

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA, AMENDING CHAPTER 10, ARTICLE VI ENTITLED “TELECOMMUNICATIONS REGULATIONS” OF THE CODE OF ORDINANCES BY RENAMING THE ARTICLE TO “PLACEMENT AND MAINTENANCE OF FACILITIES FOR COMMUNICATIONS SERVICES IN RIGHTS-OF-WAY”; UPDATING DEFINITIONS IN CONFORMANCE WITH STATE LAW; PROVIDING FOR WIRELESS COMMUNICATIONS FACILITIES; UPDATING AND REVISING THE REGISTRATION AND PERMITTING PROCESS; REQUIRING DESIGN FEATURES FOR CERTAIN ABOVE GROUND FACILITIES; PROVIDING PLACEMENT PARAMETERS FOR WIRELESS TELECOMMUNICATIONS FACILITIES IN RESIDENTIAL RIGHTS OF WAY; REVISING ADMINISTRATION AND ENFORCEMENT PROCEDURES; PROVIDING REGULATIONS FOR “PASS THROUGH PROVIDERS” IN ACCORDANCE WITH STATE LAW; PROVIDING FOR CONFLICTS, SEVERABILITY AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach's Comprehensive Plan and Code of Ordinances controls and directs development and uses throughout the City; and

WHEREAS, the City Council adopted Ordinance 4044 on May 7, 2014 and thereby enacted a moratorium for a period up to one-year as to filing and/or receiving of any application for permits for new above ground wireless communications facilities, including antennas and related equipment in the public rights of way of the City of Riviera Beach in order to create regulations for the placement and maintenance of above ground wireless communications facilities within the City rights of way; and

WHEREAS, the City Council directed City Staff to develop new regulations pertaining to the placement of wireless telecommunications facilities within the City rights of way during the pendency of said moratorium; and

WHEREAS, the City Staff has prepared the code revisions regarding telecommunications facilities, including wireless telecommunications facilities, within the City rights of way contained in this Ordinance; and

WHEREAS, the Planning and Zoning Board held a public meeting on October 23, 2014 to discuss the proposed language pertaining to telecommunications facilities, including wireless telecommunications facilities, within the City rights of way; and

WHEREAS, on October 23, 2014, the Planning and Zoning Board recommended approval of this language pertaining to telecommunications facilities, including wireless telecommunications facilities, within the City rights of way to the City Council; and

WHEREAS, it is the desire of the City Council of the City of Riviera Beach to adopt any necessary amendments to the City's Code of Ordinances governing the

placement of wireless telecommunications facilities within the City rights of way to be consistent with applicable state and federal laws and regulations regarding telecommunications facilities; and

WHEREAS, the City Council of the City of Riviera Beach desires to adopt these updated code provisions prior to the expiration of the aforesaid moratorium and believes that the updated code provisions contained in this Ordinance will serve to benefit the citizens of Riviera Beach and will protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, THAT:

SECTION 1. The foregoing recitals are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

SECTION 2. Chapter 10 of the Code of Ordinances of the City of Riviera Beach is amended at Article VI by renaming this article “Placement and Maintenance of Facilities for Communications Services in Rights-of-Way”, by updating definitions in conformance with state law, by providing for wireless communications facilities, by updating and revising the permitting process, by requiring design features for certain above ground facilities, by providing placement parameters for wireless telecommunications facilities in residential rights of way, by revising administration and enforcement procedures, and by providing regulations for “pass through providers” in accordance with state law; providing that Chapter 10 Article VI shall hereafter read as follows (additions are underlined and deletions appear in ~~strikethrough~~ format):

ARTICLE VI. PLACEMENT AND MAINTENANCE OF FACILITIES FOR COMMUNICATIONS SERVICES IN RIGHTS-OF-WAY TELECOMMUNICATIONS REGULATIONS

DIVISION 1. GENERALLY

- Sec. 10-171. Title.
- Sec. 10-172. Intent and purpose.
- Sec. 10-173. Definitions.
- Secs. 10-174—10-190. Reserved.

Sec. 10-171. Title.

This article shall be known and may be cited as the "Telecommunications "Regulations for use of Rights-of-Way by Communications Service Providers". Ordinance".

Sec. 10-172. Intent and purpose.

It is the intent of the city to promote the public health, safety, and general welfare by providing for the placement and maintenance of communications facilities and wireless communications facilities in use of the public rights-of-way within the city, ~~to adopting and administering~~ reasonable rules and regulations not inconsistent with state and federal law, including F.S. §§ 337.29(3), 337.401, 362.01, and 337.29(3), as may be amended, and the city's home-rule authority, and in accordance with the provisions of the Telecommunications Act of 1996, ~~to provide for the payment of compensation and other consideration by a telecommunications service provider to the city for the cost of regulating and maintaining the public rights of way and for the privilege of using the public rights of way within the city for constructing and maintaining telecommunications facilities, and to establish the~~ necessary to manage the placement and maintenance of communications facilities and wireless communications facilities in the public rights-of-way by all communications services providers and pass-through providers; and minimize disruption to the public rights-of-way. ~~reasonable regulations concerning the use of the public rights-of way by all telecommunications service providers after the effective date of this article.~~ In regulating the placement and maintenance of wireless communications facilities within its public rights-of-way, the city shall be governed by and shall comply with all applicable federal, state and local laws and regulations, including this article. This article is applicable only to rights of way within the city and is not applicable to the placement and maintenance of wireless communications facilities located outside of a right of way.

Sec. 10-173. Definitions.

For the purpose of this article, the following terms, phrases, words and derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the

singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any permit that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 151 et seq., as may be amended (collectively the "Communications Act"), and, if not defined therein, as defined by Florida Statute; and, if not defined therein, be construed to mean the common and ordinary meaning.

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

City means the City of Riviera Beach, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

Communications services shall mean 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 or hereafter devised, regardless of the protocol used for such transmission or conveyance. 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 as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

(b) Placement or maintenance of wiring or equipment on a customer's premises.

- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

Communications services provider shall mean any person who, upon registering with the city, places or maintains a communications facility in the city's rights-of-way.

Communications facility or facility or system shall mean any permanent or temporary equipment and/or property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, 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 city and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. Communications facilities may be wired, wireless, or both. Communications facilities may be placed or maintained within city rights-of-way by communications services providers or by pass-through providers in accordance with the provisions of this article.

Distributed antenna system, or DAS, is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are at or below the clutter level and node placements are compact.

FCC shall mean the Federal Communications Commission.

~~Gross receipts shall mean all cash, credits or property of any kind or nature, with deductions for bad debt expense, reported as revenue items to the registrant's audited~~

~~income statements arising from, or attributable to recurring local service revenues of registrant within the city. The city reserves the right to amend the definition contained herein as permitted by applicable law. The definition herein shall not be applicable as of October 1, 2001; or such other date as provided by law, provided that F.S. § 337.401 is amended effective October 1, 2001, as set forth in Chapter 00-260, Laws of Florida, 2000.~~

Information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term does not include video service.

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

Notification area shall mean within 300 linear feet of proposed communications facilities and wireless communications facilities.

Pass-through provider shall mean any person who, upon registering with the city, places or maintains a communications facility in the city's rights-of-way and that does not remit communications service taxes as imposed by the city pursuant to Chapter 202, F.S., as may be amended.

Person means any individual, corporation, partnership, association, joint venture, estate, trust, syndicate, fiduciary, organization or legal entity of any kind, and any lawful

trustee, successor, assignee, transferee or personal representative thereof, and all other groups or combinations and shall include the city to the extent the city obtains or holds a certificate under F.S. Ch. 364, as may be amended.

Place or maintain or placement or maintenance or placing or maintaining shall mean to erect, construct, place, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider or pass-through provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. The provision of service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not placing or maintaining facilities in the public rights-of-way.

PSC means the Florida Public Service Commission.

