

**ORDINANCE NO. 18-221**

**AN ORDINANCE OF THE TOWN OF MIAMI LAKES, AMENDING THE TOWN'S CODE OF ORDINANCES AT CHAPTER 35, ARTICLE II, COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; RELATING TO THE PLACEMENT OF UTILITIES OTHER THAN COMMUNICATION FACILITIES LOCATED WITHIN THE RIGHTS-OF-WAY, BOTH ABOVE AND BELOW GROUND; CREATING ARTICLE III, PROVIDING FOR REGULATIONS RELATING TO THE PLACEMENT OF COMMUNICATION FACILITIES, WIRELESS FACILITIES, PASS-THROUGH FACILITIES, AND OTHER SIMILAR FACILITIES, WITHIN THE TOWN'S RIGHTS-OF-WAY, BOTH ABOVE AND BELOW GROUND; PROVIDING FOR INCLUSION INTO THE CODE; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the provision of communications services and other utilities to residents of and visitors to the Town of Miami Lakes (the "Town") is both an important amenity and a necessity of public and private life in the Town; and

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

**WHEREAS**, Section 337.401 of Florida Statutes states that since both Federal and State Law require the nondiscriminatory treatment to providers of all communications services it is the intent of the State Legislature that municipalities treat providers of communication services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the Town's rights-of-way; and

**WHEREAS**, rules and regulations imposed by a municipality relating to communication service providers that desire to place or maintain communications facilities in the Town's rights-of-way must be generally nondiscriminatory and competitively neutral and, notwithstanding any other law, may not require providers of communications services to apply for or enter into an individual license, franchise, or other agreement with the Town as a condition of placing or maintaining communications facilities in the Town's rights-of-way; and

**WHEREAS**, Section 337.401(3)(g) of Florida Statutes provides that a municipality 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 the 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**, the Florida legislature, during their 2017 legislative session, adopted Florida Statutes 337.401(7), titled the "Advanced Wireless Communications Act," which detail a municipality's regulatory authority to regulate wireless facilities within its rights-of-ways; and

**WHEREAS**, it is the Town's intent to exercise its authority over communication service providers, communication facility providers and pass-through providers' placement and maintenance of facilities in its rights-of-way; and

**WHEREAS**, it is also the Town's intent to treat each such provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority; which authority is limited to only those matters necessary to manage the its rights-of-way; and

**WHEREAS**, the Town's rights-of-way are essential for the travel of persons and the transport of goods throughout the Town; and are a unique and physically limited resource requiring proper management by the Town in order to maximize efficiency, minimize costs to Town 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**, it is the further intent of the Town to exercise its authority to adopt reasonable rules and regulations to the fullest extent allowed by Federal and State law; and

**WHEREAS**, the Town has reviewed its ordinances and has received input from representatives of the communications service industry, and as a result of the foregoing has concluded that Town's Code of Ordinances must be updated and amended in order to conform with Federal and State laws and rules, regarding the placement and maintenance of new, existing, and expanded communications facilities in the Town's rights-of-way; and

**WHEREAS**, adoption of the following ordinance is necessary to satisfy the above objectives; and

**WHEREAS**, the Town Council believes it is in the best interest of the Town to adopt this ordinance amending Chapter 35, Article II and Creating Chapter 35, Article III for inclusion the Town's Code of Ordinances.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA AS FOLLOWS:**

**Section 1. Recitals.** Each of the above stated recitals are true and correct and are incorporated herein by this reference.

**Section 2. Findings.** After considering Staff's report, both submitted in writing and presented orally and the public comment, the Town Council finds that the proposed amendment is consistent with the Town of Miami Lakes Comprehensive Plan Code.

**Section 3. Approval.** The Town Council hereby adopts the amendment as provided at Exhibit "A," and as incorporated herein.

**Section 4. Repeal of Conflicting Provisions.** All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

**Section 5. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6. Inclusion in the Town Code.** It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall be included in the Town Code.

**Section 7. Effective date.** This Ordinance shall become effective immediately upon adoption.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**FIRST READING**

The foregoing ordinance was offered by Councilmember Mestre who moved its adoption on first reading. The motion was seconded by Councilmember Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	yes
Vice Mayor Frank Mingo	yes
Councilmember Luis Collazo	yes
Councilmember Tim Daubert	absent
Councilmember Ceasar Mestre	yes
Councilmember Nelson Rodriguez	yes
Councilmember Marilyn Ruano	yes

Passed on first reading this 16<sup>th</sup> day of January 2018.

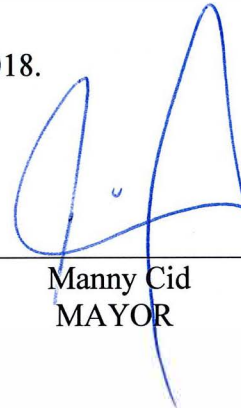
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**SECOND READING**

The foregoing ordinance was offered by Councilmember Daubert who moved its adoption on second reading. The motion was seconded by Councilmember Collazo and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	yes
Vice Mayor Frank Mingo	yes
Councilmember Luis Collazo	yes
Councilmember Tim Daubert	yes
Councilmember Ceasar Mestre	yes
Councilmember Nelson Rodriguez	absent
Councilmember Marilyn Ruano	yes

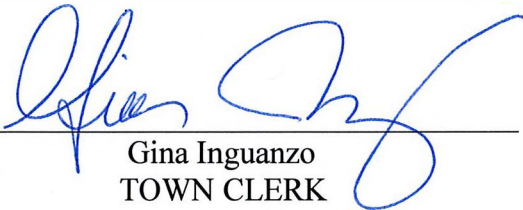
Passed and adopted on second reading this 6<sup>th</sup> day of February 2018.



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Manny Cid  
MAYOR

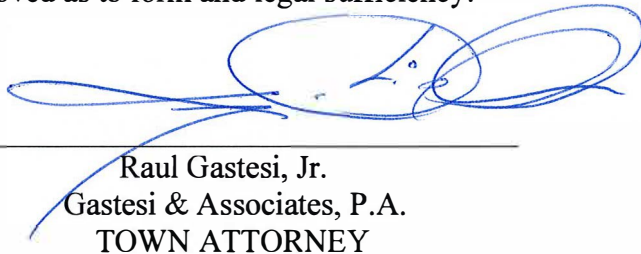
Attest:



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Gina Inguanzo  
TOWN CLERK

Approved as to form and legal sufficiency:



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Raul Gastesi, Jr.  
Gastesi & Associates, P.A.  
TOWN ATTORNEY

EXHIBIT A  
PROPOSED ORDINANCE

ARTICLE II. – ~~COMMUNICATIONS~~ UTILITY FACILITIES IN PUBLIC RIGHTS-OF-WAY

DIVISION 1. Generally.

Sec. 35-25 Intent and Purpose.

It is the intent of the Town of Miami Lakes to promote the public health, safety and general welfare by: providing regulations governing the placement or maintenance of utilities, other than Communications Facilities, in the Town’s Public Rights-of-way; adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, as each may be amended from time to time, and other Federal and State law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of utilities, in the Town’s Public Rights-of- way by all utility providers; minimizing disruption to the Town’s Public Rights-of-way; establishing reasonable rules and regulations necessary to manage the placement or maintenance of utilities; and minimizing disruption to the Town’s Public Rights-of-way. In regulating its Public Rights-of-way, the Town shall be governed by and shall comply with all applicable Federal and State Laws.

To the extent that the provisions of Article II do not conflict with Federal and State law, and any applicable franchise agreement, Utilities seeking to place or maintain Utilities, in the Town’s Public Rights-of-way shall comply with the provisions of this Article. Persons seeking to place or maintain Utilities on private real- property or other real- property to which the Town, Miami-Dade County, the School District of Miami-Dade County, the South Florida Water Management District, the State of Florida or the Federal Government own a fee simple or leasehold interest in real property, located within the municipal boundaries of the Town shall comply with the provisions of the Chapter 13, Land Development Code (LDC), to the extent it applies.

35-265. - Definitions.

For purposes of this ~~Article~~ article the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words not otherwise defined in this section 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 USC 151 et seq., as amended (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, shall be construed to mean the common and ordinary meaning.

Abandonment, or Abandoned means 90 or more consecutive days with the absence of any active user of a Facility. An Abandoned utility shall be removed or cured as required by this Article. This term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the utility. The term shall also exclude the temporary cessation of the provision of Facility where the Utility intends to re-establish the provision of Facility’s services in the future. The temporary cessation with intent to re-activate must be documented to the satisfaction of the Town Public Works Director. ~~means the permanent cessation of all uses of a communications facility, provided that this term shall not include cessation of all use of a communication 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 communications facility in the public rights-of-way.~~

Applicable Codes means uniform building, fire electrical, plumbing, or mechanical codes adopted a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes ordinances adopted to implement this Article. The term includes objective design standards provided in this Article that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards provided in this Article that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived upon a showing that the design standards are not reasonably combative for the particular location of the small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request.

Communications Facility or Communications System means any permanent or temporary plant, equipment and property, including, but not limited to, cables, wires, conduits, ducts, fiber optics, poles, Antennas, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the Town and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer Communication Services. Pursuant to F.S. § 337.401(6)(c), Communication Facility for purposes of this article shall not include communications facilities owned, operated or used by electric utilities or regional transmission organizations exclusively for internal communications purposes.

~~Communications Services~~ means 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, regardless of the protocol used for such transmission or conveyance. For the purpose of this article, cable service, as defined in F.S. § 202.11(2), is not included in this definition and cable service providers or providers of service via an open video system may be subject to other ordinances of the Town and shall require separate authorization from the Town.

~~Communications Services Provider~~ means any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way.

Emergency means situations of a serious nature, developing suddenly and unexpectedly, and demanding immediate action that will affect public safety, disruption of utility service, or damage to the Rights-of-Way, and conditions that affects the public's health, safety or welfare.

Facility or Facilities means any tangible thing located in any Public Rights-of-way used to deliver the services of a Utility.

~~FCC~~ means the Federal Communications Commission.

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

In Public Rights-of-Way or In the Public Rights-of-Way means over, above, in, on or under the Public Rights-of-way within the Town over which the Town has jurisdiction, control and authority to regulate. The term also includes those Rights-of-way over which the County or State has

jurisdiction and authority under the Florida Transportation Code, Chapter 334, Florida Statutes, as same may be amended from time to time, but where the County or State or both have delegated to the Town the authority to regulate the registration, permitting, placement, installation and maintenance of Facilities in accordance with Chapter 35 of the Town Code of Ordinances. ~~means in, on, over, under or across the public rights-of-way.~~

LDC. means the, Chapter 13 of the Town of Miami Lakes Code of Ordinances, titled “Land Development Code.

Occupant means electric, gas (natural, manufactured or similar gaseous substance), water or sewer utility, or other similar type of entity that places or maintains facilities of whatever type in the Town's Public Roads or Public Rights-of-Way.

Permit means 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 Town Right-of-Way engineering and construction permits issued by the Town Public Works Director.

Person means 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 Town to the extent permitted by applicable law.

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~~ Utility that owns or exercises physical control over ~~communications facilities~~ 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~~ Facilities through which such service is provided.

Public Rights-of-Way means a public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path or alley or any other property for which the Town has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the Town holds a property interest therein. Public Rights-of-Way shall not include:

- (1) Private property;
- (2) Any real or personal Town property except as described above; or
- (3) Town 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 means a ~~communications-services-provider~~ Utility or other person that has registered with the Town in accordance with the provisions of this article.

Registration and Register means the process described in this article whereby a Utility Communication-Services-Provider, provides certain information to the Town by which it is determined whether the Person will be authorized to obtain Permits to Place or Maintain Facilities within the Town's Public Rights-of-Way.

Town means the Town of Miami Lakes, Florida, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated or enlarged form.

User means electric, gas (natural, manufactured or similar gaseous substance), water or sewer utility, ~~cable television~~ or other similar type of entity that places or maintains facilities of whatever type in the Town's Public Roads or Public Rights-of-Way.

Utility means any Person or entity that is an electric, gas, water, steam waste, disposal, or similar service consumed by the public, and who owns or operates appurtenant facilities or equipment that are situated with the Public Rights-of-way for transmission of such Utility's goods, commodities or services.

Utility Pole means a pole or similar structure that is used in whole or in part to provide 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.

Utility Service or Services shall mean those services that are provided by a Utility other than those classified as a communication facility or service.

