

PROPOSED ORDINANCE NO. 2018-08

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA, AMENDING CHAPTER 121, "COMMUNICATIONS RIGHTS-OF-WAY" OF THE CITY OF PEMBROKE PINES CODE OF ORDINANCES TO AMEND DEFINITIONS RELATED TO COMMUNICATIONS FACILITIES LOCATED IN THE RIGHTS-OF-WAY WITHIN THE CITY OF PEMBROKE PINES; AND ENACTING A NEW SECTION 121.35, "SMALL AND MICRO WIRELESS FACILITIES" TO PROVIDE FOR THE REGULATION OF SMALL AND MICRO WIRELESS FACILITIES INSTALLED AND MAINTAINED WITHIN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF PEMBROKE PINES, CONSISTENT WITH SECTION 337.401(7), FLORIDA STATUTES, AS MAY BE AMENDED FROM TIME TO TIME; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, to promote the public health, safety, aesthetics, and general welfare, the City of Pembroke Pines has a substantial and significant public interest in maintaining and protecting its public rights-of-way in a non-discriminatory manner, and requiring that individuals and entities seeking permits to conduct any type of excavation, construction or other activity therein do so in a safe, expeditious, and professional manner; and,

**WHEREAS**, in 2017, the Florida Legislature enacted Section 337.401(7)(a), also known as the Advanced Wireless Infrastructure Deployment Act (the "Act") which addresses, *inter alia*, local governments' regulation of the placement, construction or modification of small and micro wireless communications facilities; and,

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

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**WHEREAS**, said statutes authorize regulations of telecommunications facilities in the public rights-of-way that are related to the placement or maintenance of facilities in the public rights-of-way, are reasonable and non-discriminatory, and are necessary to the management of the public rights-of-way; and,

**WHEREAS**, the City Code provisions regulating telecommunications towers and antennas need to be updated to expressly address current practices related to small and micro wireless facilities, the placement of wireless service facilities in the public rights-of-way, and to protect the public interest by protecting, preserving and maintaining the health, safety and welfare of the users of the public rights-of-way, while also protecting, preserving and maintaining the aesthetic character of areas where such rights-of-way exist, and this ordinance achieves such purpose; and,

**WHEREAS**, the City Clerk has provided at least ten days advance notice prior to first reading of this Ordinance to the Secretary of State.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA, THAT:**

**SECTION 1.** The foregoing “WHEREAS” clauses are hereby ratified as true and correct, and incorporated herein by this reference.

**SECTION 2.** That Chapter 121, entitled “Communications Rights-of-Way,” of the City of Pembroke Pines Code of Ordinances, is hereby amended to read as follows:

**CHAPTER 121: COMMUNICATIONS RIGHTS-OF-WAY**

**GENERAL**

**§ 121.01 TITLE.**

This chapter shall be known and may be cited as the City of Pembroke Pines Communications Rights-of-Way Ordinance.

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**§ 121.02 INTENT AND PURPOSE.**

It is the intent of the city to promote the public health, safety, aesthetics, and general welfare of the city by providing for the placement or maintenance of communications facilities and personal wireless service facilities in the public rights-of-way within city; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. §Section 337.401, Fla.Stat., as it may be amended, city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities and personal wireless service facilities in the public rights-of-way by all communications services providers; and minimizing disruption to the public rights-of-way.

**§ 121.03 DEFINITIONS.**

For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. 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; and the masculine gender includes the feminine gender. "And" and "or" may be read conjunctively or disjunctively. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined in this chapter shall be given the meaning set forth in Title 47 of the United States Code (the "Communications Act"), as amended, and if not defined in the Communications Act, as defined in Florida Statutes, and if not defined in Florida Statutes, as defined in the City Code, and if not defined in the City Code, shall be construed to mean USC, and, if not defined therein, their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended. The following definitions shall apply to the provisions contained in Sections 121.03 through 121.33 of the City Code of Ordinances.

**ABANDONMENT.** The permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. For

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example, 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.** The City of Pembroke Pines, Florida.