Public rights-of-way means the area and space in, on, over, under or across the surface, the airspace above the surface and the area below the surface of any public street, alley, viaduct, elevated roadway, bridge, public easement, or any other public way for which the city is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law. Public rights-of-way shall not include any real or personal city property except as described above and shall not include city buildings, fixtures, or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

~~*Recurring local service revenues* means revenues from the monthly recurring charges for local service, including but not limited to (1) recurring basic area revenues derived from the provision of flat-rated basic area services; (2) recurring optional extended area revenues derived from the provision of optional extended area services; (3) local private line revenues derived from local services which provide communication between specific locations, either through dedicated circuits, private switching arrangements,~~

~~predefined transmission paths, whether virtual or physical, or any other method of providing such services; (4) revenues from the sale of local services for resale; and (5) other local service revenues from the provision of secondary features that are integrated with the telecommunications network, including, without limitation, services such as call forwarding, call waiting, and touchtone line service. Except as provided herein, revenues from all recurring local services provided by a registrant over a telecommunications facility or system in the public rights of way shall constitute recurring local service revenues subject to this article. Recurring local service revenues do not include revenues from (1) toll charges for the transmission of voice, data, video, or other information; (2) access charges paid by carriers for origination and/or termination of toll telephone service as defined in F.S. § 203.012(7), or other charges required by the Federal Communications Commission which are directly passed through to end users; (3) interstate service; (4) ancillary services such as directory advertising, directory assistance, detailed billing services, inside wire maintenance plans, bad check charges, and nonrecurring charges for installation, move, changes or termination services; (5) cellular mobile telephone or telecommunications services; or specialized mobile telephone or telecommunications service; or specialized mobile radio, or pagers or paging service, or related ancillary services; (6) public telephone charges collected on site; (7) teletypewriter or computer exchange services as defined in F.S. § 203.012(6); or (8) local message rated (message, unit or time basis) and minutes of use charges in excess of the minimum flat rated charges for similar services. This definition shall not be applicable as of October 1, 2001, or such other date as provided by law, provided that F.S. § 337.401 is amended effective October 1, 2001, as set forth in Chapter 00-260, Laws of Florida, 2000.~~

~~*Registrant or facility owner* shall mean a communications services provider or pass-through provider telecommunications company or other person, which seeks to use or occupy the public rights-of-way that has registered with the city in accordance with the provisions of this article.~~

~~Registration and register shall mean the process described in this article section 10-191 whereby a communications services provider or pass-through provider telecommunications service provider provides certain information to the city.~~

~~Telecommunications company has the meaning set forth in F.S. § 364.02(12), as amended. The term telecommunications company does not include an open video system or cable service provider.~~

~~Telecommunications service shall include, without limitation, the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by and through electronic, radio, satellite, cable optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Telecommunications service, as contemplated herein, does not include the provision of service via an open video system or cable service provider, which shall require separate authorizations from the city. As of October 1, 2001, the term communications shall be substituted for telecommunications, provided that F.S. § 337.401 is amended effective October 1, 2001, as set forth in Chapter 00-260, Laws of Florida, 2000.~~

~~Telecommunications service provider shall refer to any person making available or providing telecommunications services, as defined herein, through the use of a telecommunications facility in the public rights-of-way. As of October 1, 2001, the term communications shall be substituted for telecommunications" provided that F.S. § 337.401 is amended effective October 1, 2001, as set forth in Chapter 00-260, Laws of Florida, 2000.~~

~~Telecommunications facilities, facilities or systems means any facility, equipment or property, including, but not limited to, cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, located, to be located, used, or intended to be used, in the public rights-of-way of the city to transmit, convey, route, receive, distribute, provide or offer telecommunications services. As of October 1, 2001, the term communications" shall be substituted for telecommunications, provided that F.S. § 337.401 is amended effective October 1, 2001, as set forth in Chapter 00-260, Laws of Florida, 2000.~~

Stealth design shall mean a method of camouflaging any tower antenna or other telecommunications 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.

Video service means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

Wireless communications facility means equipment or facilities located within a city right-of-way, used to provide wireless communications service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Poles for wireless communications facilities shall be of a size and configuration that is comparable to other utility poles that are traditionally and customarily located within the same or similarly sized rights-of-way. Wireless communications facilities within a right-of-way may be comprised of "Distributed Antenna Systems". Placing a wireless communications facility on an existing tower or building does not cause the existing tower or building to become a wireless communications facility. Wireless communications facilities may be placed or maintained within city rights-of-way by communications services providers or by pass-through providers in accordance with the provisions of this article.

Secs. 10-174—10-190. Reserved.

DIVISION 2. REGISTRATION

Sec. 10-191. Required.

Sec. 10-192. Application; review.

Sec. 10-193. Fees and payments.

~~Sec. 10-194. Reports and records.~~

Secs. 10-~~194~~ 195—10-210. Reserved.

Sec. 10-191. Required.

Each communications services provider or pass-through provider telecommunications service provider that desires to place, erect, construct, install, locate, or maintain, repair, extend, expand, remove, or relocate any communications facility or wireless communications facility telecommunications facilities in, under, over or across any public rights-of-way in the city ~~shall be considered to be using or occupying the rights-of-way and~~ shall be required to first register with the city in accordance with the terms of this article. A communications services provider or pass-through provider with an existing communications facility or wireless communications facility in the public rights-of-way of the city as of the effective date of the ordinance from which this article is derived has ninety (90) days from the effective date of the ordinance from which this article is derived to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

Sec. 10-192. Application; review.

(a) Communications services provider or pass-through provider registration Any telecommunications provider desiring to place or maintain use the public rights-of-way shall file a registration with the city which shall include the following information:

- (1) Identity of the registrant applicant and name, address, e-mail address and telephone number of the registrant's applicant's primary contact person in connection with the registration, and that of an alternate person to contact in case of emergency;
- (2) A description of the registrant's standard business operations and an inventory of existing facilities and equipment in the city if any. Said inventory shall exclude

~~wires, cables and conduit, and is only intended to capture existing above ground equipment such as antennas, poles and sheds/boxes; A statement of whether the applicant presently provides retail services to any telecommunications services customers within the jurisdictional limits of the city at the time of registration or whether the applicant simply intends to lease its facilities to other telecommunication service providers who will be providing direct service to retail customers within the jurisdictional limits of the city. This information will allow the city to follow up, with the registrant, at the time the registrant begins to make physical use of the public rights of way, and allow the city to determine whether a linear mile charge is applicable in accordance with section 10-193(b) of this article;~~

- (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 and/or state certification authorizing the applicant to provide telecommunications services; and
 - (5) ~~If the registrant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or by other means; and~~
 - (6) A security fund in accordance with this article.
- (b) The city will review the information submitted by the registrant applicant. Such review will be conducted by the city manager or ~~the city manager's~~ designee. If the registrant applicant submits information in accordance with Sec. 10-192 (a) ~~this section~~ the registration shall be effective and the city shall notify the registrant applicant of the effectiveness of registration in writing. If the city determines that the information has not been submitted in accordance with this section, the city shall notify the registrant applicant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The city shall so reply to a registrant ~~an applicant~~ within 45 ~~30~~ days after receipt of registration information from the registrant applicant. Upon notification of the non-effectiveness of the registration,

- nothing herein shall preclude the registrant applicant from filing a subsequent application correcting addressing the basis for the non-effectiveness. ~~If the registrant disputes the determination of non-effectiveness for the particular application submitted, the registrant may file an appeal under section 10-212(p). Failure to comply with the appeals section for the particular application found to be non-effective shall be sufficient grounds for the city to reject that particular application in the future.~~ A registrant may cancel a registration upon written notice to the city noticing that it will no longer maintain facilities in the city's public rights-of-way and will no longer need to pull permits to perform work in the city's public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities or wireless communications facilities in public rights-of-way. ~~Within 30 days of any change in the information required to be submitted pursuant to this section, registrant shall provide updated information to the city.~~
- (c) A registration shall not convey title, equitable or legal, in the public rights-of-way. Registration under this article governs only the placement or maintenance of communications facilities or wireless communications facilities in public rights-of-way. ~~Registrants may only occupy public rights-of-way for telecommunications facilities.~~ Registration does not excuse a communications services provider or pass-through provider ~~telecommunications provider~~ from obtaining appropriate required approvals and city building permits for access or pole attachment before locating its facilities on another person's facilities. Registration does not excuse a communications services provider or pass-through provider ~~telecommunications provider~~ from complying with all applicable city ordinances, including this article.
- (d) Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (a), a registrant shall provide updated information to the city. Additionally, a registrant shall renew its registration with the city by April 1 of even numbered years in accordance with the registration requirements in this article, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year.