~~35-26. Intent and purpose.~~

~~(a) It is the intent of the Town and the purpose of this article to promote the public health, safety and general welfare by:~~

~~(1) Providing for the placement and maintenance of communications facilities in the public rights of way within the Town;~~

~~(2) Adopting and administering reasonable rules and regulations consistent with State and Federal law, including F.S. § 337.401 and the Town's home rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other Federal and State law;~~

~~(3) 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 the ordinance from which this article is derived; and~~

~~(4) Minimizing disruption to the public rights of way.~~

~~In regulating its public rights of way, the Town shall be governed by and shall comply with all applicable Federal and State laws.~~

~~(b) It is the intent of the Town that this article will not preempt the Town's authority to require a franchise from users and/or occupants, other than communications service providers, of the Town's public roads and/or public rights of way. It is the intent of the Town to require users and/or occupants, other than communications service providers, of the Town's public rights of way to obtain a separate franchise before placing or maintaining facilities in the Town's public rights of way.~~

## DIVISION 2. Registration.

~~35-27. - Registration for placing or maintaining utilities-communications facilities in public rights-of-way.~~

~~(a) Registration. A Utility, ~~Communications~~-Service provider that desires to place or maintain a ~~communications facility~~ Facility in public rights-of-way in the Town shall first register with the Town in accordance with this Division ~~article~~. Subject to the terms and conditions prescribed in this Division ~~article~~, a registrant may place or maintain a Facility,~~

~~Communications Facility~~ in public rights-of-way. A ~~Utility Communications Services Provider~~ with an existing ~~facility~~ Facility in the public rights-of-way of the Town as of the effective date of the ordinance from which this ~~Division article~~ is derived has 120 days from the effective date of the ordinance from which this Division article is derived to comply with the terms of this Division article, including, but not limited to, registration, or shall be in violation thereof.

- (b) No property right arises from Registration. A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this article governs only the placement or maintenance of Facility, in Public Rights-of-Way. Registration does not excuse a ~~Utility, Communications or advanced wireless infrastructure services provider~~ from obtaining appropriate access or pole attachment agreements before locating its ~~facilities~~ Facilities on the Town's or another person's ~~facilities~~ Facilities. Registration does not excuse a ~~communications services provider~~ Utility from complying with all applicable law, including Town ordinances, codes or regulations, including this article.
- (c) Registration is non-exclusive. Registration does not in and of itself establish a right to Place or Maintain, or establish priority for the Placement or Maintenance of a Facility, in the Town's Public Rights-of-way, but shall establish for the Registrant a right to apply for a Permit, if permitting is required by the Town. Registrations are expressly subject to any further amendment to or replacement of this Article and further subject to any additional Town ordinances or regulations, as well as any State or federal laws that may be enacted.
- (de) Content of Registration. Each ~~Utility, Communications services provider~~ that desires to place or maintain a ~~Communications Facility~~ Facility in Public Rights-of-Way in the Town shall, file an original registration along with two complete copies with the Town that shall include the following information:
- (1) Name of the applicant;
  - (2) Name, address, telephone number, e-mail address and mobile phone number of the applicant's primary contact person in connection with the registration. Additionally, the applicant shall provide emergency contact information. The primary contact person shall be able to provide information regarding the registrant's ~~Utility, Communications facilities~~ in the public rights-of-way, and shall be able to accept and coordinate any damage claims. The registrant shall also provide a secondary contact person enabling the Town to contact appropriate registrant's personnel in emergency situations, including, but not limited to, when registrant's construction or equipment has caused damage to other property. The registrant shall also provide the Town with a current telephone number for the secondary contact person which shall be available and monitored 24 hours per day, every day, by the registrant, to be utilized by the Town in case of an emergency. Such information shall be updated as necessary by the registrant to provide the Town with current and accurate information;
  - (3) Evidence of the insurance coverage required under this article and acknowledgment that the registrant has received and reviewed a copy of this article;
  - (4) A copy of Federal or State certification authorizing the applicant to provide Utility, Communications services, if any;
  - (5) If the applicant is a corporation and does not submit a State certification pursuant to Subsection (c)(4) of this section, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or other means; and
  - (6) A security fund in accordance with this article.

- (e) Review and reporting. The Town Manager or designee shall review the information submitted by the Applicant. If the Applicant submits information in accordance with Subsection (de) of this section, the Registration shall be effective and the Town shall notify the applicant of the effectiveness of Registration in writing. The Applicant may not apply for a permit to place or maintain ~~Utility, Communications facilities~~ Facilities in the Public Rights-of-Way under this article unless and until it has been notified that its application is complete and effective. If the Town determines that the information has not been submitted in accordance with Subsection (c) of this section, the Town shall notify the applicant in writing of the noneffectiveness of registration and reasons for the noneffectiveness. ~~The Town shall so notify an Applicant within 30 days after receipt of registration information from the Applicant.~~
- (fe) Cancellation. A registrant may cancel a registration upon written notice to the Town that the registrant will no longer place or maintain any Facility ~~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 a Facility ~~Communication Facility~~ in public rights-of-way.
- (f) ~~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 Town. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional Town ordinances, as well as any State or Federal laws that may be enacted.~~
- (fg) Annual Renewal. A registrant shall ~~renew~~ update its registration with the Town by April 1 of ~~each even-numbered~~ each 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.~~ Within 30 days of any change in the information required to be submitted pursuant to Subsection of this section, a registrant shall provide updated information to the Town. 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 Town's discretion, result in the Town restricting the issuance of additional permits until the ~~communications services provider~~ Utility has complied with the registration requirements of this article.
- (h) Permit Required. ~~In accordance with applicable Town ordinances, codes or regulations and this article, a permit shall be required of a Communications services provider that desires to place or maintain a Communications Facility in Public Rights-of-Way. An effective registration shall be a condition precedent of obtaining a Permit.~~
- (hi) Compensation. ~~Except as may be provided for in a separate franchise agreement, a A Registrant that places or maintains a Communications Facilities Facility in the public rights-of-way shall be required to pay compensation to the Town as required by applicable law and ordinances of the Town. A Registrant that places or maintains a Facility Communications Facilities in the public rights-of-way, other than a Registrant that provides communications services as defined in F.S. § 202.012(3), within the Town, shall pay to the Town the fees required by Florida Law and the Town's ordinances and resolutions. Such registrants shall pay such amounts initially before obtaining permits and then annually thereafter in accordance with the Town's requirements.~~

- (i) Failure to Register: A Registrant shall bear the responsibility to maintain his registration updated with the Town at all times. A Registrant's failure to Register, or renew Registration may result in Civil Penalties.

Sec. 35-28. Insurance.

- (a) General. A Registrant shall provide, pay for and maintain satisfactory to the Town the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having an A.M. Best A-VII or better rating. All liability policies shall provide that the Town is an additional insured as to the activities under this Article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the Town annually. Thirty (30) days advance written notice by registered, certified or regular mail or facsimile as determined by the Town must be given to the Town's Risk Manager of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the Town.
- (b) Insurance Coverage and Limits of Insurance Coverage. The insurance coverage and limits of coverage of insurance required shall be not less than the following:
- (1) Worker's compensation and employer's liability insurance. Requirements as spelled out in Florida Chapter 440.
  - (2) Comprehensive general liability. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits of no less than one million dollars (\$1,000,000) per occurrence, combined single limit and two million dollars (\$2,000,000) in the aggregate.
  - (3) Commercial Automobile liability. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this Article XII for limits of no less than one million dollars (\$1,000,000) per occurrence combined single limit each accident.
  - (4) Commercial excess or umbrella liability. Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.
- (c) Proof of Insurance. Upon the effective date of the Registration, the Registrant shall submit to the Town proof that it has obtained the insurance required under this Section 35-35, including a certificate of insurance signed by the insurance agent.
- (d) Authority to decrease limits. The Town shall have the authority to increase or decrease the policy limits set forth above and shall provide each Registrant with at least thirty (30) days advance written notice of such change. Within thirty (30) days from receipt of a notice to increase its policy limits, the Registrant shall submit to the Town proof of such increased coverage.
- (e) Duration. The coverage provided herein shall be for a period not less than the period for which the indemnification obligations under Town Code Section 35-29 hereof are imposed.
- (f) Abandonment. Failure to maintain required coverage shall be deemed an Abandonment. Failure to maintain all the required insurance coverage shall be deemed an Abandonment of all of the Facilities of the Registrant.

35-29. Indemnification.

- (a) Liability. By reason of the acceptance of a Registration under this Article or the grant of a Permit under this Article, the Town does not assume any liability:
- (1) For injuries to persons, damage to property, or loss of service claims by parties other than the Registrant or the Town;
  - (2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Registrants or activities of Registrants.
- (b) Hold harmless. By registering with the Town, a Registrant agrees, or by applying for and accepting a Permit under this Article, a Permittee is required, to defend, indemnify, and hold the Town whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Facilities, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit, inspection of plans or work by the Town. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Registrant or to the Town; and the Registrant, in defending any action on behalf of the Town, shall be entitled to assert in any action every defense or immunity that the Town could assert in its own behalf. Nothing herein shall be construed as a waiver of the protections, limitations and immunities provided in Section 768.28, Florida Statutes, as same may be amended from time to time. The provisions of this Section 35-36 include, but are not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding(s).
- (c) Notification of issues. The Town agrees to notify the Registrant, in writing, within a reasonable time of the Town receiving notice, of any issue it determines may require indemnification.
- (d) Limitations. This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the registrant under workers' compensation, disability or other employee benefit acts, or the acceptance of insurance certificates required under this article, or the terms, applicability or limitations of any insurance held by the Registrant.
- (e) Investigation by registrant. The Registrant shall investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and shall bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the Town, the Registrant shall assume and defend not only itself but also the Town in connection with any such claims and any such defenses shall be at no cost or expense whatsoever to the Town provided that the Town (exercisable by the Town Attorney), shall retain the right to select counsel of its own choosing.
- (f) Waiver rights. The Town does not and shall not waive any rights against the Registrant which it may have by reason of this indemnification, or because of the acceptance by, or the Registrant's deposit with the Town of any of the insurance policies required by this Article for Registration.
- (g) Damages. This indemnification by the Registrant shall apply to all damages and claims for damages of any kind suffered regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- (h) Defense and immunity. Nothing contained in this Section shall be construed or interpreted:
- (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or
  - (2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes as same may be amended from time to time.

- (i) Term. The indemnification requirements under this Section and this Article shall survive and be in full force and effect for a period of five (5) years after the termination or cancellation of a Registration.

35-30. - Force majeure. In the event a registrant's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result; provided, however, that such owner uses all practicable means to expeditiously cure or correct any such inability to comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of a registrant's directors, officers, employees, contractors or agents.

35-31. - Termination of registration.

(a) Involuntary Termination. The involuntary termination of a previously effective registration may only be accomplished by an action of the Town Manager and such action may be appealed to the Town Council. The Town may declare the registration terminated and revoke and cancel all privileges granted under that registration if:

- (1) A Federal or Florida authority suspends, denies or revokes a registrant's certification or license to provide communications service;
- (2) The Registrant's placement and maintenance of the Public Rights-of-Way or other roads or property within the Town presents an extraordinary danger to the general public or other users of the public rights-of-way; or
- (3) The registrant voluntarily abandons all of its communications facilities in Public Rights-of-Way.

(b) Notification. Prior to such termination for any of the reasons set forth in this section, the Town Manager or his designee shall notify the registrant in writing, setting forth the matters pertinent to such reasons and describing the proposed action of the Town with respect thereto. The registrant shall have 60 days after receipt of such notice within which to cure the violation.

(c) In the event of a vote by the Town Council to terminate the registration, the registrant shall, within 30 days following such termination, provide an acceptable plan for transferring ownership of the Facilities to another Person in accordance with this Article or shall remove or abandon the Facilities and take such steps as are necessary to render every portion of the Facilities remaining in the public rights-of-way safe. If the registrant has either abandoned its Facilities or chooses to abandon its Facilities, the Town may:

- (1) Require the registrant or the registrant's bonding company to remove some or all of the Facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal;
- (2) Require that some or all of the Facilities be removed, and the public rights-of-way restored to their original condition at the registrant's expense, using Town employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement; or
- (3) Utilize or allow other persons to utilize the registrant's abandoned Facilities.



(d) *Survival of obligations.* The obligations of the registrant hereunder shall survive the termination of a registration. In the event of a declaration of termination of registration, this provision does not permit the Town to cause the removal of any Facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing Federal or State agency, where required, and is properly registered with the Town, for such certificated service, where required.

35-32. - Transfer of control, sale, or assignment of assets.

(a) *Transfer of 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 article. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided herein within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the Town that the transferee, buyer or assignee is the new applicant.

(b) *Subordination.* Any mortgage, pledge, lease or other encumbrance on the Facilities shall be subject and subordinate to the rights of the Town under this Article and Applicable Law.

35-33. - Conditional use of public rights-of-way.

(a) *Authorization required.* In the event a registrant desires to use its existing Facilities or to construct new Facilities for the purpose of providing other utility or nonutility services to existing or potential consumers or resellers, for providing any other services other than the provision of Utility Services or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the Town for such activities as may be required by applicable law.

(b) *Towns rights.* 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 to maintain Facilities in the public rights-of-way of the Town, such person or registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the Town's rights, including requiring the removal of such Facilities from the public rights-of-way of the Town, regardless of the effect on a registrant's ability to place or maintain its own Facilities in public rights-of-way of the Town.

35-34 *Security fund.* A Security Fund shall be required to be kept on file with the Town in the form of an annual bond, letter of credit or cash deposit in the minimum amount of \$50,000.00, which shall be established in the Town's favor to secure the restoration of the public rights-of-way and to ensure the faithful performance of the construction or other work in the public rights-of-way or required repairs caused by damages to the rights-of-way or the removal of any abandoned Facility. The form of the bond or other guarantee and the terms thereto shall be approved by the Town Attorney.

