

**ORDINANCE NO. 19- 238**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AMENDING CHAPTER 35, "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", AT ARTICLE I, "IN GENERAL", AT SECTION 35-4 THROUGH 35-7, PROVIDING FOR THE ADOPTION OF NEW FEES AND PENALTIES AND AMENDMENT OF FEES BY RESOLUTION; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 337.401, Florida Statutes, provides that local governments are authorized to prescribe and enforce reasonable rules and regulations with reference to the placing and maintaining of utilities or communications facilities along, across, or on any road and may grant to a resident or corporation organized or licensed in Florida the use of the right-of-way in accordance with said rules and regulations; and

**WHEREAS**, the Town of Miami Lakes' 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; and

**WHEREAS**, the regulation and protection of the rights-of-ways and other utilities to residents of and visitors to the Town is both an important amenity and a necessity of public and private life in the Town; and

**WHEREAS**, it is also the Town's intent to exercise its authority and regulate activities that affect the rights-of-way by any person or public or private entity; 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 Council has repeatedly expressed its desire that all costs incurred by the Town related to private entities activities be fully recovered; and,

WHEREAS, the Town Manager recommend to the Town Council that in an effort to achieve recovery of staff, consultant, and administrative costs, it is necessary to adopt new fees and penalties to provide these services without adversely impacting the Town's general fund; and

WHEREAS, in order to recover these costs, it is necessary to establish new fees and penalties by amending Chapter 35, Article I; and

WHEREAS, amending and renaming Section 35-4 through 35-7, of the Town's Code of Ordinances as provided at Exhibit A; and

WHEREAS, on February 5, 2019, the Town Council at a duly noticed public hearing, moved the item on First Reading; and

WHEREAS, on March 12, 2019, the Town Council considered the ordinance at a duly noticed public hearing; and

WHEREAS, to that end, the Town Council of the Town of Miami Lakes hereby finds and declares that adoption of this Ordinance is appropriate and advances the public interest.

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

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

**Section 2.**     **Amendment.** Section 35-4 through 35-7, of the Town's Code of Ordinances is hereby amended as provided at Exhibit "A."

**Section 3.**     **Fee Schedule.** Fee Schedule shall be adopted by separate Resolution.

**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 become and be made part of the Town Code and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Article”, “Division” or other appropriate word.

**Section 7. Effective Date.** That this Ordinance shall be effective immediately upon its adoption on second reading.

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**FIRST READING**

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

Mayor Manny Cid	yes
Vice Mayor Nelson Rodriguez	absent
Councilmember Carlos O. Alvarez	yes
Councilmember Luis Collazo	yes
Councilmember Joshua Dieguez	yes
Councilmember Jeffrey Rodriguez	yes
Councilmember Marilyn Ruano	yes

Passed on first reading this 5<sup>th</sup> day of February 2019

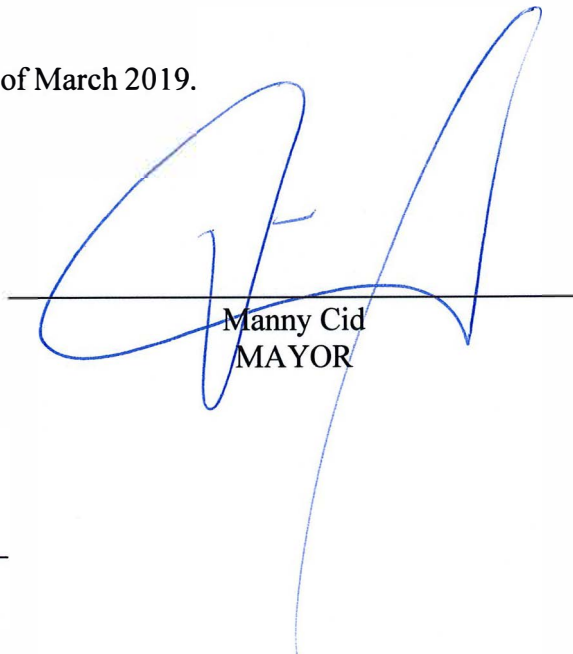
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**SECOND READING**