Registration renewals shall include an inventory of the registrant's newly placed facilities or abandoned facilities since the prior registration or registration renewal. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the communications services provider or pass-through provider has complied with the registration requirements of this article.

- (e) In accordance with applicable city ordinances, codes or regulations and this article, a city issued building permit shall be required of a communications services provider or pass-through provider that desires to place or maintain a communications facility or wireless communications facility in public rights-of-way. An effective registration shall be a condition of obtaining a city issued building permit. Notwithstanding an effective registration, applicable city permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all city permitting requirements are met.
- ~~(f) Each application for registration or transfer shall be accompanied by a non-refundable application fee in the amount of \$800.00. The fee amount shall be equal to the city's costs and expenses incurred in connection with approving the registration, transfer or renewal. If the application fee is insufficient to cover all costs or expenses incurred by the city in connection with approval of the registration or transfer the applicant shall reimburse the city for any such costs and expenses in excess of the application fee. Fee amounts may be amended from time to time, by resolution of the city council, for the purpose of complying with this provision. This application fee may be credited against fees due under section 10-193.~~
- (g) Registration with the city shall be nonexclusive. Registration does not establish any priority for the use of the public right-of-way by a registrant or any other registrants. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted during the term of the registration.

Sec. 10-193. Fees and payments.

A registrant that places or maintains communications facilities or wireless communications facilities in the public rights-of-way shall be required to pay an administrative/application fee, as set by resolution of the city council, to cover the city's actual costs of reviewing and processing permit applications.

~~(a) In consideration for the rights, privileges, and permission granted hereunder, a registrant hereunder shall pay to the city annually a sum equal to one percent of gross receipts of the registrant on recurring local service revenues for services provided within the corporate limits of the city. Included within such one percent maximum fee or consideration are all taxes, licenses, fees, in-kind contributions accepted pursuant to F.S. § 337.401(5), and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the city upon a registrant. In the event that applicable law currently permits or is amended to permit the city to collect a fee higher than one percent, or permits the city to calculate the fee on revenues not specified herein, the registrant shall pay following written notice from the city, its fee payments to the city to that higher amount on the effective date of such law. In the event applicable law is amended to require the city to collect a fee lower than the current statutory limit, the city shall take all necessary steps to conform the requirements hereof to applicable law. All of the aforesaid payments shall be made to the city quarterly, with such payments made within 20 days following the end of each calendar quarter. Payments received after the due date stated herein shall be subject to interest in accordance with the interest rate identified in F.S. § 55.03, or its successors.~~

~~(b) A registrant, that makes physical use of the public rights of way and who is not providing telecommunications services as defined in F.S. § 203.012(3) within the jurisdictional limits of the city at the time the registrant begins to make physical use of the public rights of way, shall pay to the city annually no less than \$500.00 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the public rights-of-way. The city may adopt additional fees or other consideration,~~

~~provided that any fee or other consideration imposed by the city in excess of \$500.00 per linear mile shall be applied in a nondiscriminatory manner and shall not exceed the sum of:~~

- ~~(1) Costs directly related to the inconvenience or impairment solely caused by the disturbance of the public rights of way;~~
- ~~(2) The reasonable cost of the regulatory activity of the city; and~~
- ~~(3) The proportionate share of cost of land for such street, alley or other public way attributable to utilization of the public rights of way by a telecommunications service provider.~~

~~The fee or other consideration imposed pursuant to this subsection shall not apply in any manner to any telecommunications company which provides telecommunications services as defined in F.S. § 203.012(3) for any services provided by such telecommunications company.~~

- ~~(c) Notwithstanding anything herein to the contrary, the city shall at all times hereby require the maximum compensation allowed under applicable law.~~
- ~~(d) Except to the extent prohibited by applicable law: (1) the fee payments to be made pursuant to this section shall not be deemed to be in the nature of a tax; (2) such fee payments shall be in addition to any and all taxes of a general applicability; (3) a registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said city taxes or other fees or charges of general applicability which registrant is required to pay of the city, except as required by law; and (4) the fee specified herein is the consideration for use of the public rights-of-way, including all public easements, for the purpose of installing and maintaining a telecommunications facility.~~
- ~~(e) The payments required under subsection 10-193(a) shall not apply as of October 1, 2001. Additionally, after October 1, 2001, subsection 10-193(b) shall continue to apply to any person or entity that does not directly serve a communications services customer at retail within the jurisdictional limits of the city at the time the person or entity makes physical use of the rights-of-way.~~

Sec. 10-194. Reports and records.

- ~~(a) The city may, at its option, upon 60 days notice to the registrant, but in no event more often than once per year, examine the records and accounting files, and such other books and records, if such records relate to the calculation of fee payments. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions, and requirements of this article shall be during regular hours of business of the registrant at an office of the registrant located within the county, or at another location satisfactory to the city. In the event that the city, pursuant to an audit, determines that there exists a discrepancy in the amount paid and the amount owed to the city by the registrant in excess of two percent, registrant shall pay all reasonable costs, fees and expenses of the audit. This paragraph shall not apply for periods after October 1, 2001, or such other date as provided by law, provided that F.S. § 337.401 is amended effective October 1, 2001, as set forth in Chapter 00-260, Laws of Florida, 2000.~~
- ~~(a) Upon reasonable request, a registrant shall provide the following documents to the city as received or filed:~~
- ~~(1) Any pleadings, petitions, notices, and documents, regarding any legal proceeding involving any provisions of this article which are reasonably necessary for the city to protect its interests under this article.~~
 - ~~(2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.~~
- ~~(b) Nothing in this section shall affect the remedies the registrant has available under applicable law.~~
- ~~(c) In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.~~
- ~~(d) The city shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.~~

Secs. 10-~~194~~ 195—10-210. Reserved.

DIVISION 3. PLACEMENT INSTALLATION AND RELOCATION OF COMMUNICATIONS FACILITIES OR WIRELESS COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 10-211. Use of rights-of-way. Underground installation; relocation.

Sec. 10-212. Relocation of communications facilities or wireless communications facilities in public rights-of-way. Use of rights-of way.

Secs. 10-213—10-220. Reserved.

Sec. 10-211. Use of rights-of-way.

- (a) A registrant ~~facility owner~~ agrees at all times to comply with and abide by all applicable provisions of the state statutes and local laws including, but not limited to, applicable zoning and building regulations not inconsistent with state and federal laws in placing or maintaining a communications facility or wireless communications facility in public rights-of-way.
- (b) Except in the case of an emergency, no registrant ~~telecommunications service provider~~ shall construct or maintain any communications facility or wireless communications facility on, over, above, along, upon, under, across, or within any public right-of-way ~~which disrupts the public rights-of-way~~ without first filing an application with and obtaining a permit from the city therefor, pursuant to applicable permitting requirements of the city, and other applicable City Code requirements, ~~except as otherwise provided in this article.~~ The term emergency shall mean a condition that affects the public's health, safety or welfare, which includes unplanned out of service condition of a pre-existing service. Registrant shall still be required to provide prompt ~~prior~~ notice to the city of the placement or maintenance of a communications facility or wireless communications facility in public rights-of-way in the event of an emergency. For the purposes of the notice requirements herein, the city shall provide the registrant with a city contact who will be available 24 hours a day, seven days a week. Unless otherwise required by the City Code, the city may

waive the permit requirement in cases where there will be no disruption of the public rights-of-way.