~~35-28. — Requirement for franchise for other users or occupants of the public rights-of-way.~~

- (a) ~~Franchise or other agreement required.~~ Other users and/or occupants of the Town's public roads and/or public rights-of-way other than communications service providers shall be required to obtain a franchise or other agreement from the Town prior to performing construction or placing facilities in the Town's public rights-of-way, or obtaining a permit from the Town to perform construction or to place facilities in the Town's public rights-of-way or other roads or property within the Town. The terms set out in this article, to be included in such franchises or agreements, are minimum standards and shall not be construed as prohibiting the Town from including any and all other terms, conditions and/or other requirements the Town so desires in any franchise or agreement. Such users and/or occupants shall enter into a franchise agreement or other agreement approved by the Town Council.
- (b) ~~Franchise application.~~ Any user and/or occupant other than a communications service provider, including governmental units, desiring to place or maintain facilities in the Town's public rights-of-way shall file an application with the Town requesting that the Town enter into a franchise agreement with said user and/or occupant. The application shall include, at a minimum, the following information:
- (1) Identity of the user and/or occupant, address and telephone number and primary contact person; and
  - (2) A statement of whether the applicant presently serves any customers at retail within the jurisdictional limits of the Town at the time of the application or whether the applicant simply intends to lease its facilities to other users and/or occupants who will be providing direct service to retail customers within the jurisdictional limits of the Town.
- (c) ~~Application fee.~~ Each application requesting the Town to enter into a franchise agreement shall be accompanied by an initial nonrefundable application fee in the amount established by resolution. The fee amount shall approximate the Town's costs and expenses incurred in connection with processing the application. All reasonable expenses incurred by the Town in processing the application, including, but not limited to, consulting and legal costs, shall be offset from the filing fee.
- (d) ~~Cost recovery.~~ If the Town's expenses, as referenced in Subsection (c) of this section, exceed the amount of the application fee, the applicant shall pay the difference within 30 days of the date it receives notice of such additional expenses. If the additional fees are not received by the Town within 30 days of the date of notice, the Town shall notify such applicant, and the applicant shall pay an additional late fee at the rate of 18 percent per annum of the amount unpaid or underpaid; provided, however, that such rate does not exceed the maximum amount allowed under the applicable law. In such case, the rate will be the maximum allowed by law. If the Town does not receive said fee in total within 60 days of the date of notice, the Town shall notify the applicant in writing and may, in the Town's sole discretion, refuse in good faith to execute the franchise agreement, or may terminate in good faith the franchise agreement without any penalty and/or liability.
- (e) ~~Construction bond.~~ All franchise agreements between the Town and any user and/or occupant shall contain a provision for a construction bond in an amount to be determined by the Town Manager, which shall be established in the Town's favor to secure the restoration of the public rights-of-way and to ensure the faithful performance of the construction or other work in the public rights-of-way. The form of the bond and the terms thereto shall be approved by the Town Attorney.
- (f) ~~Security fund.~~ All franchise agreements between the Town and any user and/or occupant shall contain a provision for a security fund, which shall be required to be kept on file with the Town

~~in the form of an annual bond, letter of credit or cash deposit in the minimum amount of \$50,000.00. The form of the bond or other guarantee and the terms thereto shall be approved by the Town Attorney.~~

DIVISION 3. Permitting and Placement of Facilities in the Public Rights-of-Way.

35-3529. - Placement or maintenance of Utilities facilities in public rights-of-way, in general.

(a) Compliance. Registrants and users and/or occupants agree at all times to comply with and abide by all applicable provisions of Federal and State law and Town ordinances, codes and regulations in placing or maintaining Facilities in public rights-of-way.

(b) Permit Required. A Registrant shall not commence to place or, maintain a Facility in a Town Public Right-of-way until all applicable Permits, if required, have been issued, except in the case of routine maintenance or an emergency as provided for in this Article. In such cases deemed an emergency situation by the Utility owner, the Registrant shall apply for Permits within 15 days of the incident or repair, whichever comes sooner. No person shall commence to place or to maintain communications facilities or other facilities or to perform construction in the public rights-of-way or other roads or property within the Town until the Town or other appropriate authority has issued all applicable permits, except in the case of an emergency. The term "emergency" means a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a preexisting service. Registrants and users and/or occupants shall provide prompt notice to the Town of the placement or maintenance of a ~~facility~~ Facility in public rights-of-way in the event of an emergency. The Registrant acknowledges that as a condition of granting a permit(s), the Town may impose reasonable conditions governing the Placement or Maintenance of a Facility in the Town's Public rights-of-way related to the public, health, safety and welfare as permitted and set forth in Section 337.401 of Florida Statutes as same may be amended from time to time; however, no such imposed conditions shall prohibit or otherwise adversely impact the provision of Utility Services. Permits shall apply only to the areas of the Town's Public Rights-of-way specifically identified in the Permit. As a condition of granting such permits, the Town may impose reasonable rules or regulations governing the placement or maintenance of facilities in public rights-of-way or other roads or property within the Town. Permits shall apply only to the areas of public rights-of-way or other roads or property within the Town specifically identified in the permit. The Town 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. All applicants for Facility work within the Rights-of-Way shall pay applicable building and/or public works permit fees as provided by Town Ordinance or as may be required by State Law.

(c) Required information. As part of any permit application to place a new or to replace an existing ~~communications facility or other facility~~ Facility in public rights-of-way or other roads or property within the Town, the applicant shall provide information concerning the ~~communications facility or other facility~~ Facility that sets forth the following, as required by the Town Manager:

(1) An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in Section 471.003 of Florida Statutes, identifying the location of the proposed facility, and including:

- a. A description of any facility to be installed;
  - b. The facility's ~~length~~ dimensions in feet;
  - c. Site plan indicating where ~~Where~~ the facility is to be located; ~~and~~
  - d. Ability to demonstrate compliance with the Florida Building Code, for wind load requirements unless otherwise exempted by Florida Statutes; and
  - e. For new Utilities, or any excavation work, a geotechnical report for the existing soil conditions, or a soil statement by a Florida licensed professional engineer, attesting to the soil conditions.
- (2) ~~A description of the manner in which the communications facility or other facility will be installed, i.e., anticipated construction methods and/or techniques;~~
- (3) ~~A traffic maintenance plan for any disruption of the public rights-of-way or other roads or property within the Town;~~
- (42) Plans and information, Information as required by this Article, on the ability of the public rights-of-way to accommodate the proposed Facility ~~communications facility or other facility, if available; such information shall be provided without certification as to correctness, to the extent obtained from other persons with communications facilities or other facilities in the public rights-of-way;~~
- (53) If appropriate, given the Facility ~~communications facility or other facility~~ proposed, an estimate of the cost of restoration to the public rights-of-way;
- (64) The timetable for construction of the project or each phase thereof, and the areas of the Town which will be affected;
- (7) ~~The use of door hangers to notify residents living within a 300-foot radius of the project; and~~
- 8
- (5) A description of the type of Facility and the manner in which the Facility will be installed and/or modified (i.e. anticipated construction methods or techniques).
- (6) A temporary sidewalk closure plan, if appropriate given the Facility proposed, to accommodate Placement or Maintenance of the Facility.
- (7) A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate given the Facility proposed, to accommodate installation and/or modification of the Facility.
- (8) A proposed timetable for Placement or Maintenance of the proposed Facility or each phase of the Placement or Maintenance thereof, and the intended areas of the Town to be served by the Facility.
- (9) Registrants shall not place or maintain signage on Facilities in Town Public Rights-of-way, unless otherwise required by federal or State law; however, that Existing Structures that lawfully supported signage before being Repurposed may continue to support signage as otherwise permitted by law or Town Code, as same may be amended from time to time.
- (10) Such additional information requested by the Town that the Town finds reasonably necessary to review the permit application to ensure continued level of service delivery of its Rights-of-Way.
- (d) Public accessibility, safety, and sufficiency of spacing. To the extent that such regulations do not interfere with the ability of a Utility to deliver and provide service to its customers, ~~The~~ Town shall have the power to prohibit or to limit the placement of new or existing telecommunication facilities or other facilities in that area of the public rights-of-way, or to

~~safely accommodate additional installations at any location, or for the protection of existing communication facilities or other facilities public rights-of-way or to accommodate Town plans for public improvements or projects that the Town determines are in the public's interest or to the extent permitted by applicable law.~~ afforded by Florida Law to regulate Facilities to ensure that they meet Town requirements for public accessibility, safety and sufficiency of spacing, to ensure compliance with State of Florida and local laws and ordinances. In determining whether to permit and reasonably limit, or impose conditions or prohibit a Facility to be placed or located within the Town's Public Rights-of-way, the Town Public Works Director shall consider the following standards and minimum requirements in his review and consideration of a Permit application and imposition of reasonable Permit conditions:

- (1) Sufficiency of space to accommodate present and pending applications for use of the Town's Public Rights-of-way. The sufficiency of space to accommodate all of the present and pending applications to place Facilities and pending or planned applications to Place and Maintain Facilities in that area of the Town's Public Rights-of-way; and
  - (2) Sufficiency of space to accommodate the Town's need for projected public improvements. The sufficiency of space to accommodate Town plans for public improvements or projects adopted as part of its community investment capital improvements plan that the Town determines in the best interest of the public; and
  - (3) Impact on traffic and traffic safety. The impact on traffic and traffic safety; and
  - (4) Impact on Existing Facilities. The impact upon existing Facilities in the Town's Public Rights-of-way; and
  - (5) Distance separation from edge of pavement. No new Facility shall be constructed, operated or maintained in the Town's Public Rights-of-way in violation of the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, (Commonly known as the "Florida Green Book" and for the Minimum Width of Clear Zones. In accordance with The Florida Green Book, the Town Public Works Director shall have the authority to reduce the minimum offset where that offset cannot be reasonably obtained, and other alternatives are deemed impractical; and
  - (6) Distance separation from sidewalk. No newly installed Facility shall be Placed or Maintained in the Town's Public Rights-of-way within one (1) foot of a sidewalk that is five (5) feet or less in width. Co-location on an Existing Structures is exempt from this requirement; and
  - (7) Installation at outermost boundary of Town's Public Rights-of-way. Where a superior site design results from placement of a Facility at or near the outermost boundary of the Town's Public Right-of-way, the farthest distance practicable from the centerline thereof and edge of pavement is encouraged. To the extent that the location of the sidewalk within the Town's Public Right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this Article, then the Town Public Works Director or Registrant may propose, and the Registrant may include in the Permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet other requirement of this Article.
- ~~(e) Undergrounding of facility. All communications facilities and other facilities shall be placed and maintained so as not to interfere unreasonably with the use of the public rights-of-way by the public and so as not to cause unreasonable interference with the rights and convenience of property owners who adjoin any of the public rights-of-way. A Registrant or other user shall~~

endeavor, to the greatest extent possible, to place all ~~communications facilities or other facilities~~ Facilities underground. The Town may require the use of trenchless technology (i.e., directional bore method) for the installation of ~~communications facilities or other facilities~~ Facilities in the public rights-of-way as well as joint trenching ~~or the collocation of communications facilities or other facilities~~ Facilities in existing conduit. The registrant or user shall be solely liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its ~~communications facility or other facility~~ Facility within the public rights-of-way. The appropriate Town official may issue such rules and regulations concerning the placement or maintenance of a facility in public rights-of-way as may be consistent with this article and other applicable Federal and State laws or regulations.

- (f) Notification of adjacent property owners. Excluding emergencies, ~~prior~~ Prior to the commencement of any work by the applicant pertaining to the placement and maintenance of ~~communications facilities or other facilities~~ Facilities within the public rights-of-way or other roads or property within the Town, the Town Manager or designee may require the applicant to issue notice of the work to property owners who adjoin such affected area (the "Notification Area"). The notification area may be expanded at the Town's discretion and notice shall be ~~effected~~ affected in a manner deemed appropriate by the Town Manager or designee.
- (g) ~~Safety.~~ All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of facilities.
- (gh) Repair of damages. A person placing or maintaining ~~facilities~~ Facilities in the public rights-of-way or other roads or property within the Town shall, at its own expense, restore the public rights-of-way, or any other adjacent property that has been damaged by work on the project, to at least its original condition before such work was initiated, subject to the Town's satisfaction upon inspection. Restoration shall include, among other things, the removal of all markings placed by users on the right-of-way, unless they are required to remain pursuant to State law. A registrant or user shall warrant restoration of the public rights-of-way or other roads or property within the Town for a period of 12 months after completion of such restoration. If the registrant or user fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant or user, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration against the registrant or user in accordance with Florida Law and require reimbursement within 30 days after the submission of the bill by the Town to the registrant or user.
- (hi) Removal or relocation. Removal or relocation at the direction of the Town of a person's ~~facility~~ Facility in the public rights-of-way shall be governed by Florida Law
- (ij) Property right not created. A permit from the Town constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (jk) ~~Industry practice.~~ A registrant and user shall maintain its communications facility and other facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (jl) Underground safety act. In connection with excavation in the public rights-of-way, a registrant and user shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Section 556 of Florida Statutes.