**COMMUNICATIONS FACILITY** or **FACILITY** or **SYSTEM.** Any permanent or temporary plant, equipment or property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, 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 FACILITY PROVIDER** means a person (other than a communications services provider) operating one or more Communications Facilities located within the City, who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more Communications Service Providers all or a portion of the tangible personal property used in a Communications Facility. A Pass-Through Provider may be a Communications Facility Provider.

**COMMUNICATIONS SERVICES.** The transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, and as defined in Section 202.11, Fla.Stat. ~~Notwithstanding the foregoing, for purposes of this chapter, "video service", as defined in F.S. § 202.11, as it may be amended, is not included in the definition of~~ **COMMUNICATIONS SERVICES.** Communications to remotely facilitate, monitor, or control the distribution or transmission of electricity by an electric utility are also not included in the definition of **COMMUNICATIONS SERVICES.**

**COMMUNICATIONS SERVICES PROVIDER.** Any person providing communications services through the placement or maintenance of a communications facility in public rights-of-way. ~~**COMMUNICATIONS SERVICES PROVIDER** shall also include any person that places or maintains a communications facility in public rights-of-way but does not provide communications services.~~

**FCC.** The Federal Communications Commission.

**IN PUBLIC RIGHTS-OF-WAY** or **IN THE PUBLIC RIGHTS-OF-WAY.** In, on, over, under or across the public rights-of-way.

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**ORDINANCE.** This ordinance and the provisions of this chapter.

**PASS-THROUGH PROVIDER** has the meaning provided in Section 337.401(6), Fla. Stat..

**PERSON.** Any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the city to the extent the city acts as a communications services provider.

**PERSONAL WIRELESS SERVICES.** Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services, and shall include “wireless service” as defined in F.S. § 365.172, as well as “personal wireless services” defined in 47 U.S.C. § 332(c)(7)(C)(i), as they may be amended from time to time. Notwithstanding the foregoing, for purposes of this chapter, “video service,” as defined in F.S. § 202.11, as it may be amended, is not included in the definition of **PERSONAL WIRELESS SERVICES**. **PERSONAL WIRELESS SERVICES** shall not include any form of surveillance by photography, wireless communication, or other form of transmission.

**PERSONAL WIRELESS SERVICE FACILITIES.** Facilities for the provision of personal wireless services and, for the purposes of this chapter, shall include all of those “wireless communication facilities” as defined in F.S. § 365.172, as it may be amended, that are not also telecommunications towers as defined by Chapter 155 of the city’s Code of Ordinances. Facilities used for communications to remotely facilitate, monitor, or control the distribution or transmission of electricity on electric infrastructure are not included in the definition of **PERSONAL WIRELESS SERVICE FACILITIES**. **PERSONAL WIRELESS SERVICE FACILITIES** shall not be used to provide for any form of surveillance or photography through wireless communication or other form of transmission.

**PLACE OR MAINTAIN** or **PLACEMENT OR MAINTENANCE** or **PLACING OR MAINTAINING**. To erect, construct, install, maintain, grade, excavate, place, repair, extend, replace, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is **PLACING OR MAINTAINING** the facilities. A party providing service only through resale or only through use of a third party’s unbundled network elements is not **PLACING OR MAINTAINING** the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute **PLACING OR MAINTAINING** facilities in

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the public rights-of-way.

**PUBLIC RIGHTS-OF-WAY.** A public right- of-way, public utility easement, public highway, street, lane, bridge, sidewalk, road, waterway, tunnel, alley, or similar property for which the city is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the city holds a property interest therein. **PUBLIC RIGHTS-OF-WAY** shall not include private property. **PUBLIC RIGHTS-OF-WAY** shall not include any real or personal city property except as described above and shall not include city buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way. No reference herein, or in any permit, to public rights-of-way shall be deemed to be a representation or guarantee by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a registrant shall be deemed to gain only those rights to use as are properly in the city and as the city may have the undisputed right and power to give.

**REGISTRANT.** A communications services provider or other person that has registered with the city in accordance with the provisions of this chapter.

**REGISTRATION or REGISTER.** The process described in this chapter whereby a communications services provider provides certain information to the city.