(c) As part of any permit application, with respect to new or existing facilities, where applicable, in the public rights-of-way, the registrant shall provide a proposal for construction of the telecommunications facility that sets forth at least the following:

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

(2) A description of the manner in which the facility system will be placed ~~installed~~ (i.e. anticipated construction methods and/or techniques), the time required to construct the facility system, a maintenance of traffic plan for any disruption of the public rights-of-way, information on the ability of the public rights-of-way to accommodate the proposed facility system, including information that identifies all above-ground facilities currently existing in the areas to which the permit application applies, and extending 1,000 feet beyond said areas within the city if available (such information shall be provided without certification as to correctness, to the extent obtained from other users of the public rights-of-way), and, if appropriate given the facility system proposed, an estimate of the cost of restoration to the public rights-of-way. Such plan shall include the timetable for construction for each phase of the project, and the areas of the city which will be affected, and an inventory of all existing communications facilities or wireless communications facilities that the registrant or the registrant's predecessors in interest has previously placed in the areas to which the permit application applies, and extending 1,000 feet beyond said areas within the city, as well as

any other areas within the city which the city finds reasonably necessary to review the permit application.

- (3) The city may request such additional information as it finds reasonably necessary to review an application for a permit to perform work in the public rights-of-way.
- (4) Subject to the limitations set forth in Florida Statute, Section 337.410(3), as amended, an administrative fee, as set by resolution of the city council, to cover the city's actual costs of reviewing and processing the permit application.
- (5) Prior to the issuance of any permit pertaining to the placement and maintenance of communication facilities or wireless communications facilities within the public rights-of-way located in residential zoning districts, the City Council shall be notified by issuance of a memorandum by the city manager or designee showing the location of the proposed communication facilities or wireless communications facilities. Additionally, the city manager or designee shall require the applicant to issue notice of the work to property owners who adjoin such rights-of-way (the "notification area"), and based on the scope of the proposed work, the number of affected property owners, and the potential severity of the impact to such property owners, shall further require the applicant to hold a public information meeting for purposes of answering questions and taking comments from affected property owners. Comments may be submitted in person or in writing to the city. The process for submitting written comments shall be provided to all property owners in the notification area by the applicant. The notification area may be expanded at the city's discretion and notice shall be affected in a manner deemed appropriate by the city manager or designee. Should a public information meeting be required, the applicant shall submit a report to the city manager or designee, no later than 10 days after such meeting, stating the public comments received and any responses provided by the applicant. The applicant shall meet with city staff no later than 15 days after submittal to review comments received at the public information meeting and attempt to resolve all negative comments or issues raised. No permits shall be issued by the city until this process, if required, has been completed by the applicant.

- (d) The city shall have the power to prohibit or limit the placement of new or additional communications facilities or wireless communications facilities within the public rights-of-way, if there is insufficient space to accommodate all of the requests to occupy or use the rights-of-way, for the protection of existing facilities in the public rights-of-way, or for city plans for public improvements or development projects which have been determined by the city to be in the public interest, to prevent interference with the operations of public safety telecommunications services, or to accommodate traffic safety issues raised by the city, the county, Florida Department of Transportation or any other agency with regulatory authority over any right-of-way within the city. Nothing in this article shall affect the city's authority to add, vacate, or abandon public rights-of-way, and the city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.
- (e) All communications facilities and wireless communications facilities shall be placed installed, located and maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and to cause unreasonable interference with the rights and convenience of property owners who adjoin any of the public rights-of-way. Except as provided herein, all communications facilities and wireless communications facilities shall have the capacity to permit multiple users where feasible. All communications facilities and wireless communications facilities shall be placed and maintained so as not to create interference with the operations of public safety telecommunications services. The registrant shall be liable for costs and expenses for the displacement, damage or destruction of any irrigation system or landscaping within the public rights-of-way, to the extent not covered by the construction bond. The registrant shall make such repairs upon request of the affected property owner. In the event the registrant fails to make the appropriate repairs, to restore such property to as good a condition as existed prior to commencement of work, the affected property owner may file a complaint with the city manager or a designee. In this instance, the registrant shall be given prior

- written notice of the necessary repairs by the city manager or his designee. If such repairs are not performed in a reasonable and satisfactory manner within the 30 calendar days after receiving notice, the city may cause the repairs to be made at the facility owner's expense, utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the city to the registrant. After 30 days, the city may obtain reimbursement from the security fund. The prior written notice described in this paragraph shall be considered a final written decision for purposes of the appellate rights outlined in subsection (p) of this section 10-231.
- (f) The registrant shall endeavor, when practicable, to place all communications facilities or wireless communications facilities underground. In the event that a registrant demonstrates to the city that there is no underground alternative for certain wireless facilities, including antenna and structures that physically support antenna, which must be placed above-ground to be functional, above ground placement of such facilities shall be permitted by the city. To the extent not inconsistent with public service commission regulations, the city may require the use of trenchless technology (i.e., directional bore method) for the placement of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit. In making such requests, the city shall take into consideration several factors including inconvenience to the public and other users of rights-of-way and the technical feasibility of such requests. Every registrant which places or constructs telecommunications facilities underground shall maintain appropriate participation in the regional notification center for subsurface placements. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights of way as well as joint trenching and/or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever possible.
- (g) The city manager or designee may issue such additional rules and regulations concerning the placement or maintenance of a communications facility or wireless communications ~~telecommunications~~ facility in the public rights-of-way, as may be consistent with applicable law and not inconsistent with this article.

- (h) Stealth design is required in order to minimize the visual impact of above ground communications facilities and wireless communications facilities. The use of foliage and vegetation around ground equipment is required by the city based on conditions of the specific area where the ground equipment is to be located. In order to avoid the clustering of multiple items of ground equipment in a single area, a maximum of two (2) ground equipment boxes may be grouped together in any single location. In addition, such locations must be spaced a minimum of two thousand (2,000) linear feet of right-of-way apart from each other, unless technical documentation is provided by the applicant to support a smaller distance and is approved by the City Manager. Should said separation result in the potential location of more than six (6) communications utility poles on one linear mile of a city block, the City Council shall be notified by a memorandum from the City Manager. Stealth poles shall not be included in the quantity limitation described herein. Individual ground equipment boxes shall not exceed three (3) feet wide, by three (3) feet deep by five (5) feet high in size. The size and height of wireless communications facility poles shall not exceed the average size and height of existing utility poles located in the same right-of-way within the city. Nothing contained in this section shall be interpreted to prohibit the co-location of antennas on existing poles due to antenna height requirements.
- (i) Wireless communications facilities shall be located in expressway, and major or minor arterial rights-of-way, as defined in Sec. 30-1 of the City's Code of Ordinances, whenever possible. Placement of wireless communications facilities in collector street, cul-de-sac, local street and marginal access street rights-of-way, as defined in Sec. 30-1 of the City's Code of Ordinances, shall be prohibited unless the applicant cannot otherwise provide service to a particular customer or customers without doing so, and the inability to place ~~can justify, to the satisfaction of the city,~~ that placement of facilities in such rights-of-way is necessary to accomplish requirements of nondiscriminatory treatment of the applicant in relation to the city's treatment of other telecommunications service providers. In such circumstances, the applicant shall include with its city building permit application, sufficient evidence

consistent with industry standards, to justify such placement. Whenever wireless communications facilities must be placed in a right-of-way with residential uses on one or both sides, neither poles, equipment, antennas or other structures shall be placed in front of a residential structure. If a right-of-way has residential structures on only one side, the wireless communications facilities shall be located on the opposite side of the right-of-way whenever possible. All wireless communications facilities shall be located in such a way that they do not interfere with views from residential structures.