- (~~km~~) Maintenance. A registrant and user shall place or maintain a ~~communications facility and other facility~~ Facility in public rights-of-way in compliance with all applicable standards as established by all local, State or Federal law and in conformance with the Town Code. A registrant and user 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.
- (~~ln~~) Coordination or work. In the interest of the public's health, safety and welfare, upon request of the Town, a registrant or user shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way or other roads or property within the Town. The Town may require a registrant or user to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the public rights-of-way or other roads or property within the Town. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules.
- (~~m~~) Existing facilities. A registrant or user shall not place or maintain its ~~communications facilities or other facilities~~ Facilities so as to interfere, displace, damage or destroy any facilities, including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's ~~facilities~~ Facilities lawfully occupying the public rights-of-way or other roads or property within the Town. The Registrant or user shall report to the Town any damage to existing Facilities and notify the Facility owner.
- (~~np~~) Conditions of rights-of-way. The Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the facilities, and any performance of work or costs incurred by the registrant or user or provision of services shall be at registrant's or user's sole risk. Nothing in this article shall affect the Town's authority to add, vacate or abandon public rights-of-way and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for facilities.
- (~~op~~) Inspections. The Town shall have the right to make such inspections of ~~communications facilities and other facilities~~ Facility placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article. In the event the Town determines that a violation exists with respect to a registrant's or user's placement or maintenance of ~~communications facilities or other facilities~~ 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 Town will provide the registrant or user no less than three days' written notice setting forth the violation and requesting correction. Nothing herein shall limit the authority of the Town Manager, building official or their designee from taking appropriate action to address an imminent and immediate health or safety hazard.
- (~~pr~~) Emergency. In an emergency, as determined by the Town Manager, building official, Public Works Director, or their designee, where the installation, use or maintenance of any ~~communications facility or other facility~~ Facility poses an imminent and immediate health or safety hazard to pedestrians or vehicles, the Town shall, where feasible, give telephonic notice to the owner of the ~~communications facility or other facility~~ Facility of the nature of the emergency and afford the owner the opportunity to remove or otherwise relocate the ~~facility~~ Facility. Where telephonic notice is not feasible or where the owner fails to address the emergency hazard, the Town Manager, building official or their designee may summarily and temporarily remove or relocate such ~~facility~~ Facility, but only to the extent necessary to avoid

the health or safety hazard at issue. Immediately following removal or relocation of any facility Facility under these emergency procedures, the Town shall provide the owner of the facility Facility with written notice of the action by certified mail, return receipt requested. If the Town removes such facility Facility, the owner of such facility shall have 30 days after receipt of such written notice by the Town to claim the facility Facility, or the Town may dispose of such facility Facility.

- (s) ~~Plans.~~ A permit application to place a new or replace an existing communications facility or other facility in the public rights-of-way shall include plans showing the location of the proposed installation of communications facilities or other facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant or user shall promptly provide revised plans, or "as-builts," upon completion of any installation or construction. The plans shall be in a digitized format showing the two-dimensional location of the communications facilities or other facilities based on the Town's Geographical Database, or other format acceptable to the Town. Upon the Town's request, a registrant or user shall submit such as-builts in the format acceptable to the Town, showing the location of its facilities in the public rights-of-way. The registrant or user shall provide such plans at no cost to the Town. The Town shall maintain the confidentiality of such plans and any other information provided in accordance with Section 202.195 of Florida Statutes.
- (t) ~~Town Rights.~~ The Town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the Town in public rights-of-way occupied by the registrant or the user. A registrant or user shall allow Town communication facilities or other facilities to be collocated within Town's public rights-of-way through the use of a joint trench during the registrant's or user's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between the registrant or user and the Town and may be subjected to other Town rights-of-way requirements. The Town 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 Town and within said limits as same may from time to time be altered.

35-30.—Suspension of permits.

- (a) Subject to this section and to providing reasonable notice and an opportunity to cure, the Town may suspend a permit issued to any registrant or user or may deny an application for a subsequent permit made by a registrant or user for work in the public rights-of-way or other roads or property within the Town for one or more of the following reasons:
- (1) Failure to satisfy permit conditions, or conditions set forth in this article or other applicable Town ordinances, codes or regulations governing placement or maintenance of communications facilities or other facilities in public rights-of-way or other roads or property within the Town, including without limitation, failure to take reasonable safety precautions to alert the public of work at the work site, or to restore any public rights-of-way or adjacent property;
  - (2) Misrepresentation or fraud by the registrant in a registration or by a registrant or user in a permit application;
  - (3) Failure to properly renew, a registration;
  - (4) Ineffectiveness of a registration; or



~~(5) Failure to relocate or to remove facilities as may be lawfully required by the Town.~~

~~(b) After the suspension or denial of a permit pursuant to this section, the Town shall provide written notice of the reason to the registrant or user.~~

~~35-31.— Appeals.~~

~~(a) Final written decisions of the Town Manager or designee suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the Town Manager within 30 days of the date of the final written decision to be appealed. Any appeal not timely filed as set forth in this section shall be waived. The Town Council shall hear or shall appoint a Hearing Officer to consider the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant or user, and a written decision shall be rendered within 30 days of the hearing. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.~~

~~(b) Nothing in this section shall affect or limit the remedies the Town has available under applicable law.~~

~~35-32.— Conditional use of public rights of way.~~

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

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

~~35-33.— Termination of registration.~~

~~(a) The involuntary termination of a previously effective registration may only be accomplished by an action of the Town Manager and such action may be appealed to the Town Council. The Town may declare the registration terminated and revoke and cancel all privileges granted under that registration if:~~

~~(1) A Federal or Florida authority suspends, denies or revokes a registrant's certification or license to provide communications service;~~

~~(2) The registrant's placement and maintenance of the public rights of way or other roads or property within the Town presents an extraordinary danger to the general public or other users of the public rights of way; or~~

~~(3) The registrant abandons all of its communications facilities in public rights of way.~~

~~(b) Prior to such termination for any of the reasons set forth in this section, the Town Manager or his designee shall notify the registrant in writing, setting forth the matters pertinent to such reasons and describing the proposed action of the Town 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 Town Council, to accomplish the same.~~

- (c) ~~In the event of a vote by the Town Council to terminate the registration, the registrant shall, within 30 days following such termination, provide an acceptable plan for transferring ownership of the communications facilities to another person in accordance with this article or shall remove or abandon the communications facilities and take such steps as are necessary to render every portion of the communications facilities remaining in the public rights-of-way safe. If the registrant has either abandoned its communications facilities or chooses to abandon its communications facilities, the Town may:~~
- ~~(1) Require the registrant or the registrant's bonding company to remove some or all of the communications facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal;~~
  - ~~(2) Require that some or all of the communications facilities be removed and the public rights-of-way restored to their original condition at the registrant's expense, using Town employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement; or~~
  - ~~(3) Utilize or allow other persons to utilize the registrant's abandoned communications facilities.~~
- (d) ~~The obligations of the registrant hereunder shall survive the termination of a registration. In the event of a declaration of termination of registration, this provision does not permit the Town to cause the removal of any communications facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing Federal or State agency, where required, and is properly registered with the Town, for such certificated service, where required.~~

~~35-34. Transfer or control, sale or assignment of assets.~~

- (a) ~~If a registrant transfers, sells or assigns its registration or its communications 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 article. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided herein within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the Town that the transferee, buyer or assignee is the new applicant.~~
- (b) ~~Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the Town under this article and applicable law.~~

~~35-35. Insurance.~~

- (a) ~~*Required.* Registrant shall provide, pay for and maintain satisfactory to the Town 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 Town. All liability policies shall provide that the Town 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 Town annually. Thirty days' advance written notice by registered or certified mail must be given to the Town of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the Town. In addition to the Certificate of Insurance, the registrant shall provide a copy of the insurance policy, if requested by the Town.~~

- ~~(b) *Limits.* The limits of coverage of insurance required shall be not less than the following:
  - ~~(1) Worker's Compensation and Employer's Liability Employer's Liability—\$500,000.00 limit each accident, \$500,000.00 limit per each employee;~~
  - ~~(2) Comprehensive General Liability Bodily Injury and Property Damage—\$3,000,000.00 combined single limit each occurrence. Said coverage shall not exclude Contractual Liability, Products/Completed Operations, Independent or Contractors;~~
  - ~~(3) Automobile Liability, Bodily Injury and Property Damage—\$3,000,000.00 combined single limit each accident.~~~~
- ~~(c) *Umbrella or Excess Liability.* Registrant may satisfy the minimum limits required above for 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 Town shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow Form" basis.~~
- ~~(d) *Self-insurance.* The registrant may satisfy the insurance requirements and conditions of this section under a self-insurance plan and/or retention if approved in advance by the Town in its sole discretion.~~
- ~~(e) *Right to review.* The Town reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages or endorsements, herein from time to time throughout the life of this section. The Town 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.~~
- ~~(f) *Town maintains certain rights.* This section shall not be construed to affect in any way the Town's rights, privileges and immunities as set forth in F.S. § 768.28. Insurance under this section shall run continuously with the presence of the registrant's communications facilities in the public rights-of-way and any termination or lapse of such insurance shall be a violation of this section and subject to the remedies as set forth herein. Notwithstanding the foregoing, the Town may, in its sole discretion, require increased or decreased levels of insurance for any other object placed in the public rights-of-way by way of individual agreements.~~

~~35-36. — Indemnification.~~

~~A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Town arising out of the placement or maintenance of its communications facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article; provided, however, that a registrant's obligation hereunder shall not extend to any damages caused solely by the gross negligence or wanton or willful acts of the Town. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in~~

~~defending against any such claim, suit or proceedings. The Town agrees to notify the registrant, in writing, within a reasonable time of the Town receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost if in the Town's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted:~~

- ~~(1) As denying to either party any remedy or defense available to such party under the laws of the State of Florida;~~
- ~~(2) As consent by the Town to be sued; or~~
- ~~(3) As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28.~~

35-367. - ~~Construction bond~~Expanded Security Fund.

- (a) Bond required. Where applicable and for projects that exceed the amount provided as part of the Security Fund, ~~prior~~ prior to performing any permitted work in the public rights-of-way, the registrant shall establish in the Town's favor a ~~construction bond~~ or letter of credit, 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. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided herein.
- (b) Failure to compete work. In the event a registrant subject to such a construction bond fails to complete the work in accordance with the provisions of the permit and this ~~article~~ Article, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town 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.
- (c) Release. No less than 12 months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the Town to remove the requirement to continue the construction bond, and the Town shall release the bond within 30 days of the date of final approval of said request. Notwithstanding, the Town may require a new bond for any subsequent work performed in the public rights-of-way.
- (d) Bond Rating. 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 Town Attorney; and shall provide that:

"Unless released by the Town, this bond may not be canceled, or allowed to lapse, until 60 days after receipt by the Town, 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) Rights reserved. The rights reserved by the Town with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the Town may have under this section, or at law or in equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the Town may have.

35-38. — ~~Security Fund.~~

~~At the time of registration and as a condition of receiving its first permit to place or to maintain a communications facility in public rights-of-way after the effective date of the ordinance from which this article is derived, the registrant shall be required to file with the Town a security fund~~

~~in the form of an annual bond or cash deposit in the sum of \$50,000.00. If the registrant files a bond, it shall have as a surety a company that is qualified to do business in the State of Florida, that has a minimum rating of AAA in Best's Key Rating Guide, Property/Casualty Edition and shall be subject to the approval of the Town Attorney. The security fund 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 article. The bond or other guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town 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, up to the full amount of the security fund.~~

#### DIVISION 4 Enforcement and Appeals

##### 35-379. - Enforcement remedies of Permit Obligations; Suspension and Revocation of Permits.

- (a) Unless otherwise exempted from State Law, a ~~A~~ violation of this article or any resolution adopted pursuant to this article may be enforced pursuant to Section 8-10 and by issuance of a uniform civil violation notice, citation, summons, or notice to appear in county court, or by filing an action in civil court for injunctive relief. This ~~article~~ Article is supplemental and nothing contained herein shall prohibit the Town from enforcing this ~~article~~ Article by any other lawful means.
- (b) Failure of the Town to enforce any requirements of this article shall not constitute a waiver of the Town's right to enforce the article with respect to that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.
- (c) The Town Manager or his designee is authorized to give any notice required by law.
- (d) The Town Public Works Director may order the suspension of placement and maintenance work under a permit and ultimately may revoke any Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or regulation or any condition of the permit. The types of substantial breach by Permittee may include, but are not limited to:
- (1) The violation of any material provision of the Permit;
  - (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 Town or its citizens;
  - (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 or insurance;
  - (5) The failure to properly restore the Town's Public Rights-of-way;
  - (6) The failure to correct within the specified time an order issued by the Town Engineer;
  - (7) The failure to Register, Re-Register, or provide notice of any transfer in accordance with this Article;
  - (8) The failure to relocate or remove Facilities pursuant to this Article and Sections 337.402, 337.403 and 337.404, Florida Statutes (2016) as same may be amended from time to time.
  - (9) The failure to report to the Town and Facility owner any damages caused to a facility during the execution of the work.