**STEALTH FACILITY.** Any communications facility which is designed to blend into the surrounding environment. Examples of **STEALTH FACILITIES** include architecturally screened roof- mounted antennas, antennas integrated into architectural elements, poles in the rights-of-way that are designed to look like light poles, and wireless telecommunications towers designed to look like light poles, power poles, or trees.

**ADMINISTRATION**

**§ 121.10 REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY.**

(A) A communications services provider, communications facility provider, or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the city shall first register with the city in accordance with this section. Subject to the terms and conditions prescribed in this section, a registrant may place or maintain a communications facility in public rights-of-way. ~~A communications services provider with an existing communications facility in the~~

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~~public rights-of-way of the city as of the effective date of this chapter shall comply with this chapter within 60 days from the effective date of this chapter, including, but not limited to, registration, or be in violation hereof.~~

(B) A registration shall not convey any title, equitable or legal, to the registrant in the public rights- of-way. Registration under this section governs only the placement or maintenance of communications facilities in public rights-of-way. Registration does not excuse a communications services provider, communications facility provider, or pass-through provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the city's or another person's facilities. Registration does not excuse a communications services provider, communications facility provider, or pass-through provider from complying with all applicable city ordinances, codes or regulations, including this chapter.

(C) Each communications services provider, communications facility provider, or pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file a single registration with the city which shall include the following information:

(1) Name of the applicant;

(2) Name, address and telephone number of the applicant's primary contact person in connection with the registration and the person to contact in case of an emergency;

~~(3) For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;~~

(34) Evidence of the insurance coverage required under § 121.25 of this chapter and acknowledgment that registrant has received and reviewed a copy of this chapter;

~~(45)~~ A copy of the applicant's certificate of authorization or local business tax receipt to provide communications services issued by the Florida Public Service Commission, the Federal Communications Commission, or other federal or state authority, if any;

~~(56)~~ For an applicant that does not provide a Florida Public Service Commission certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, including the number of the certificate of incorporation; and

~~(7) A security fund in accordance with § 121.28 of this chapter.~~

(D) The City Manager, or his, or her designee shall review the information submitted by the applicant. If the applicant submits information in accordance with division (C) above, the registration shall be effective and the city shall notify the applicant of the effectiveness of registration in writing. If the city determines that

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the information has not been submitted in accordance with division (C) above, the city shall notify the applicant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The city shall so reply to an applicant within 30 days after receipt of registration information from the applicant.

(E) A registrant may cancel a registration upon written notice to the city stating that it will no longer place or maintain any communications facilities in public rights-of-way within the city and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

(F) Registration shall not in itself establish any right to place or maintain or priority for the placement or maintenance of a communications facility in public rights-of-way within the city, but shall establish for the registrant a right to apply for a permit, if permitting is required by the city. Registrations are expressly subject to any future amendment to or replacement of this chapter and further subject to any additional city's ordinances, as well as any state or federal laws that may be enacted.

(G) A registrant shall renew its registration with the city by April 1 of even numbered years in accordance with the registration requirements in this chapter, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year. Within 30 days of any change in the information required to be submitted pursuant to division (C), ~~except, as of October 1, 2001, division (C)(3),~~ a registrant shall provide updated information to the city. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this section.

(H) In accordance with applicable city ordinances, codes or regulations and this chapter, a permit shall be required of a communications services provider, communications facility provider, or pass-through provider that desires to place or maintain a communications facility in public rights-of-way. An effective registration shall be a condition precedent to obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

(I) A registrant that places or maintains communications facilities in the public

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rights-of-way and that pays communications services taxes shall not be required to pay a permit fee since the City has elected to collect the communications services tax pursuant to Ch. 202, Florida Statutes, as may be amended from time to time. ~~Pass-through providers shall pay a fee pursuant to applicable resolution or City code provision, and section 337.401(56)(b), Fla.Stat., as may be amended from time to time.~~ A pass-through provider that places or maintains a communications facility in the City's roads or rights-of-way shall pay the City an annual amount not to exceed \$500 per linear mile or portion thereof. The City's roads or rights-of-way do not include roads or rights-of-way that extend in or through the municipality but are state, county, or another authority's roads or rights-of-way. ~~shall be required to pay compensation to the city as required by applicable law and ordinances of the city.~~