- (j) All safety practices required by applicable law or accepted industry practices and standards shall be used during construction, maintenance, and repair of the communication facilities or wireless communications ~~telecommunications~~ facilities.
- (k) In the event that at any time during the term of the rights granted herein the city shall lawfully elect to alter, or change the grade of, any public rights-of-way, upon reasonable notice by the city, the registrant shall make any necessary removals, relaying and relocations of its communication facilities or wireless communications ~~telecommunications~~ facilities at its own expense, in accordance with applicable law. The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications or other types of facilities, cables or conduits, and to do, and to permit to be done, any underground and overhead placement ~~installation~~ or improvement that may be deemed necessary or proper by the city in the public rights-of-way occupied by the registrant. Registrant may allow the city facilities to be co-located within the city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and the city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, placement, relocation or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.

- (l) A registrant ~~facility owner~~ shall obtain any and all required permits and pay any and all required fees before commencing any construction on or otherwise disturbing any public rights-of-way as a result of its construction, except as provided herein. The registrant ~~facility owner~~ shall, at its own expense, restore such property to as good a condition as existed prior to commencement of work. A registrant shall guarantee its restoration for a period of 12 months after the completion of such restoration. If such restoration is not performed in a reasonable and satisfactory manner within 30 calendar days after the completion of construction, the city may, after prior written notice to registrant, cause the repairs to be made at the facility's owner expense, utilizing city employees, agents or contractors, charge any and all costs, in accordance with F.S. § 337.402, as may be amended, and require reimbursement within 30 days after the submission of the bill by the city to the registrant. Alternatively, at the sole discretion of the city, the city may seek to recover expenses, costs and loss from restoring the right-of-way, against the registrant's construction bond pursuant to section 10-225. A permit from the city constitutes authorization to undertake only certain activities on public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (m) All ongoing placement ~~installation~~, construction and maintenance of a communications facility or wireless communications ~~telecommunications~~ facility located in the public rights-of-way shall be subject to the city's periodic inspection for compliance with this article, or any applicable provisions of the City Code.
- (n) The city makes no warranties or representations regarding the fitness, suitability or availability of the city's public rights-of-way for the registrant's communications facilities or wireless communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk.
- (o) A registrant ~~facility owner~~ shall cooperate with the city by providing timely and complete information requested under this section ~~subparagraph~~. Upon completion of any placement ~~installation~~ or construction of new facilities in the public right-of-

way, at no cost to the city, the registrant ~~facility owner~~ shall provide such information, as may be requested, showing the exact location of its facilities and structures, including but not limited to, as-built plans, maps, geographical information systems, plats, construction documents, drawings and any other information the city may find reasonably necessary. Such plans shall be provided in digitized format showing the two-dimensional location of the facilities based on the city's geographical database datums, or other format acceptable to the city manager or designee. All information required by this section shall be maintained in accordance with F.S. § 202.195, as may be amended.

- (p) In the interest of the public's health, safety and welfare, upon request of the city, a registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, placement or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way. The city may require a registrant 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. The city may provide a more definite time frame based on specific city construction or maintenance schedules.
- (q) Waivers to the requirements of this division may be granted by the city manager or designee as provided in this subsection. Nothing in this chapter shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of city rights-of-way by communications service providers and pass-through providers, in violation of state or federal law. The waiver provisions listed in this subsection apply only where a registrant's application for the placement or relocation of a communications facility or wireless communications facility in a city right-of-way does not meet the criteria for approval as required by this division. A request for a waiver shall include all information described in this subsection and any other reasonable information the city may require. The city may deny the request for a waiver if it does not comply with the requirements of this subsection. The following provisions shall govern the issuance of a waiver from the requirements of this division:

- (1) In the event that the applicant files for a waiver, the applicant shall file the appropriate waiver application fee.
- (2) The city manager or designee shall consider the following factors in determining whether to grant a waiver:
 - (i) A detailed explanation, with supporting data, as to why a waiver from the requirements of this division is required in order to allow the registrant/applicant to have nondiscriminatory and competitively neutral use of city rights-of-way. This may include, as appropriate, evidence that a waiver is required to avoid an undue burden/hardship on the applicant and that a waiver is necessary in order to close a significant gap in the applicant's service to the affected area, evidence that the application of the requirements of this division is contrary to the public health, safety or welfare; or evidence that the application of the requirements of this division creates a result that is inconsistent with the intent of this division. The foregoing examples are not intended to be exhaustive of the items that an applicant may present to the city when requesting a waiver under this subsection.
 - (ii) Availability of co-location opportunities, which are a preferred solution in the granting of a waiver;
 - (iii) Size and height of the proposed facilities;
 - (iv) Location and separation distances of the proposed facilities;
 - (v) Location of the nearest residential units or residentially zoned properties;
 - (vi) Adjacent and nearby topography, tree coverage and foliage;
 - (vii) Design of the proposed facilities with particular reference to elimination of visual impacts of such facilities through stealth design or adequate screening, which are a preferred solution in the granting of a waiver;
 - (viii) Any other factors the city determines to be relevant.
- (3) In granting any waiver, the city may impose conditions to the extent the city concludes such conditions are necessary to minimize any adverse effects of the proposed facility on adjoining properties or to protect the health, safety and welfare of the city and the residents.

- (r) The city shall prohibit the installation of new wood poles for any communications facilities and wireless communications facilities. The registrant shall be able to collocate on existing wood poles located in the City that existed prior to the adoption of the ordinance from which this article was derived.
- (s) All communications facilities and wireless communications facilities shall be maintained graffiti free or free of any non-registrant company related stickers by the registrant. The City shall notify the registrant of any graffiti or stickers placed on the communications facilities and wireless communications facilities. The registrant shall have five (5) days after receipt of the notice from the City to remove any graffiti or stickers from the communications facilities and wireless communications facilities. All graffiti or stickers must be removed at the sole expense of the registrant.
- (t) All communications facilities and wireless communications facilities poles installed after the adoption of the ordinance from which this article was derived shall be decorative where decorative poles exist or are planned to be installed by the City.
- ~~(u) Subject to subsection (p) below, the city manager or a designee may suspend or deny a permit for work in the public rights of way for one or more of the following reasons:~~
- ~~(1) Violation of permit conditions, including conditions set forth in this article or other applicable provisions of the City Code or regulations governing use of public rights of way; or~~
 - ~~(2) Misrepresentation or fraud by registrant in a registration or permit application to the city; or~~
 - ~~(3) Failure to relocate or remove facilities as may be lawfully required by the city; or~~
 - ~~(4) Failure of registrant, its employees, agents or subcontractors, in connection with the subject permit, to (a) place barricades or signs around the work area, (b) take reasonable safety precautions to alert the public of work at the work site, or (c) repair, replace and restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature. In the event of such failure, the city may perform the work utilizing city employees, agents or contractors, charge any and~~

~~all costs, and require reimbursement within 30 days after the submission of the bill by the city to registrant.~~

- ~~(v) Immediately after the suspension or denial of permit pursuant to this section, the city shall provide written notice of the violation, which notice shall contain a description of the violation. A final written decision(s) of the city manager suspending a permit or denying an application is subject to appeal. Upon correction of any violation that gave rise to a suspension or denial of permit, the suspension or denial shall be lifted.~~
- ~~(w) An appeal must be filed with the city within 30 days of the date of the final, written decision(s) to be appealed. Any appeal not timely filed shall be waived. The city council shall hear the appeal no later than 45 days from the end of the 30 day appeal period, unless waived by the registrant.~~
- ~~(x) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers, by providing cable services, or any other services other than the provision of telecommunications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from city for such activities as may required by applicable law. In the event that a registrant is acting in its proprietary function as a retail provider of telecommunications equipment or appliances, registrant shall seek the appropriate permits and licenses from the city.~~
- ~~(y) To the extent that any person or registrant leases or otherwise uses the facilities of an entity that is duly registered or otherwise authorized to place and maintain facilities in the public rights-of-way of the city, the person or registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the city's rights, including requiring the removal of such facilities from the public rights-of-way of the city, regardless of the effect on the persons ability to provide service or on the registrant's ability to maintain its own telecommunications facilities in the public rights-of-way of the city. Any person or registrant leasing or otherwise using the facilities of a registrant or other entity authorized to place and maintain facilities in the public rights-of-way, may provide the city with notice of its use of such facilities,~~

~~describing the location of the facilities used and providing the city with an address to which notices from the city should be sent. In the event the city exercises its lawful authority to require the removal or relocation of any such facilities, under this provision, such person or registrant leasing or otherwise using the facilities of a registrant or other entity authorized to place and maintain facilities in the public rights-of-way, shall receive notice from the city of such removal or relocation of such facilities. The failure of the city to provide notice, under this paragraph, shall not render the city's actions under this paragraph invalid.~~

Sec. 10-212. Relocation of communications facilities or wireless communications facilities in public rights-of-way Underground installation; relocation.