- (e) If the Town Public Works Director determines that the Permittee has committed a substantial breach of a term or condition of the Permit, the Town Public Works Director shall make a written demand upon the Permittee to remedy such violation. The demand shall state that the continued violation(s) may be cause for revocation of the Permit. Further, a substantial breach as stated above will allow the Town Public Works Director, at his or her discretion, to place additional or revised conditions on the Permit.
- (f) Within thirty (30) calendar days of receiving notification of the breach, the Permittee shall contact the Town Public Works Director with a plan, acceptable to the Town Public Works Director, for its correction. The Town shall provide additional time as reasonably necessary for a Permittee to establish a plan acceptable to the Town Public Works Director taking into account the nature and scope of the alleged breach. The Permittee's failure to so contact the Town Public Works Director, 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 of the Permit. Further, the Permittee's failure to contact the Town Public Works Director, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to implement the approved plan, shall be cause for the Permittee to be placed on probation for one full year.
- (g) The Town Public Works Director may establish a list of conditions for any Permit which, if breached, will be cause for the Permittee to be placed on probation for one full year, such as, but not limited to, working out of the allotted time period or working on a Town Public Right-of-way significantly outside the scope of the Permit. These conditions shall be stated on the Permit.
- (h) If a Permittee, while on probation, commits a breach as outlined above, the Permittee's Permit may be revoked, and the Permittee may not be allowed to obtain further Permits for one full year, except for emergency repairs and service requirements as mandated by State or federal regulations.
- (i) If a Permit is revoked, the Permittee shall reimburse the Town for the Town's reasonable costs, including restoration costs and the cost of collection and reasonable attorneys' fees incurred in connection with such revocation.
- (j) The Town Public Works Director may cause an immediate stop work order where the Permittee's construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

### 35-38 - Appeals.

- (a) Final written decisions of the Town Manager or designee suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the Town Manager within 30 days of the date of the final written decision to be appealed. Any appeal not timely filed as set forth in this section shall be waived. The Town Council shall hear consider the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant or user, and a written decision shall be rendered within 30 days of the hearing.
- (b) The Town Council shall conduct a de novo hearing on the record and shall determine if:
  - (1) There was a departure from the essential requirements of the law in the proceedings appealed; or
  - (2) Competent, substantial evidence does not exist to support the decision.
- (c) If the Town Council determines that there was not a departure from the essential requirements of the law or that competent substantial evidence exists to support the decision of the Town

Manager, then the decision of the Town Manager shall be upheld, otherwise it shall be overturned.

- (d) Appeal from a final decision by the Town Council shall be to the Circuit Court by filing a petition for writ of certiorari within thirty (30) days of the decision, pursuant to court rules. Any such appeal is voluntary, and in the absence of taking such appeal, the decision of the Town Council shall be deemed to be final. If an appeal is taken, however, the decision of the Town Council is no longer deemed to be final but instead is tolled pending the appeal
- (e) Nothing in this section shall affect or limit the remedies the Town has available under applicable law.

35-3940. - Reports and records.

- (a) A registrant shall provide the following documents to the Town as received or filed:
- (1) Any pleadings, petitions, notices and documents which may directly impact the obligations under this article and which are reasonably necessary for the Town to protect its interests under this article; and
  - (2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
- (b) Nothing in this subsection shall affect the remedies a registrant has available under applicable law.
- (c) The Town shall keep any documentation, books and records of the registrant confidential to the extent required by Florida Statutes.

DIVISION 5 Abandonment of a Facility and Reservation of Rights

35-401. - Abandonment of a Facility ~~communications or other facility~~.

- (a) Upon determination by a registrant that one or more of its Facilities in a Town Public Right-of-way is to be abandoned, the Registrant shall notify the Town no later than 90 days from such determination, or no later than 30 days following such abandonment, whichever is sooner. ~~Upon abandonment of a communications facility owned by a registrant in the public rights-of-way, the registrant shall notify the Town of such abandonment within 90 days.~~
- (b) The Town may direct the registrant by written notice to remove all or any portion of such abandoned ~~communications facility~~ Facility at the registrant's sole expense if the Town determines that the abandoned ~~communications facility's~~ Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such ~~communications facility~~ Facility:
- (1) Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;
  - (2) Prevents another person from locating ~~facilities~~ Facilities in the area of public rights-of-way where the abandoned ~~communications facility~~ Facility is located when other alternative locations are not reasonably available; or
  - (3) Creates a maintenance condition that is disruptive to the use of any public rights-of-way.
- In the event of Subsection (b)(2) of this section, the Town may require the third person to coordinate with the registrant that owns the existing ~~communications facility~~ Facility for joint removal and placement, where agreed to by the registrant.
- (c) In the event that the Town does not direct the removal of the abandoned ~~communications facility~~ Facility, the registrant, by its notice of abandonment to the Town, shall be deemed to

consent to the alteration or removal of all or any portion of the ~~communications facility~~ Facility by the Town or another person at such third party's cost.

- (d) If the registrant fails to remove all or any portion of an abandoned ~~communications facility~~ Facility as directed by the Town within a reasonable time period as may be required by the Town under the circumstances, the Town may perform such removal and charge the cost of the removal against the registrant.
- (e) In the event the Abandoned Facility is subject to a pole attachment agreement, then the obligation to remove the Abandoned Facility shall be in compliance with the federal Pole Attachment Act (47 USC Section 224), as same may be amended from time to time.

~~35-42. Force majeure.~~

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

35-4143. - Reservation of rights.

- (a) The Town 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~~ Facility placed in the public rights-of-way on or after the effective date of the ordinance from which this article is derived and shall apply to all existing ~~communications facilities~~ Facilities placed in the public rights-of-way prior to the effective date of the ordinance from which this article is derived, to the full extent permitted by State and Federal law.

Sec. 35-42. No liability or warranty.

Nothing contained in this Article shall be construed to make or hold the Town responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the Registrant's Facilities by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any Permit or the approval or disapproval of any Placement or Maintenance of the Registrant's Facilities as authorized herein constitute any representation, guarantee or warranty of any kind by, or create any liability upon the Town or any official, agent or employee thereof. Additionally, the Town shall not be responsible for any relocation costs incurred by any Registrant due to the Town's or any other Person's work in the Town's Public Rights-of-way.

ARTICLE III. COMMUNICATION FACILITIES IN PUBLIC RIGHTS-OF-WAY



DIVISION 1. Generally.

Sec. 35-43 Intent and Purpose.

It is the intent of the Town of Miami Lakes to promote the public health, safety and general welfare by: providing regulations governing the placement or maintenance of Communication Facilities in the Town's Public Rights-of-way; adopting and administering reasonable rules and regulations not inconsistent with State and Federal law, and Orders issued by the FCC, as each may be amended from time to time; establishing reasonable rules and regulations necessary to manage the placement or maintenance of Communication Facilities in the Town's Public Rights-of-way by all Communications Service Providers; minimizing disruption to the Town's Public Rights-of-way; promoting and encouraging Colocation of Telecommunication Facilities on existing, modified or replacement structures within the Town's Public Rights-of-way as a primary option generally preferred over the construction of new Communication Facilities that will either eliminate or reduce the need for the erection of new Communication Facilities; avoiding potential damage to the Town's Public Rights-of-way caused by Communication Facilities by ensuring that such Communication Facilities are soundly and carefully designed, constructed, modified and maintained; establishing reasonable rules and regulations necessary to manage the placement or maintenance of Communications Facilities in the Town's Public Rights-of-way by Communication Service Providers, Communications Facilities Providers, or Pass-Through Providers; and minimizing disruption to the Town's Public Rights-of-way. In regulating its Public Rights-of-way, the Town shall be governed by and shall comply with all applicable Federal and State Laws.

Persons seeking to place or maintain Communication Facilities in the Town's Public Rights-of-way shall comply with the provisions of this Article. Persons seeking to place or maintain Communication Facilities on private real- property or other real- property to which the Town, Miami-Dade County, the School District of Miami-Dade County, the South Florida Water Management District, the State of Florida or the Federal Government own a fee simple or leasehold interest in real property, located within the municipal boundaries of the Town shall comply with the provisions of the Chapter 13, Land Development Code (LDC), to the extent it applies.

35-44. - Definitions.

For purposes of this article the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words not otherwise defined in this section 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 USC 151 et seq., as amended, and any Orders issued by the FCC (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes, specifically definitions as found in section 337 of Florida Statutes; and, if not defined by Florida Statutes, shall be construed to mean the common and ordinary meaning or other applicable local, State, or Federal Law.

*Abandonment, or Abandoned* means 90 or more consecutive days with the absence of any active Communication Service Provider on a Communications Facility. An Abandoned Communication Facility shall be removed or cured as required by this Article. This term shall not

include cessation of all use of a Communication Facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the Communications Facility. If the Communication 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 Communication Facility requires removal of the Communication Facility only and does not require the removal of the Existing Structure. The term shall also exclude the temporary cessation of the provision of Communication Services where the Provider intends to re-establish the provision of Communication Services in the future. For example, cable drops to homes that are deactivated based on competitive alternatives, but are maintained for when the customer re-activates service shall not be Abandonment of a Communication Facility. The temporary cessation with intent to re-activate must be documented to the satisfaction of the Town Public Works Director. Any Communication Facility that is not registered by a Communication Facility Provider, shall be considered Abandoned. This definition does not apply to application(s) for Communication Facilities which have not yet been installed, erected, or operationalized, as defined and controlled by Florida Statutes.

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

*Communications Facility Pole* means a pole-like structure either designed primarily as a Communications Facility or used as a Communications Facility. A Utility Pole is not a Communications Facility Pole for purposes of the Article. This term does not include infrastructure owned by an Electric Utility that is not use for Communication Services.

*Communications Facility or Communications System* means any permanent or temporary plant, equipment and property, including, but not limited to, cables, wires, conduits, ducts, fiber optics, poles, Antennas, wireless facilities, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the Town and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer Communication Services. Pursuant to F.S. § 337.401, Communication Facility for purposes of this article shall not include communications facilities owned, operated or used by electric utilities or regional transmission organizations exclusively for internal communications purposes.

*Communications Services* means the transmission, conveyance or routing of voice, data, audio, video or any other information or signals, including Video Services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence of hereafter devised, regardless of the protocol used for such transmission or conveyances in accordance with Section 202.11, Florida Statutes as same may be amended from time to time. The term includes such transmission, conveyance, or routing in which

computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to a voice-over-internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. For the purpose of this article, cable service, as defined in F.S. § 202.11(2), is not included in this definition and cable service providers or providers of service via an open video system may be subject to other ordinances of the Town and shall require separate authorization from the Town.

Communications Services Tax means the local communications services tax authorized to be levied and collected by counties and municipalities upon chargers for Communications Services, pursuant to Section 202.20, Florida Statutes as same may be amended from time to time.

Electric Utility means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system as defined in F.S. 366.02, as amended.

Emergency means situations of a serious nature, developing suddenly and unexpectedly, and demanding immediate action that will affect public safety, disruption of utility service, or damage to the Rights-of-Way, and conditions that affects the public's health, safety or welfare.

Facility or Facilities means any tangible thing located in any Public Rights-of-way used to deliver Communications Services

FCC means the Federal Communications Commission.

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

In Public Rights-of-Way or In the Public Rights-of-Way means over, above, in, on or under the Public Rights-of-way within the Town over which the Town has jurisdiction, control and authority to regulate. The term also includes those Rights-of-way over which the County or State has jurisdiction and authority under the Florida Transportation Code, Chapter 334, Florida Statutes, as same may be amended from time to time, but where the County or State or both have delegated to the Town the authority to regulate the registration, permitting, placement, installation and maintenance of Communications Facilities in accordance with Chapter 35 of the Town Code of Ordinances.

LDC means the, Chapter 13 of the Town of Miami Lakes Code of Ordinances, titled "Land Development Code.

Order, as used in the definition of "Wireless Service Provider," shall mean as amended from time to time Order's promulgated by the FCC.

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

Pass-Through Provider means any Person who places or maintains a Communications Facility in the Town's Public Rights-of-way that levies a tax pursuant to chapter 202 of Florida Statutes, as may be amended from time to time, and who does not remit taxes imposed by the Town pursuant to Chapter 202, Florida Statutes as same may be amended from time to time.

Permit means 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 Town Right-of-Way engineering and construction permits issued by the Town Public Works Director.

Person means 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 Town to the extent permitted by applicable law.

Pole Attachment means any attachment of a Communications Facility by a provider of Communication Services to an existing structure within a Public Right-of-way.

Public Rights-of-Way means a public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path or alley or any other property for which the Town has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the Town holds a property interest therein. Public Rights-of-Way shall not include:

- (1) Private property;
- (2) Any real or personal Town property except as described above; or
- (3) Town 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 means a communications services provider or other person that has registered with the Town in accordance with the provisions of this article.

