;

- (7) 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.
- (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) 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 the registration applicant. If the registration applicant submits information in accordance with this subsection the City shall notify the applicant of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with this subsection, the City shall notify the registration applicant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The City shall endeavor to notify an 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 filing subsequent applications for registration under the provisions of this Ordinance.

(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 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 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 April 1 of even-numbered years 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 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 registrant 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 of a registration as required herein, or prior to applying for a permit.
- (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, 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 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) 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. A copy of updated maps depicting the locations and descriptions of all of the registrant's facilities in the public rights-of-way by longitude and latitude. Such maps shall be provided in a digitized format in compliance with the City's GIS standards, at the registrant's expense. As an alternative, every registrant shall 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) 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) 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.

(12) 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.

(13) 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.

- (14) 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) 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) 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) 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.

**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. 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.

(1) A registrant that is in compliance with this Ordinance shall be allowed to perform emergency maintenance within the public rights-of-way 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 emergency maintenance in the public rights-of-way 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 to allow the police

department to notify the City public works director or his/her designee. Within fifteen (15) 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.

- (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, 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.
- (3) A registrant shall be allowed to perform routine maintenance within the public rights-of-way 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, a permit shall be required.
- (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.
- (5) A registrant shall be allowed to 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.
- (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 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 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 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 a particular micro wireless facility's dimensions shall apply to all identical micro wireless facilities. 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 for inclusion in the City's GIS database.

- (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, 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.
- (8) If any placement or maintenance by a registrant that does not require a permit 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.
- (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.

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

- (a) Pre-submittal meeting. 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-submittal meeting. 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 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 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(c) 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.

- (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 American Land Title Association (ALTA) survey or other survey that may be specified in the City's application form submitted by a licensed engineer or 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 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 utilities, and other above-grade structures and utilities located above grade within a 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-grade structures and utilities located within a 500-foot radius of the proposed facility and below-grade structures and facilities within a fifty (50) foot radius, 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 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 in 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, 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 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 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, 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.
- (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.
- (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.
- (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 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 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 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 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. 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 Small Wireless Facilities and Utility Poles for Collocation of Small Wireless Facilities. The following procedures and time periods shall apply 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 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.

(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, 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 a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:
  - (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
  - (5) Fails to comply with applicable codes including but not limited to this Ordinance.
  
- (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 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. 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 on the ground that such standard is not reasonably compatible with the particular location or imposes an excessive expense, the request for a waiver shall include the following information:

(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;

(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 a request for a waiver within forty-five (45) days after receiving the request 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.

(ix) 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) The City shall review and process applications for backhaul facilities, fiber, cable, conduit, and communications facilities, other than small wireless facilities and utility poles for collocation of small wireless facilities, consistent with applicable law and 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 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 for a permit or Registration;
    - (4) The failure to maintain the required performance 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 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 for a new permit to a registrant or registrant's contractor that has materially violated any provisions of a permit 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.
- (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 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 deducted from the registrant's permanent performance bond in the City's discretion.
- (e) The City may cause an immediate stop work order where the construction poses a serious threat to the health, safety, or welfare

of the public or property until such time as such serious threat has been abated.

(4) Appeals.

(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 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 and grant or deny it within thirty (30) days. 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 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 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 applicant, and a written decision shall be rendered within twenty (20) days of the hearing.

(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. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the City

Commission 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.

**Sec. 70-82 Performance construction 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.
  
- (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 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.

**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. 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.
- (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 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.

- (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 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., directional 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.

- (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-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.
- (k) A registrant shall immediately notify the City of any damage to 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 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 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 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' written notice setting forth the violation and requesting correction.

- (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 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.
- (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.

**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 a permit to locate a communications facility in public rights-of-way that would impact an historic landmark or historic landmark district, the applicant shall either simultaneously or prior to filing the application 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 for a permit. The 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 filed pursuant to this Ordinance if the required Certificate of Appropriateness is denied. 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, prior to the placement of such facility in the public rights-of-way that would impact an historic landmark or historic district.

- (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 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 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. A registrant shall apply for such approval or Special Certificate of Appropriateness, as applicable, concurrently with or prior to submitting an application for a permit. The 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 for a permit if the registrant does not obtain the approval or a Special Certificate of 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.

- (e) Registrants are encouraged to consult with the City's Historical Resources Department prior to applying 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 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 Historical Resources Department or Historic Preservation Board shall be denied by the city manager if the 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.

**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 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, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the City.
  - (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 remain the property of the City .
- (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 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. 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. 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.

- (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.
  - (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.
  - (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, 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 manner that would interfere with, 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.

- (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 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.
- (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.
- 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.
- c) New proposed wireline fiber or coaxial backhaul facilities for small wireless facilities shall be installed 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.
- (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, 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 in-line with the common, interior side lot lines or within the virtual side 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 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.
- 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
- c) Small wireless facilities, utility poles for collocation of small wireless 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.

(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).

(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 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 finish, base and pole design, diameter, material and height as the original pole being replaced, unless the City requires a different design, color or composition to be consistent with applicable City standards for new utility poles, as they may be amended.
- (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 design to other utility poles 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, 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, 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,
  - 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, including but not limited to this Ordinance.

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

- (a) 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 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.
- (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.

- (c) 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 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.
  - (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 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.

(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 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 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.
- (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.
- (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 4.** 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 5.** 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 6.** All ordinances or parts of ordinances inconsistent or in conflict herewith are hereby repealed to the extent of any conflict. The Zoning In Progress adopted by Resolution 2017-205, and extended by Resolution 2018-128, is hereby repealed upon the effective date of this Ordinance.

**SECTION 7.** 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