- ~~(a) To the extent required by applicable city rules and regulations and not inconsistent with applicable PSC rules and regulations, a registrant shall install its facilities underground.~~
- ~~(b) Every registrant which places or constructs telecommunications facilities underground shall maintain appropriate participation in the regional notification center for subsurface installations.~~
- (a) Any communications facilities or wireless communications telecommunications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the city to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon written notice to the registrant or its agent, be removed or relocated, within 30 days of such notice, by such registrant at its own expense in accordance F.S. § 337.403, as may be amended. The city manager or designee may extend the time within which a registrant shall remove or relocate a telecommunications facility, for good cause shown.
- (b) The registrant shall not in any way displace, damage, or destroy any facilities, including, but not limited to, gas, sewer, water main, pipe cable, conduit, fiber optic, or other pathway or any other facilities belonging to the city. The registrant shall be liable to the city for the costs of any repairs or replacements made necessary by any

such displacement, damage or destruction, of facilities belonging to the city, and the registrant shall pay such costs upon demand. In the case of an emergency, the city may commence repairs without any prior notice to the registrant. If circumstances permit, the city shall attempt to notify the owner of the communications facilities or wireless communications facility, if known, prior to commencing repairs and shall notify the owner of the facility, if known, after repairing a facility. The term emergency shall mean a condition that may affect the public's health, safety or welfare. In the event of an emergency the city may cause the repairs to be made at the facility owner's expense, utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the city to the registrant. In all other non-emergency circumstances, the registrant shall be given prior written notice. If such repairs are not performed in a reasonable and satisfactory manner within the 30 calendar days after receiving notice, the city may, cause the repairs to be made at the facility owner's expense, utilizing city employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the city to the registrant.

- (c) Subject to F.S. § 337.403, as may be amended, whenever an order of the city requires such removal or change in the location of any communications facilities or wireless communications facilities ~~telecommunications facility~~ from the public rights-of-way, and the registrant ~~facility owner~~ fails to remove or change the same at its own expense to conform to the directive within the time stated in the notice, the city may proceed to cause the communications facilities or wireless communications facilities ~~telecommunications facility~~ to be removed. The expense thereby incurred except as provided in F.S. § 337.403(1)(a)—(c), as may be amended, shall be paid out of any money available therefor, and such expense shall be charged against the registrant and/or owner of the communications facilities or wireless communications facilities ~~telecommunications facility~~ and levied, collected and paid to the city.
- (d) Subject to F.S. § 337.404, as may be amended, whenever it shall be necessary for the city to remove or relocate any communications facilities or wireless

- ~~telecommunications facility~~, the registrant owner of the communications facilities ~~telecommunications facility~~, or the owner's chief agent, shall be given written notice of such removal or relocation and requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than 20 nor more than 30 days in which to file an appeal with the city council to contest the reasonableness of the order. Upon receipt of a written appeal, the city council shall place the matter on the council's agenda for consideration within ~~60~~ 45 working days. Should the registrant owner or the owner's representative not appear, the determination of the cost to the registrant and/or owner shall be final, in accordance with F.S. 337.404, as may be amended.
- (e) A final order of the city imposed pursuant to Florida Statutes, and applicable provisions of the City Code, if any, shall constitute a lien on any property of the owner and may be enforced as provided by Florida Statutes and any applicable provisions of the City Code.
- (f) The city retains the right and privilege to cut or move any communications facilities or wireless communications facilities located within the public rights-of-way of the city, as the city manager or designee in his/her reasonable discretion may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the city shall attempt to notify the owner of the communications facilities or wireless communications facility, if known, prior to cutting or removing a facility and shall notify the owner of the facility, if known, after cutting or removing a facility.
- ~~(g) Upon abandonment of a facility within the public rights-of-way of the city, the owner of the facility shall notify the city within 90 days. Following receipt of such notice, the city may direct the facility owner to remove all or any portion of the facility if the city determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the city does not direct the removal of the abandoned facility by the owner of the facility, and the facility owner chooses not to remove its facilities, then such owner, by its notice of abandonment to the city, shall be deemed~~

~~to consent to the alteration or removal of all or any portion of the facility by another utility or person.~~

Secs. 10-213—10-220. Reserved.

DIVISION 4. ADMINISTRATION AND ENFORCEMENT

Sec. 10-221. Termination of registration.

Sec. 10-221.5. Suspension of permits.

Sec. 10-222. Compliance with other laws; police power.

Sec. 10-223. Transfer of control; sale or assignment.

Sec. 10-223.5. Abandonment of a communications facility or wireless communications facility.

Sec. 10-224. Insurance; surety; indemnification.

Sec. 10-225. Construction bond.

Sec. 10-226. Security fund.

Sec. 10-227. Enforcement remedies.

Sec. 10-228. Force majeure.

Sec. 10-228.5. Conditional use of public rights-of-way.

Sec. 10-229. Reservation of rights.

Sec. 10-230. Reports and records; inspections.

Sec. 10-231. Appeals.

Sec. 10-232. Pass-through provider fees and charges.

Sec. 10-233. No liability or warranty.

Secs. 10-234 230—10-240. Reserved.

Sec. 10-221. Termination of registration.

(a) The involuntary termination of a registration may only be accomplished by an action of the city council. The city may declare the registration terminated and revoke and cancel all privileges granted under that registration if (a) a federal or state authority suspends, denies, or revokes a registrant's certification to provide telecommunications service, (b) the registrant is adjudicated bankrupt by a united

- states district court or through any legal proceeding of any kind, or that a receiver is appointed to take possession of the assets of the registrant, (c) the registrant abandons all of its communications facilities and wireless communications facilities in the public rights-of-way, (d) the registrant's placement and maintenance in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way, or (e) a pass-through provider fails to comply with the requirements of Sec. 10-232.
- (b) Prior to such termination by the city resulting from a violation of any of the provisions of subsection (a) this subparagraph, the registrant shall be notified by the city manager or designee with a written notice setting forth all matters pertinent to such violation, and describing the proposed action of the city with respect thereto. The registrant shall have 60 days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the city council, to accomplish the same.
- ~~(c) In the event of an emergency, the city may take appropriate action in accordance with section 10-211(d) of this article.~~ In the event of a vote by the city council to terminate a registration, the registrant shall, within a reasonable time following such termination, remove or abandon the communications facilities and/or wireless communications facilities and take such steps as are necessary to render every portion of the communications facilities and/or wireless communications facilities remaining within the public right-of-way of the city safe. However, in the event of an emergency, the city may take appropriate action in accordance with section 10-211(d) of this article. If the registrant has either abandoned its facilities or chooses to abandon its facilities, the city may either (1) require the registrant's bonding company to remove some or all of the facilities from the public right-of-way and restore the public right-of-way to its proper condition or (2) ~~the city may~~ require that some or all of the facilities be removed and the public right-of-way restored to its proper condition at the registrant's expense, utilizing city employees, agents or contractors, and charge any and all costs, and require reimbursement. The obligations of the registrant and the bonding company hereunder shall survive, ~~for a~~

~~period of 24 months from,~~ the termination of the registration. In the event of a termination of registration, this provision does not permit the city to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification with the governing federal and state telecommunications agencies and is properly registered with the city, for such certificated service, under this article.