Registration and Register means the process described in this article whereby a Communication Services Provider, Communication Facility Provider, Pass-Through Provider provides certain information to the Town by which it is determined whether the Person will be authorized to obtain Permits to place or maintain Facilities within the Town's Public Rights-of-Way.

Small Wireless Facility means a Wireless Facility that meets the following qualifications:

- (1) 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
- (2) 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 meter, 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 support structures.

Stealth Design means a method of camouflaging any tower, antenna or other Communications Facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth Design may include a Repurposed Structure or a Wrap.

Town means the Town of Miami Lakes, Florida, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated or enlarged form.

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

include a pole or similar structure 15 feet in height or less unless the authority grants a waiver for such pole.

*Wireless Facility* means equipment at a fixed location which enable 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 the wireless communication. The term includes small wireless facilities. The term does not include:

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

*Wireless infrastructure provider* means 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.

## DIVISION 2. Registration.

### 35-45. - Registration for placing or maintaining Communications Facilities in Public Rights-of-Way.

- (a) *Registration.* A Communications Service Provider, Communication Facility Provider, or Pass-Through Provider that desires to place or maintain a Communications Facility in public rights-of-way in the Town shall first register with the Town in accordance with this Division. Subject to the terms and conditions prescribed in this Division, a registrant may place or maintain a Communications Facility in public Rights-of-Way. A Communications Services Provider, Communication Facility Provider, or Pass-Through Provider with an existing Facility in the public rights-of-way of the Town as of the effective date of the ordinance from which this Division is derived has 120 days from the effective date of the ordinance from which this Division is derived to comply with the terms of this Division, including, but not limited to, registration, or shall be in violation thereof.
- (b) *No property right arises from Registration.* A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this article governs only the placement or maintenance of Communication Facilities in Public Rights-of-Way. Registration does not excuse a Communications Services Provider, Communication Facility Provider, or Pass-Through Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on the Town's or another person's Facilities. Registration does not excuse a Communications Services Provider, Communication Facility Provider, or Pass-Through Provider from complying with all applicable law, including Town ordinances, codes or regulations, including this article, Federal or State laws, Regulations or Orders.
- (c) *Registration is non-exclusive.* Registration does not in and of itself establish a right to place or maintain, or establish priority for the Placement or Maintenance of a Communications Facility in the Town's Public Rights-of-way, but shall establish for the Registrant a right to apply for a Permit, if permitting is required by the Town. Registrations are expressly subject

- to any further amendment to or replacement of this Article and further subject to any additional Town ordinances or regulations, as well as any State or federal laws that may be enacted.
- (de) Content of Registration. Each Communications Services Provider, Communication Facility Provider, or Pass-Through Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the Town shall, annually, file an original registration along with two complete copies with the Town that shall include the following information:
- (1) Name of the applicant;
  - (2) Name, address, telephone number, e-mail address and mobile phone number of the applicant's primary contact person in connection with the registration. Additionally, the applicant shall provide emergency contact information. The primary contact person shall be able to provide information regarding the registrant's Communications Facilities in the public rights-of-way, and shall be able to accept and coordinate any damage claims. The registrant shall also provide a secondary contact person enabling the Town to contact appropriate registrant's personnel in emergency situations, including, but not limited to, when registrant's construction or equipment has caused damage to other property. The registrant shall also provide the Town with a current telephone number for the secondary contact person which shall be available and monitored 24 hours per day, every day, by the registrant, to be utilized by the Town in case of an emergency. Such information shall be updated as necessary by the registrant to provide the Town with current and accurate information;
  - (3) Evidence of the insurance coverage required under this article and acknowledgment that the registrant has received and reviewed a copy of this article;
  - (4) A copy of Federal or State certification authorizing the applicant to provide Communications Services, if any;
  - (5) If the applicant is a corporation and does not submit a State certification pursuant to Subsection (c)(4) of this section, proof of authority to do business in the State of Florida,
- (e) Review and reporting. The Town Manager or designee shall review the information submitted by the Applicant. If the Applicant submits information in accordance with Subsection (d) of this section, the Registration shall be effective, and the Town shall notify the applicant of the effectiveness of Registration by electronic mail. The Applicant may not apply for a permit to place or maintain Communication Facilities in the Public Rights-of-Way under this Article unless and until it has been notified that its application is complete and effective. If the Town determines that the information has not been submitted in accordance with Subsection (c) of this section, the Town shall notify the applicant by electronic mail of the non-effectiveness of registration and reasons for the non-effectiveness. The Town shall so notify an Applicant within 30 days after receipt of registration information from the Applicant.
- (f) Cancellation. A registrant may cancel a registration upon written notice to the Town 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 a Communication Facility in public rights-of-way.
- (g) Annual Renewal. A Registrant shall update its registration with the Town by April 1 of each year in accordance with the registration requirements in this Article and shall include Annual payment at the time of registration. Within 30 days of any change in the information required to be submitted pursuant to Subsection of this section, a Registrant shall provide updated

information to the Town. 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 Town's discretion, result in the Town restricting the issuance of additional permits until the Registrant has complied with the registration requirements of this Article. Failure to renew registration shall mean all facilities identified in prior registrations and all facilities not registered, shall be subject to subject to the procedures set forth in Section 35-49.

(h) *Failure to Register:* A Registrant shall bear the responsibility to maintain his registration updated with the Town at all times. A Registrant's failure to Register, or renew Registration may result in the suspension of any open Permits and Civil Penalties subject to the procedures set forth in Section 35-49.

Sec. 35-46. Insurance.

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

(b) *Insurance Coverage and Limits of Insurance Coverage.* The insurance coverage and limits of coverage of insurance required shall be not less than the following:

(1) *Worker's compensation and employer's liability insurance.* Requirements as spelled out in Florida Chapter 440.

(2) *Comprehensive general liability.* Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits of no less than one million dollars (\$1,000,000) per occurrence, combined single limit and two million dollars (\$2,000,000) in the aggregate.

(3) *Commercial Automobile liability.* Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this Article XII for limits of no less than one million dollars (\$1,000,000) per occurrence combined single limit each accident.

(4) *Commercial excess or umbrella liability.* Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

(c) *Proof of Insurance.* Upon the effective date of the Registration, the Registrant shall submit to the Town proof that it has obtained the insurance required under this Article, including a certificate of insurance signed by the insurance agent.

(d) *Duration.* The coverage provided herein shall be for a period not less than the period for which the indemnification obligations under this Article hereof are imposed.

(e) *Abandonment.* Failure to maintain required insurance coverage shall be deemed an deemed a violation of this Article and be subject to Code Enforcement proceedings including any applicable fines or liens as permitted therein.. Enforcement of all of the Communications Facilities of the Registrant is subject to the procedures set forth in Section 35-49.

35-47. Indemnification.

(a) *Liability.* By reason of the acceptance of a Registration under this Article or the grant of a Permit under this Article, the Town does not assume any liability:

(1) For injuries to persons, damage to property, or loss of service claims by parties other than the Registrant or the Town;

(2) For claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities by Registrants or activities of Registrants.

(b) *Hold harmless.* By registering with the Town, a Registrant agrees, or by applying for and accepting a Permit under this Article, a Permittee is required, to defend, indemnify, and hold the Town whole and harmless from all costs, liabilities, and claims for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Communications Facilities, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit, inspection of plans or work by the Town. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Registrant or to the Town; and the Registrant, in defending any action on behalf of the Town, shall be entitled to assert in any action every defense or immunity that the Town could assert in its own behalf. The provisions of this Section include, but are not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceeding(s).

(c) *Notification of issues.* The Town agrees to notify the Registrant, in writing, within a reasonable time of the Town receiving notice, of any issue it determines may require indemnification.

(d) *Limitations.* This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the registrant under workers' compensation, disability or other employee benefit acts, or the acceptance of insurance certificates required under this article, or the terms, applicability or limitations of any insurance held by the Registrant.

(e) *Investigation by registrant.* The Registrant shall investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and shall bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the Town, the Registrant shall assume and defend not only itself but also the Town in connection with any such claims and any such defenses shall be at no cost or expense whatsoever to the Town, provided, however, that a registrant's obligation hereunder shall not extend to any damages caused solely by the negligence, gross negligence or wanton or willful acts of the Town, its employees, agents, contractors, subcontractors or invitees. The Town (exercisable by the Town Attorney), shall retain the right to select counsel of its own choosing.

(f) *Waiver rights.* The Town does not and shall not waive any rights against the Registrant which it may have by reason of this indemnification, or because of the acceptance by, or the Registrant's deposit with the Town of any of the insurance policies required by this Article for Registration.

(g) *Damages.* This indemnification by the Registrant shall apply to all damages and claims for damages of any kind suffered, excepting any damages caused by the negligence, gross negligence or intentional acts of the Town, its employees, agents or contractors regardless of



whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

- (h) Defense and immunity. Nothing contained in this Section shall be construed or interpreted:
- (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or
  - (2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes as same may be amended from time to time.
- (i) Term. The indemnification requirements under this Section and this Article shall survive and be in full force and effect for a period of five (5) years after the termination or cancellation of a Registration, or until all of the equipment is removed from the Town's Rights-of-Way.

35-48. - Force majeure. In the event a Registrant's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the Registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result; provided, however, that such owner uses all practicable means to expeditiously cure or correct any such inability to comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of a registrant's directors, officers, employees, contractors or agents.

35-49. - Termination of registration.

- (a) Involuntary Termination. The involuntary termination of a previously effective registration may only be accomplished by an action of the Town Manager and such action may be appealed to the Town Council. The Town may declare the registration terminated and revoke and cancel all privileges granted under that registration if:
- (1) A Federal or Florida authority suspends, denies or revokes a registrant's certification or license to provide Communications Service;
  - (2) The Registrant's placement and maintenance of the Public Rights-of-Way or other roads or property within the Town presents an extraordinary danger to the general public or other users of the public rights-of-way; or
  - (3) The registrant voluntarily abandons all of its Communications Facilities in Public Rights-of-Way.
  - (4) The registrant fails to update their information with the Town as set forth in this Ordinance.
- (b) Notification. Prior to such termination for any of the reasons set forth in this section, the Town Manager or his designee shall notify the registrant in writing, setting forth the matters pertinent to such reasons and describing the proposed action of the Town with respect thereto. The registrant shall have 60 days after receipt of such notice within which to cure the violation.
- (c) In the event of a vote by the Town Council to terminate the registration, the registrant shall, within 30 days following such termination, provide an acceptable plan for transferring ownership of the Communications Facilities to another person in accordance with this Article or shall remove or Abandon the Communications Facilities and take such steps as are necessary to render every portion of the Communications Facilities remaining in the public rights-of-way

safe. If the registrant has either Abandoned its Communications Facilities or chooses to Abandon its Communications Facilities, the Town may:

(1) Require the registrant or the registrant's bonding company to remove some or all of the Communications Facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal;

(2) Require that some or all of the Communications Facilities be removed, and the public rights-of-way restored to their original condition at the registrant's expense, using Town employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement; or

(3) Utilize or allow other persons to utilize the registrant's Abandoned Communications Facilities.

(d) *Survival of obligations.* The obligations of the registrant hereunder shall survive the termination of a registration. In the event of a declaration of termination of registration, this provision does not permit the Town to cause the removal of any Communications Facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing Federal or State agency, where required, and is properly registered with the Town, for such certificated service, where required.

35-50. - Transfer of control, sale, or assignment of assets.

(a) *Transfer of control, sale, or assignment of assets.* If a Registrant transfers, sells or assigns its Registration or its Communications 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 article. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective closing date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided herein within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the Town that the transferee, buyer or assignee is the new applicant.

(b) *Subordination.* Any mortgage, pledge, lease or other encumbrance on the Communications Facilities shall be subject and subordinate to the rights of the Town under this article and Applicable Law.

35-51. - Security Fund. At the time of registration and as a condition of receiving its first permit to place or to maintain a Communications Facility in public rights-of-way after the effective date of the ordinance from which this Article is derived, the registrant shall be required to file with the Town a security fund in the form of an annual bond or cash deposit in the sum of \$50,000.00, or a corporate guarantee for substantially the same amount and in a form that is legally acceptable to the Town. If the registrant files a bond, it shall have as a surety a company that is qualified to do business in the State of Florida, that has a minimum rating of AAA in Best's Key Rating Guide, Property/Casualty Edition and shall be subject to the approval of the Town Attorney, or Letter of Credit. The security fund 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 Article. The bond or other guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the

event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Article, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town 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, up to the full amount of the security fund.

DIVISION 3. Permitting and Placement of Communication Facilities in the Public Rights-of-Way.

35-52. - Placement or maintenance of Communications Facilities, in public rights-of-way, in general, excluding Small Wireless Facilities.

(a) *Compliance.* Registrants and users and/or occupants agree at all times to comply with and abide by all applicable provisions of Federal and State law and Town ordinances, codes and regulations in placing or maintaining communications facilities in public rights-of-way.