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

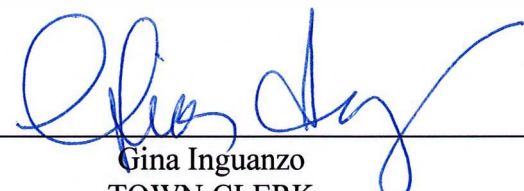
Mayor Manny Cid	yes
Vice Mayor Nelson Rodriguez	yes
Councilmember Carlos O. Alvarez	yes
Councilmember Luis Collazo	yes
Councilmember Joshua Dieguez	yes
Councilmember Jeffrey Rodriguez	yes
Councilmember Marilyn Ruano	yes

Passed and adopted on second reading this 12<sup>th</sup> day of March 2019.



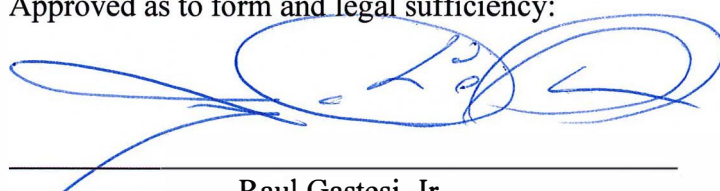
Manny Cid  
MAYOR

Attest:



Gina Inguanzo  
TOWN CLERK

Approved as to form and legal sufficiency:



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

EXHIBIT A

ORDINANCE

Chapter 35 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

\* \* \*

ARTICLE I. – IN GENERAL

\* \* \*

Sec. 35-4. – Rights-of-Way Permit.

- (a) All permit's granted shall expire after forty-five (45) days of issuance, unless otherwise restricted to be existing Florida State Statute or Federal Law. Extensions in increments of forty-five (45) days may be granted by the Public Works Director.
- (b) Except as otherwise provided in the code, no person may construct in any rights-of-way without first having obtained a permit from the Public Works Department.
- (c) A permit will allow the holder to construct in that part of the rights-of-way described in such permit and to hinder free and open passage over the specified portion of the rights-of-way by placing facilities described therein, to the extent and for the duration specified therein.
- (d) A permit is valid only for the dates and the area of rights-of-way specified in the permit, unless modified by the Public Works Director.
- (e) No person may construct in the rights-of-way beyond the date or dates specified in the permit unless such permit is modified by the Public Works Director.
- (f) Permits issued under this article shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by department inspectors and authorized Town personnel.
- (g) The Public Works Director may impose reasonable conditions, upon the issuance of the permit and the performance of the person requesting the permit thereunder in order to, protect the public health, safety and welfare, to ensure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public.

Sec. 35-5. – Rights-of-Way Permit Fees.

- (a) Established. The fees related to rights-of-way permits shall be established by resolution of the Town Council.
- (b) Payment of permit fees. To the extent permit fees are not prohibited under the communications services tax simplification law, no permit shall be issued without prior payment of permit fees, unless, at the discretion of the Town Manager, or designee, the Town allows the person or entity requesting the permit to pay such fees within thirty (30) calendar days of billing.
- (c) Non-refundable fees. Any and all permit fees that were paid for a permit that the Town has revoked for breach are not refundable.
- (d) Preservation of Right-of-Ways. Existing right-of-way located within the Town's jurisdictional boundaries, including sidewalks, curbs and gutters, and landscaping must be restored to their legally permissible preexisting condition, including any aesthetic enhancements thereto and any adjacent private property damaged during construction, upon the expiration or closing of the Permit, which ever should occur first. Any entity failing to restore the right-of-way to its preexisting condition or better within the time permitted shall be subject to a civil fine of five hundred dollars (\$500.00) per violation per day until such time as the right-of-way is restored, as well as five hundred dollars (\$500.00) per day for each affected adjacent private property until it is restored.

Sec. 35-6 – Enforcement

In addition to any other remedy available by law or ordinance, enforcement against a person, firm, corporation or benefactor that violates this section by un-lawfully placing items on a right of way or failing to preserve the right of way shall be dealt with as provided in Chapter 8, of this Code.

Sec. 35-7. – Permit Fees Waiver.

The Town Manager or Public Works Director may waive all or part of a right-of-way permit fees.