Sec. 10-221.5. Suspension of permits.

(a) Subject to section 10-231 below and to providing reasonable notice and an opportunity to cure, the city manager or designee may suspend a permit issued or deny an application for a subsequent permit to a registrant for work in the public rights-of-way for one or more of the following:

(1) Failure to satisfy permit conditions, or conditions set forth in this article or other applicable city ordinances, codes or regulations governing placement or maintenance of communications facilities or wireless communications facilities in public rights-of-way, 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;

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

(3) Failure to properly renew or ineffectiveness of registration.

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

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

Sec. 10-222. Compliance with other laws; police power.

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

Sec. 10-223. Transfer of control; sale or assignment.

- (a) If the registrant transfers or assigns its registration incident to a sale or other transfer of the registrant's assets, the transferee or assignee shall be obligated to comply with the terms of this article. Written notice of any transfer, sale or assignment shall be provided to the city within 20 days of the effective date of the transfer, sale or assignment. In order for the transfer of registration to be effective, the transferee or assignee must comply with the registration requirements under section 10-191 of this article.
- (b) Notwithstanding anything in this article, pledges in trust or mortgages or other hypothecations of the assets of the registrant to secure the construction, operation or repair of its communications facilities or wireless communications facilities ~~telecommunications facilities~~ may be made to any person without notice to the city. Any mortgage, pledge, lease or other encumbrance of the communications facilities or wireless communications facilities ~~telecommunications facilities~~ shall be subject and subordinate to the rights of the city by virtue of this article or other applicable law.

Sec. 10-223.5. Abandonment of a communications facility or wireless communications facility.

- (a) Upon abandonment of a communications facility or wireless communications facility owned by a registrant in the public rights-of-way, the registrant shall notify the city of such abandonment within ninety (90) days.
- (b) The city may direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the city determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:
- (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 a third party from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available. The city may require the third party to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.; or
- (3) Creates a maintenance condition that is disruptive to the public rights-of-way's use.
- (c) In the event that the city does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the city shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city or another person at such third party's cost.
- (d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.

Sec. 10-224. Insurance; surety; indemnification.

- (a) A registrant ~~facility owner~~ shall at all times maintain the following ~~liability~~ insurance coverage insuring the registrant and naming the city, its officers, boards, council, council members, agents and employees as additional insureds: worker's compensation and employer liability insurance to meet all requirements of Florida law, ~~and~~ commercial general liability and business automobile liability insurance with respect to the construction, operation and maintenance of the communications facilities or wireless communications facilities ~~telecommunications facilities~~, and the conduct of registrant's business in the city, in the minimum amounts of:
- (1) Worker's compensation and employer's liability insurance.
Employer's liability—Five hundred thousand dollar (\$500,000.00) limit each occurrence, accident five hundred thousand dollars (\$500,000.00) limit per each employee.
- (2) Commercial general liability.

Bodily injury and property damage—Three million dollars (\$3,000,000.00) combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations or independent contractors.

(3) Business automobile liability.

Bodily injury and property damage—Three million dollars (\$3,000,000.00) combined single limit each occurrence.

~~(1) \$250,000.00 for property damage in any one accident:~~

~~(2) \$500,000.00 for personal bodily injury to any one person; and~~

~~(3) \$1,000,000.00 for personal bodily injury in any one accident.~~

(b) All insurance policies shall be with sureties qualified to do business in the State of Florida; shall be with sureties with a minimum rating of A-1 in Best's Key Rating Guide, property/casualty edition except as provided in (d) below. All insurance coverage shall be primary over any city insurance coverage. Further, all insurance coverage shall be "by occurrence" rather than on a "claims made" basis. The city may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by law. A registrant may provide a portion of the insurance coverage required by section 10-224(a) through excess or umbrella policies of insurance and where such policies are in a form acceptable to the city's risk manager or designee. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The city shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.

(c) A registrant shall keep on file with the city certificates of insurance which certificates shall indicate that the city, its officers, boards, council, council members, agents and employees are listed as additional insureds. In the event of a potential claim such that the city claims insurance coverage, the facility owner shall immediately respond to all reasonable requests by the city for information with respect to the scope of the insurance coverage.

- (d) The certificates of insurance shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days' prior written notice thereof has been given to the city. A registrant shall not cancel any required insurance policy without submission of proof that the registrant has obtained alternative insurance satisfactory to the city which complies with this article. A registrant that elects to self-insure all or a portion of the insurance coverage and limit requirements required by this section is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under this section. A registrant that elects to self-insure shall provide to the city evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under this section, such as evidence that the registrant is a private self insurer under the workers compensation act. For purposes of this section, self-insure shall also include a registrant which insures through a captive insurer as defined in F.S. § 628.901, as may be amended.
- (e) The city, by and through its risk management department, 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. The city reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.
- (f) A registrant shall, at its sole cost and expense, release, indemnify, hold harmless, and defend the city, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, sustained by the city, arising out of the construction, maintenance or operation of its communications facilities or wireless communications facilities ~~telecommunications system or facilities~~ in the 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 ~~facility owner's~~ obligation hereunder shall not extend to any claims caused by the negligence of the city. The city agrees to notify the registrant, in writing, within a

reasonable time of the city receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this provision 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, and (2) as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as may be amended.

- (g) This section shall not be construed to affect in any way the city's rights, privileges and immunities as set forth in F.S. § 768.28, as may be amended. Insurance under this section shall run continuously with the presence of the registrant's facilities in the public right-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 city may, in its sole discretion, require increased or decreased levels of insurance for any other object placed in the city's rights-of-way by way of individual license agreements.

Sec. 10-225. Construction bond.

- (a) Except in the case of an emergency, as described in section 10-212(b) of this article, prior to performing any work in the public rights-of-way, a registrant shall establish in the city's favor a construction bond in an amount specified in the ~~an~~ engineering permit or other authorization as necessary to ensure the registrant's faithful performance of the construction in the public rights-of-way, in accordance with applicable sections of the City Code. The amount of the construction bond shall be as set forth in the ~~engineering~~ permit, and may be modified in the city manager's or designee's reasonable discretion, based on the cost of the restoration to take place in the public rights-of-way, and any previous history of the registrant concerning restoration within the public rights-of-way of the city. The city, in its discretion, may request a certified estimate of the cost of restoration by a Florida licensed registered

- professional civil engineer or certified by a person who is exempt from such requirements as provided in F.S. § 471.003. Notwithstanding the foregoing, a construction bond will be required only when the estimated cost of restoration exceeds the amount of the construction bond provided by the registrant pursuant to Section 10-226. In the event that the registrant depletes the construction bond set forth by the City, the registrant shall replenish the actual depletion of the construction bond within five business days.
- (b) In the event a registrant ~~subject to such a construction bond~~ fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit and this article, or fails to complete all restoration work in the right-of-way as required in section 10-212(e) or (l), including but not limited to repair or replacement of damaged landscaping, structures, hardscape, underground utility facilities, structures or equipment, or any other item or feature disturbed by the permitted work, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.
- (c) No less than twelve (12) ~~Twelve~~ months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the city manager or designee to remove the requirement to continue the construction bond and the city shall release the bond within ten (10) days upon approval of the city manager or designee ~~the city shall eliminate the bond~~. Notwithstanding, the city shall ~~may~~ require a new bond for any subsequent work performed in the public right-of-way.
- (d) The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, property/casualty edition; shall be subject to the approval of the city attorney; and shall provide that:

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

(e) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this article, or at law or equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the city may have.

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

Sec. 10-226. Security fund.