(b) *Permit Required.* A Registrant shall not commence to place or maintain a Communications Facility in a Town Public Right-of-way until all applicable Permits, if required, have been issued, except in the case of routine maintenance or an emergency as provided for in this Article. In such cases deemed an emergency situation by the Public Works Director, the Registrant shall apply for Permits within 15 days of the incident or repair, whichever comes sooner. Registrants and users and/or occupants shall provide prompt notice to the Town of the placement or maintenance of a facility in public rights-of-way in the event of an emergency. The Registrant acknowledges that as a condition of granting a permit(s), the Town may impose reasonable conditions governing the Placement or Maintenance of a Communications Facility in the Town's Public rights-of-way related to the public, health, safety and welfare as permitted and set forth in Section 337.401 of Florida Statutes as same may be amended from time to time; however, no such imposed conditions shall prohibit or otherwise adversely impact the provision of Communications Services. Permits shall apply only to the areas of the Town's Public Rights-of-way specifically identified in the Permit. The Town 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. This subsection 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.

(c) *Required information.* As part of any permit application to place a new or to replace an existing Communications Facility in public rights-of-way or other roads or property within the Town, the applicant shall provide information concerning the Communications Facility that sets forth the following, as required by the Town Manager:

(1) An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in Section 471.003 of Florida Statutes, identifying the location of the proposed facility, and including:

a. A description of any facility to be installed;

b. The facility's dimensions in feet;

c. Site plan indicating where the facility will be located with electronic geodata; and

- d. Ability to demonstrate compliance with the Florida Building Code, for wind load requirements; and
- e. For new Communication Facility Poles, Wireless Support Structures, or any excavation work, a geotechnical report for the existing soil conditions, or a soil statement by a Florida licensed professional engineer, attesting to the soil conditions.
- (2) Plans and information, as required by this Article, on the ability of the public rights-of-way to accommodate the proposed Communications Facility;
- (3) If appropriate, given the Communications Facility, an estimate of the cost of restoration to the public rights-of-way;
- (4) The timetable for construction of the project or each phase thereof, and the areas of the Town which will be affected;
- (5) A full color photo-simulation showing the proposed new Communication Facility Poles and Wireless Support Structures installed in accordance with the application from the point of view of properties Adjacent to the proposed site;
- (6) A description of the type of Communication Facility and the manner in which the Communication Facility will be installed and/or modified (i.e. anticipated construction methods or techniques) to include:
  - (a) A description of Stealth Design to be utilized. Additionally, each application for a Permit to place a Communications Facility Pole in the Town's Public Rights-of-way shall include photographs showing the location and condition of the Surrounding Neighborhood, and a description of the Stealth Design techniques proposed to minimize the visual impact of the Communications Facility Pole or Wireless Support Structure and graphic depictions accurately representing the visual impact of the Communications Facility Pole or Wireless Support Structure when viewed from the street and from Adjacent properties.
  - (b) Alternatively, a signed and sealed statement from a Florida state licensed professional engineer that Stealth Design cannot be utilized on any particular Communication Facility and providing documentation demonstrating to the satisfaction of the Town Public Works Director that the proposed Communications Facility cannot employ Stealth Design and the proposed exterior location and configuration of equipment proposed are the minimum equipment necessary to achieve the needed function.
- (7) A temporary sidewalk closure plan, if appropriate given the Communication Facility proposed, to accommodate Placement or Maintenance of the Communication Facility.
- (8) A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate given the Communication Facility proposed, to accommodate installation and/or modification of the Communication Facility.
- (9) Restoration plan given the Communication Facility proposed, and an estimate of the cost of restoration of the Town's Public Rights-of-way in the event the Communication Facility is Abandoned
- (10) A proposed timetable for Placement or Maintenance of the proposed Communication Facility or each phase of the Placement or Maintenance thereof, and the intended areas of the Town to be served by the Communication Facility.
- (11) Registrants shall not place or maintain signage on Communication Facilities in Town Public Rights-of-way, unless otherwise required by federal or State law; however, that Existing Structures that lawfully supported signage before being Repurposed may continue

- to support signage as otherwise permitted by law or Town Code, as same may be amended from time to time.
- (12) Communications Facilities not requiring FAA painting or marking shall have an exterior hard durable finish which enhances compatibility with adjacent uses, as approved by the Town Public Works Director.
- (13) A Communication Facility shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, State, or local rule, regulation, the FAA or law; provided, however, the Town may require the installation of an LED street light on a new Communications Facility Pole or Wireless Support Structure or an Existing Structure functioning as a light pole.
- (14) Such additional information or studies requested by the Town that the Town finds reasonably necessary to review the permit application to ensure continued level of service delivery of its Rights-of-Way.
- (d) Public accessibility, safety, and sufficiency of spacing. The Town shall have the power afforded by Florida Law to regulate Facilities to ensure that they meet Town requirements for public accessibility, safety and sufficiency of spacing, to ensure compliance with State of Florida and local laws and ordinances. In determining whether to permit and reasonably limit, or impose conditions or prohibit a Communications Facility to be placed or located within the Town's Public Rights-of-way, the Town Public Works Director shall consider the following standards and minimum requirements in his review and consideration of a Permit application and imposition of reasonable Permit conditions:
- (1) Sufficiency of space to accommodate present and pending applications for use of the Town's Public Rights-of-way. The sufficiency of space to accommodate all of the present and pending applications to place Communications Facilities and pending or planned applications to Place and Maintain Facilities in that area of the Town's Public Rights-of-way; and
- (2) Sufficiency of space to accommodate the Town's need for projected public improvements. The sufficiency of space to accommodate Town plans for public improvements or projects adopted as part of its community investment capital improvements plan that the Town determines in the best interest of the public; and
- (3) The impact on traffic and traffic safety; and
- (4) Impact on Existing Facilities. The impact upon existing Facilities in the Town's Public Rights-of-way; and
- (5) Distance separation from edge of pavement. No new Communication Facility shall be constructed, operated or maintained in the Town's Public Rights-of-way in violation of the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, (commonly known as the "Florida Green Book") and for the Minimum Width of Clear Zones. In accordance with the Florida Green Book, the Public Works Director shall have the authority to reduce the minimum offset where that offset cannot be reasonably obtained and other alternatives are deemed impractical; and
- (6) Distance separation from sidewalk. No newly installed Communication Facility shall be Placed or Maintained in the Town's Public Rights-of-way within one (1) foot of a sidewalk that is five (5) feet or less in width. Co-location on an Existing Structures is exempt from this requirement; and

- (7) Installation at outermost boundary of Town's Public Rights-of-way. Where a superior site design results from Placement of a Communication Facility at or near the outermost boundary of the Town's Public Right-of-way, the farthest distance practicable from the centerline thereof and edge of pavement is encouraged. To the extent that the location of the sidewalk within the Town's Public Right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this Article, then the Town Public Works Director or Registrant may propose and the Registrant may include in the Permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet other requirement of this Article.
- (e) *Undergrounding of facility.* A Registrant or other user shall endeavor, to the greatest extent possible, to place all Communications Facilities underground. The Town may require the use of trenchless technology (i.e., directional bore method) for the installation of Communications Facilities in the public rights-of-way as well as joint trenching or the collocation of Communications Facilities in existing conduit. The registrant or user shall be solely liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its Communications Facility within the public rights-of-way. The appropriate Town official may issue such rules and regulations concerning the placement or maintenance of a Communication Facility in public rights-of-way as may be consistent with this article and other applicable Federal and State laws or regulations.
- (f) *Notification of adjacent property owners.* Prior to the commencement of any work by the applicant pertaining to the placement and maintenance of Communications within the public rights-of-way or other roads or property within the Town, the Town Manager or designee may require the applicant to issue notice of the work to property owners who adjoin such affected area (the "Notification Area"). The notification area may be expanded at the Town's discretion and notice shall be effected in a manner deemed appropriate by the Town Manager or designee.
- (g) *Repair of damages.* A person placing or maintaining Communication Facilities in the public rights-of-way or other roads or property within the Town shall, at its own expense, restore the public rights-of-way, or any other adjacent property that has been damaged by work on the project, to at least its original condition before such work was initiated, subject to the Town's satisfaction upon inspection. Restoration shall include, among other things, the removal of all markings placed by users on the right-of-way, unless they are required to remain pursuant to State law. A registrant or user shall warrant restoration of the public rights-of-way or other roads or property within the Town for a period of 12 months after completion of such restoration. If the registrant or user fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant or user, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration against the registrant or user in accordance with Florida Law and require reimbursement within 30 days after the submission of the bill by the Town to the registrant or user.
- (h) *Removal or relocation.* Removal or relocation at the direction of the Town of a Person's Communication Facility in the public rights-of-way shall be governed by Florida Law
- (i) *Property right not created.* A permit from the Town constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this Article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.

- (j) Underground safety act. In connection with excavation in the public rights-of-way, a registrant and user shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Section 556 of Florida Statutes.
- (k) Maintenance. A registrant and user shall place or maintain a Communications Facility in public rights-of-way in compliance with all applicable standards as established by all local, State or Federal law and in conformance with Applicable Codes and the Town Code. A registrant and user 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.
- (l) Coordination or work. In the interest of the public's health, safety and welfare, upon request of the Town, a registrant or user shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way or other roads or property within the Town. The Town may require a registrant or user to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the public rights-of-way or other roads or property within the Town. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules.
- (m) Existing facilities. A registrant or user shall not place or maintain its Communications Facilities so as to interfere, displace, damage or destroy any Communication Facilities, including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities lawfully occupying the public rights-of-way or other roads or property within the Town. The Registrant or user shall report to the Town any damage to existing Facilities and notify the Facility owner.
- (n) Conditions of rights-of-way. The Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the facilities, and any performance of work or costs incurred by the registrant or user or provision of services shall be at registrant's or user's sole risk. Nothing in this article shall affect the Town's authority to add, vacate or abandon public rights-of-way and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for facilities.
- (o) Inspections. The Town shall have the right to make such visual inspections of Communications Facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article. In the event the Town determines that a violation exists with respect to a registrant's or user's placement or maintenance of Communications 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 Town will provide the registrant or user no less than three days' written notice setting forth the violation and requesting correction. During the inspection, Town staff, employees or contractors shall not attempt to open, tamper, manipulate any equipment attached. Nothing herein shall limit the authority of the Town Manager, building official or their designee from taking appropriate action to address an imminent and immediate health or safety hazard.
- (p) Emergency. In an emergency, as determined by the Town Manager, Building Official, Public Works Director, or their designee, where the installation, use or maintenance of any Communications Facility poses an imminent and immediate health or safety hazard to pedestrians or vehicles, the Town shall, where feasible, give telephonic notice to the owner of the Communications Facility of the nature of the emergency and afford the owner the opportunity to remove or otherwise relocate the Communication Facility. Where telephonic

notice is not feasible or where the owner fails to address the emergency hazard, the Town Manager, building official or their designee may summarily and temporarily remove or relocate such Communication Facility, but only to the extent necessary to avoid the health or safety hazard at issue. Immediately following removal or relocation of any Communication Facility under these emergency procedures, the Town shall provide the owner of the facility with written notice of the action by certified mail, return receipt requested. If the Town removes such facility, the owner of such Communication Facility shall have 30 days after receipt of such written notice by the Town to claim the Communication Facility, or the Town may dispose of such Communication Facility.

35-53. Review of Communication Facility Poles, Utility Poles, Small Wireless Facilities in the Rights-of-Way.

(a) Purpose and Scope.

1. The purpose of this section is to provide appropriate local regulations in the review, permitting, and issuance of wireless facilities pursuant to Section 337.401(7), Florida Statutes, entitled the "Advanced Wireless Infrastructure Deployment Act." Notwithstanding any other provision to the contrary, the provisions identified herein and as referenced elsewhere in this Article, shall provide for the full scope of regulatory authority, as authorized by the Florida Statutes, in the regulation of, Small Wireless Facilities within the jurisdiction of the Town.
2. The approval of the installation, placement, maintenance, or operation of a wireless facility pursuant to this subsection does not authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the right-of-way.
3. This subsection does not affect provisions relating to Pass-Through Providers in this Article and at Section 337.401(6) Florida Statutes.
4. This subsection does not authorize a person to collocate Small Wireless Facilities or Micro Wireless Facilities on an authority Utility Pole, place Small Wireless Facilities, or erect a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association.
5. This subsection does not apply to the installation, placement, maintenance, or replacement or routine maintenance of Micro Wireless facilities or replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size.

(b) Electronic mail. All correspondence with the applicant, including but not limited to, plan review comments, requests for additional information, and permit/registration status, whether for submittal of registration or for building permit, shall be by electronic mail.

(c) Process, review and issuance of permits. The Town shall accept applications for permits and shall process and issue permits subject to the following requirements:

1. The Town may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.
2. An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of Wireless Facilities in the locations identified the application.
3. The Town may not require the placement of wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.



4. The Town may not limit the placement of Wireless Facilities by minimum separation distances. However, within 14 days after the date of filing the application, an authority may request that the proposed location of a Wireless Facility be moved to another location in the right-of-way and placed on an alternative authority Utility Pole or support structure or may place a new Utility Pole. The authority and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the authority of such nonagreement and the authority must grant or deny the original application within 90 days after the date the application was filed. 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.
5. The Town shall limit the height of a Wireless Facility to 10 feet above the utility pole or structure upon which the wireless facility is to be collocated. Unless waived by the Town, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Wireless Facility. If there is no Utility Pole within 500 feet, the authority shall limit the height of the Utility Pole to 50 feet.
6. Except as provided in subparagraphs 4. and 5., the installation of a Utility Pole in the public rights-of-way designed to support a Wireless Facility shall be subject to the Town's rules or regulations governing the placement of utility poles in the public rights-of-way and shall be subject to the application review timeframes in this subsection.
7. Within 14 days after receiving an application, the Town must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the Town must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.
8. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if the Town fails to approve or deny the application within 60 days after receipt of the application. If the Town does not use the 30-day negotiation period provided in subparagraph 4., the parties may mutually agree to extend the 60-day application review period. The Town shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application shall remain effective for one (1) year unless extended by the authority.
9. The Town must notify the applicant of approval or denial by electronic mail. The Town shall approve a complete application unless it does not meet the Town's Applicable Codes. If the application is denied, the Town shall specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the Town denies the application. The applicant may cure the deficiencies identified by the Town and resubmit the application within 30 days after notice of the denial is sent to the applicant. The Town shall approve or deny the

revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

10. An applicant seeking to collocate wireless facilities within the Town may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 Wireless Facilities. If the application includes multiple Wireless Facilities, the Town may separately address Wireless Facility collocations for which incomplete information has been received or which are denied.
11. The Town may deny a proposed collocation of a Wireless Facility in the public rights-of-way if the proposed collocation:
  - a. Materially interferes with the safe operation of traffic control equipment.
  - b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - d. Materially fails to comply with the latest edition of the Florida Department of Transportation Utility Accommodation Manual.
  - f. Fails to comply with applicable codes.
12. The Town may reserve space on Town utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a Wireless Facility. If replacement of the Town utility pole is necessary to accommodate the collocation of the 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.
13. A structure granted a permit and installed pursuant to this subsection shall comply with Chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protections.

(d) The Town shall not require approval or require fees or other charges for:

1. Routine maintenance;
2. Replacement of existing wireless facilities with Wireless Facilities that are substantially similar or of the same or smaller size; or
3. Installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under chapter 202.

Notwithstanding this paragraph, an authority may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

(e) Collocation of Wireless Facilities on Utility Poles is subject to the following requirements:

1. The Town shall not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.
2. The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.
3. The rate to collocate wireless facilities on a Town utility pole shall be \$150 per pole annually.
4. Agreements between the Town and wireless providers that are in effect on July 1, 2017, and that relate to the collocation of wireless facilities in the right-of-way, including the collocation of Wireless Facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and

- terms established under this subsection for Wireless Facilities and Utility Poles that are the subject of an application submitted after the rates, fees, and terms become effective.
5. A person owning or controlling an Authority Utility Pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first Wireless Facility on a Utility Pole owned or controlled by an Authority, the person owning or controlling the authority Utility Pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of Wireless Facilities on the Authority Utility Pole which comply with this subsection.
    - a. The rates, fees, and terms must be nondiscriminatory and competitively neutral and must comply with this subsection.
    - b. For a Town 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. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested Collocation must include pole replacement if necessary.
    - c. For a Town Utility Pole that does not support an aerial facility used to provide communications services or electric service, the authority 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 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the Town may require the applicant seeking to Collocate a Wireless Facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the 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 Town 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 Authority.
    - d. The Town shall 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.
  - (f) A wireless providers shall, in relation to a wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements, as may be applicable, of the Town. Any such requirements may be waived by the Town Manager.
  - (g) A wireless infrastructure provider may apply to the Town to place utility poles in the public rights-of-way to support the collocation of Wireless Facilities. The application must include an attestation that Wireless Facilities will be collocated on the Utility Pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved. The Town shall accept and process the application in accordance with

section 35-52(c)6, and any applicable codes and other local codes governing the placement of Utility Poles in the public rights-of-way.

#### DIVISION 4 Enforcement and Appeals

##### 35-54. - Enforcement remedies of Permit Obligations; Suspension and Revocation of Permits.

- (a) A violation of this article or any resolution adopted pursuant to this article may be enforced pursuant to Section 8-10 and by issuance of a uniform civil violation notice, citation, summons, or notice to appear in County Court, or by filing an action in civil court for injunctive relief. This Article is supplemental, and nothing contained herein shall prohibit the Town from enforcing this Article by any other lawful means.
- (b) Failure of the Town to enforce any requirements of this article shall not constitute a waiver of the Town's right to enforce the Article with respect to that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.
- (c) The Town Manager or his designee is authorized to give any notice required by law.
- (d) The Town Public Works Director may order the suspension of placement and maintenance work under a permit and ultimately may revoke any Permit in the event of a substantial breach of the terms and conditions of any applicable statute, ordinance, rule or regulation or any condition of the permit. The types of substantial breach by Permittee may include, but are not limited to:
- (1) The violation of any material provision of the Permit;
  - (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 Town or its citizens;
  - (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 or insurance;
  - (5) The failure to properly restore the Town's Public Rights-of-way;
  - (6) The failure to correct within the specified time an order issued by the Town Engineer;
  - (7) The failure to Register, Re-Register, or provide notice of any transfer in accordance with this Article;
  - (8) The failure to relocate or remove Facilities pursuant to this Article and Sections 337.402, 337.403 and 337.404, Florida Statutes (2016) as same may be amended from time to time.
  - (9) The failure to report to the Town and Facility owner any damages caused to their Facilities during the execution of the work.
- (e) If the Town Public Works Director determines that the Permittee has committed a substantial breach of a term or condition of the Permit, the Town Public Works Director shall make a written demand upon the Permittee to remedy such violation. The demand shall state that the continued violation(s) may be cause for revocation of the Permit. Further, a substantial breach as stated above will allow the Town Public Works Director, at his or her discretion, to place additional or revised conditions on the Permit.
- (f) Within thirty (30) calendar days of receiving notification of the breach, the Permittee shall contact the Town Public Works Director with a plan, acceptable to the Town Public Works Director, for its correction. The Town shall provide additional time as reasonably necessary for a Permittee to establish a plan acceptable to the Town Public Works Director taking into account the nature and scope of the alleged breach. The Permittee's failure to so contact the Town Public Works Director, 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 of the Permit. Further, the Permittee's failure to contact the Town Public Works Director, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to implement the approved plan, shall be cause for the Permittee to be placed on probation for one full year.

- (g) The Town Public Works Director may establish a list of conditions for any Permit which, if breached, will be cause for the Permittee to be placed on probation for one full year, such as, but not limited to, working out of the allotted time period or working on a Town Public Right-of-way significantly outside the scope of the Permit. These conditions shall be stated on the Permit.
- (h) If a Permittee, while on probation, commits a breach as outlined above, the Permittee's Permit may be revoked, and the Permittee may not be allowed to obtain further Permits for one full year, except for emergency repairs and service requirements as mandated by State or federal regulations.
- (i) If a Permit is revoked, the Permittee shall reimburse the Town for the Town's reasonable costs, including restoration costs and the cost of collection and reasonable attorneys' fees incurred in connection with such revocation.
- (j) The Town Public Works Director may cause an immediate stop work order where the Permittee's construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

#### 35-55 - Appeals.

- (a) Final written decisions of the Town Manager or designee suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the Town Manager within 30 days of the date of the final written decision to be appealed. Any appeal not timely filed as set forth in this section shall be waived. The Town Council shall hear the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant or user, and a written decision shall be rendered within 30 days of the hearing.
- (b) The Town Council shall conduct a de novo hearing on the record and shall determine if:

  - (1) There was a departure from the essential requirements of the law in the proceedings appealed; or
  - (2) Competent, substantial evidence does not exist to support the decision.
- (c) If the Town Council determines that there was not a departure from the essential requirements of the law or that competent substantial evidence exists to support the decision of the Town Manager, then the decision of the Town Manager shall be upheld, otherwise it shall be overturned.
- (d) Appeal from a final decision by the Town Council shall be to the Circuit Court by filing a petition for writ of certiorari within thirty (30) days of the decision, pursuant to court rules. Any such appeal is voluntary, and in the absence of taking such appeal, the decision of the Town Council shall be deemed to be final. If an appeal is taken, however, the decision of the Town Council is no longer deemed to be final but instead is tolled pending the appeal
- (e) Nothing in this section shall affect or limit the remedies the Town or Registrant has available under applicable law.

#### 35-56. - Reports and records.

- (a) A registrant shall provide the following documents to the Town as received or filed:

- (1) Any pleadings, petitions, notices and documents which may directly impact the obligations under this article and which are reasonably necessary for the Town to protect its interests under this article; and
- (2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
- (b) Nothing in this subsection shall affect the remedies a registrant has available under applicable law.
- (c) The Town shall keep any documentation, books and records of the registrant confidential to the extent required by Florida Statutes.

#### DIVISION 5 Abandonment of a Communication Facility and Reservation of Rights

##### 35-57. - Abandonment of a Communications Facility.

- (a) Upon determination by a registrant that one or more of its Communications Facilities in a Town Public Right-of-way is to be Abandoned, the Registrant shall notify the Town no later than 90 days from such determination, or no later than 30 days following such Abandonment, whichever is sooner.
- (b) The Town may direct the registrant by written notice to remove all or any portion of such Abandoned Communications Facility at the registrant's sole expense if the Town determines that the Abandoned Communications Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Communications Facility:
  - (1) Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;
  - (2) Prevents another person from locating facilities in the area of public rights-of-way where the Abandoned Communications Facility is located when other alternative locations are not reasonably available; or
  - (3) Creates a maintenance condition that is disruptive to the use of any public rights-of-way.In the event of Subsection (b)(2) of this section, the Town may require the third person to coordinate with the registrant that owns the existing Communications Facility for joint removal and placement, where agreed to by the registrant.
- (c) In the event that the Town does not direct the removal of the Abandoned Communications Facility, the registrant, by its notice of Abandonment to the Town, shall be deemed to consent to the alteration or removal of all or any portion of the Communications Facility by the Town or another person at such third party's cost.
- (d) If the registrant fails to remove all or any portion of an Abandoned Communications Facility as directed by the Town within a reasonable time period as may be required by the Town under the circumstances, the Town may perform such removal and charge the cost of the removal against the registrant.
- (e) In the event the Abandoned Facility is subject to a pole attachment agreement, then the obligation to remove the Abandoned Communication Facility shall be in compliance with the federal Pole Attachment Act (47 USC Section 224), as same may be amended from time to time.

##### 35-58. - Reservation of rights.

- (a) The Town 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 Communication Facilities placed in the public rights-of-way on or after the effective date of the ordinance from which this article is derived and shall apply to all existing Communication Facilities placed in the public rights-of-way prior to the effective date of the ordinance from which this article is derived, to the full extent permitted by State and Federal law.

Sec. 35-59. No liability or warranty.

Nothing contained in this Article shall be construed to make or hold the Town responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the Registrant's Communications Facilities by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any Permit or the approval or disapproval of any Placement or Maintenance of the Registrant's Communications Facilities as authorized herein constitute any representation, guarantee or warranty of any kind by, or create any liability upon the Town or any official, agent or employee thereof. Additionally, the Town shall not be responsible for any relocation costs incurred by any Registrant due to the Town's or any other Person's work in the Town's Public Rights-of-way.

DIVISION 6 – Fees and Taxes

Sec. 35-60. Communications Services Tax In Lieu of Permit Fee.

A Registrant that places or maintains Communications Facilities in the Town's Public Rights-of-way and that pays Communications Services Taxes shall not be required to pay a permit fee since the Town has elected to collect the Communications Services Tax pursuant to Ch. 202, *Florida Statutes* as same may be amended from time to time. Pass-Through Providers shall pay a fee pursuant to Section 337.401 (5), *Florida Statutes* as same may be amended from time to time and Town Code Section 35-61.

Sec. 35-61 Other Fees.

- (a) Pass-Through Providers shall pay to the Town 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 Town's Public Rights-of-way.
  - (1) The amounts charged shall be based on the linear miles of Town Rights-of-way where Communications Facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.
  - (2) Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the Pass-Through Provider remits taxes imposed by the Town pursuant to Chapter 202, *Florida Statutes* (2016) as same may be amended from time to time.
  - (3) Annual payments shall be due and payable on April 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the Town 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 Town may have for additional sums due and payable. All fee payments shall be

subject to audit by the Town, 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 Town, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

- (4) If the payments required by this Section are not made within ninety (90) days after the due date, the Town Engineer may withhold the issuance of any Permits to the Registrant until the amount past due is paid in full
- (b) A Registrant that provides communications services as defined in F.S. § 202.012(3), within the Town, shall pay to the Town the fees permitted by Florida Law of \$150 per pole facility and wireless facility owned by the Town.