At the time of registration, and as a condition of receiving its first permit to place or maintain a communications facility or wireless communications facility in public rights-of-way after the effective date of this article, the registrant shall file with the city, for city approval, a cash security, or a bond, ~~or irrevocable letter of credit,~~ in the sum of \$50,000.00 ~~\$25,000.00~~, in a form acceptable to the city manager or a designee, which shall be referred to as the "security fund." For purposes of the bond ~~and irrevocable letter of credit,~~ the registrant must have as a surety a company qualified to do business in the State of Florida. The cash security, or bond, ~~or irrevocable letter of credit,~~ shall be to secure the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this article, and to pay any taxes, fees or liens owned to the city. The bond ~~or irrevocable letter of credit~~ shall be furnished annually, or as frequently as necessary, and shall provide a continuing guarantee of the registrant's full and faithful performance at all times. Should the city draw upon the cash security, or bond, ~~or irrevocable letter of credit,~~ the city shall promptly notify the registrant, and the registrant shall promptly restore the cash security, or annual bond, ~~or irrevocable letter of credit,~~ to full required amount. In the event a

registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to section 10-227, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation or indemnification, plus a reasonable allowance for attorneys' fees, up to the full amount of the fund. The ~~case security, or bond or letter of credit~~ may be waived by the city where the city determines that the security fund is not necessary to secure the required performance under this article. The city may from time to time increase the amount of the security fund to reflect the increased risks to the city and to the public.

Sec. 10-227. Enforcement remedies.

(a) In addition to any other remedies available at law or equity or provided in this article, the city may apply any one or combination of the following remedies in the event a registrant violates this article, or applicable local law or order related to use of the public rights-of-way:

(1) Failure to comply with the provisions of this article or other law applicable to users and/or occupants of the public rights-of-way may result in imposition of penalties to be paid by the registrant to the city in an amount of not less than \$250.00 ~~\$100.00~~ per day or part thereof that the violation continues.

~~(2) A registrant's failure to obtain a permit before commencing work, except in cases of an emergency, may result in imposition of penalties to be paid to the city in an amount of not less than \$1,000.00 per day or part thereof that the violation continues.~~

~~(3)~~ (2) In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction.

(b) Before imposing a fine pursuant to this section, the city shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have 30 days to either: (1) cure the violation and the city shall make good faith reasonable efforts to assist in resolving the violation, or (2) file an appeal in

accordance with section 10-231 242(p). If the violation is not cured within that 30-day period, and no appeal is filed, the city may collect all fines owed, beginning with the first day of the violation, either by removing such amount from the security fund or through any other means allowed by law.

- (c) In determining which remedy or remedies are appropriate, the city shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.
- (d) Failure of the city to enforce any requirements of this article shall not constitute a waiver of the city's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.
- (e) In any proceeding before the city council wherein there exists an issue with respect to a registrant's performance of its obligations pursuant to this article, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms of this article. The city council may find a registrant that does not demonstrate compliance with the terms and conditions of this article in default and apply any one or combination of the remedies otherwise authorized by this article.
- (f) The city manager or his/her designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law.
- (g) Nothing in this article shall affect the remedies the registrant has available under applicable law.

Sec. 10-228. Force majeure.

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

Sec. 10-228.5. Conditional use of public rights-of-way.

- (a) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the city for such activities as may be required by applicable law.
- (b) To the extent that any person or registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the city, such person or registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the city's rights, including requiring the removal of such facilities from the public rights-of-way of the city, regardless of the effect on registrant's ability to place or maintain its own communications facilities or wireless communications facilities in public rights-of-way of the city.

Sec. 10-229. Reservation of rights.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all communications facilities and wireless communications facilities ~~telecommunications facilities~~ permitted to be placed in the public rights-of-way, on or after the effective date of the ordinance from which this

- ~~article is derived this article, and shall apply to all existing communications facilities and wireless communications facilities telecommunications facilities in the public rights-of-way prior to the effective date of the ordinance from which this article is derived this article, to the full extent permitted by state and federal law , except that any provision of this article regarding size, composition, or location of physical facilities shall not apply to physical facilities lawfully placed within any city right-of-way prior to the effective date of the ordinance from which such provision is derived. Providers with existing lines and cables have 120 days from the effective date of this article to comply with the terms of this article, or be in violation thereof.~~
- (c) The city reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this article. Registrant agrees to advise the city of any such suits, actions or proceedings.

Sec. 10-230. Reports and records; inspections.

- (a) Upon reasonable request, a registrant shall provide the following documents to the city as received or filed:
- (1) Any pleadings, petitions, notices, and documents, regarding any legal proceeding involving any provisions of this article which are reasonably necessary for the city to protect its interests under this article.
 - (2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
- (b) Nothing in this section shall affect the remedies the registrant has available under applicable law.
- (c) In addition, the city may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents. The city shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.

Sec. 10-231. Appeals.

- (a) Final, written decisions of the city 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 city within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The city's Development Special Magistrate shall hear the appeal.
- (b) Nothing in this article shall affect or limit the remedies the city has available under applicable law.

Sec. 10-232. Pass-through provider fees and charges.

- (a) Pass-through providers shall pay to the city on an annual basis an amount equal to Five Hundred Dollars (\$500.00) per linear mile or portion thereof of communications facilities or wireless communications facilities placed and/or maintained in the city's rights-of-way. For purposes of this section, the city's rights-of-way do not include rights-of-way that extend in or through the city but are state, county or another authority's rights-of-way.
- (b) The amounts charged pursuant to this section shall be based on the linear miles of rights-of-way where communications facilities or wireless communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.
- (c) 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 city pursuant to Chapter 202, F.S., as may be amended.
- (d) Annual payments shall be due and payable on March 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 city shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the city may have for additional sums due and payable. All fee payments shall be subject to audit by the city, and assessment

or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the city, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

(e) If the payments required by this section are not made within ninety (90) days after the due date, the city manager or designee may withhold the issuance of any permits to the registrant until the amount past due is paid in full.

Sec. 10-233. No liability or warranty.

Nothing contained in this article shall be construed to make or hold the city responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the registrant's communications facilities or wireless communications facilities; or by reason of any inspection or reinspection authorized herein or failure to inspect or reinspect. Nor shall the issuance of any permit or the approval or disapproval of any placement or maintenance of the registrant's communications facilities or wireless communications facilities as authorized herein constitute any representation, guarantee or warranty of any kind by, nor create any liability upon, the city or any official, agent or employee thereof.

Secs. 10-~~234~~ 230—10-240. Reserved.

SECTION 3. Each and every other section and subsection of Chapter 10 of the City of Riviera Beach Code of Ordinances shall remain in full force and effect as previously adopted.

SECTION 4. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, Section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby. In the event of a subsequent change in applicable law, so the provision which had been held invalid is no longer invalid, the provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding under this Ordinance.

SECTION 5. All Ordinances or parts of Ordinances in conflict herewith or to the extent of such conflict shall be repealed.

SECTION 6. This Ordinance shall take effect upon its final passage and approval by the City Council.

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PASSED AND APPROVED on the first reading this _____ day of
_____ 2016.

PASSED AND ADOPTED on second and final reading this _____ day of
_____ 2016.

APPROVED:

THOMAS A. MASTERS
MAYOR

TERENCE D. DAVIS
CHAIRPERSON

ATTEST:

ORDINANCE NO. _____
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CLAUDENE L. ANTHONY
CERTIFIED MUNICIPAL CLERK
CITY CLERK

KASHAMBA MILLER-ANDERSON
CHAIR PRO TEM

LYNNE L. HUBBARD
COUNCILPERSON

TONYA DAVIS JOHNSON
COUNCILPERSON

DAWN S. PARDO
COUNCILPERSON

1ST READING

MOTIONED BY: _____

SECONDED BY: _____

L. HUBBARD _____

K. MILLER-ANDERSON _____

T. DAVIS JOHNSON _____

D. PARDO _____

T. DAVIS _____

2ND & FINAL READING

MOTIONED BY: _____

SECONDED BY: _____

L. HUBBARD _____

K. MILLER-ANDERSON _____

T. DAVIS JOHNSON _____

D. PARDO _____

T. DAVIS _____

REVIEWED AS TO LEGAL SUFFICIENCY

ANDREW DEGRAFFENREIDT, ESQ.
CITY ATTORNEY

DATE: _____