**§ 121.11 TRANSFER, SALE OR ASSIGNMENT OF ASSETS IN PUBLIC RIGHTS-OF-WAY.**

(A) If a registrant transfers, sells or assigns its assets located in public rights-of-way incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this chapter. Written notice of any such transfer, sale or assignment shall be provided by such registrant to the city within 24 days after the closing effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in § 121.10 of this chapter within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the Engineering Department that the transferee, buyer or assignee is the new applicant.

(B) Any encumbrance on the communications facilities of the registrant in the public rights- of-way shall be subject and subordinate to the rights of the city under this chapter and applicable law.

**§ 121.12 PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY OR PERSONAL WIRELESS SERVICE FACILITY IN PUBLIC RIGHTS-OF-WAY.**

The provisions of this Section shall not apply to small and micro wireless facilities that are regulated pursuant to Section 121.35 of the City's Code of Ordinances.

(A) Registrant shall at all times comply with and abide by all applicable provisions of state, federal and local law and city ordinances, codes and regulations including but not limited to § 154.60 et seq. of this Code, as amended, in placing or

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maintaining a communications facility or a personal wireless service facility in public rights-of-way.

(B) To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional communications facilities and personal wireless service facilities within a particular area of public rights-of-way. The city shall have the power to prohibit or limit the placement of new or additional communications facilities and personal wireless service facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public rights-of-way, for the protection of existing facilities in the public rights-of-way or to accommodate city adopted plans for public improvements or projects that the city determines are in the public interest.

(C) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities and personal wireless service facilities.

(D) Personal wireless service facilities located in the public rights-of-way must meet the following minimum standards:

(1) Required approvals. No application for placement of personal wireless service facilities in the public rights-of-way shall be permitted without approval of the Building Department, the Public Services Department, and the Planning and Economic Development Division.

(2) (a) Because an antenna must be placed above- ground in order to transmit and receive signals, an applicant proposing placement of an antenna in the public rights-of-way, except in the case of a collocation, shall submit an application for approval through the Planning and Economic Development Division as a non-quasi-judicial action before the Planning and Zoning Board. The application shall consist of the following:

1. Application form provided by the city; ~~accompanied by the required application fee;~~
2. Copy of current business tax receipt;
3. A scaled site plan depicting an area within a 600-foot radius from the center of the proposed personal wireless service facility, and showing the proposed antennas, equipment, related infrastructure, sidewalks, all existing utilities, antennas, towers, stealth facilities, the right-of-way boundaries, wireless communications facility boundary, road improvements, all ingress and egress to nearby streets, major vegetation, required grading, existing and proposed elevations, easements, and other significant features of the site.
4. Certification signed by the applicant confirming the distance separation

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from other personal wireless service facilities.

(b) No building permit shall be issued by the Building Department and no engineering permit shall be issued by the Public Services Department prior to the approval of a development plan where required pursuant to this division (D).

(3) Completeness review; time limitation. The city shall grant or deny a properly completed application for personal wireless service facilities in the public rights-of-way within 90 days or, as required by federal and state law, after the date the application is determined to be properly completed. An application is deemed submitted or resubmitted on the date the application is received by the Planning and Economic Development Division. The Planning and Economic Development Division shall notify the applicant within 20 days after the date the application is initially submitted or additional information resubmitted, whether the application is properly completed in compliance with the city's requirements. If the application is not completed in compliance with the city's requirements, the Planning and Economic Development Division shall so notify the applicant in writing indicating with specificity any deficiencies which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the Planning and Economic Development Division shall notify the applicant, in writing, no later than 20 days after the additional information is submitted, of any remaining deficiencies that must be cured. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the Planning Division may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed.

(4) Co-location or use of stealth facilities. An antenna in the public right-of-way shall, to the extent possible, be co-located on an existing power, light or other utility pole. When co-location of an antenna is not possible, a freestanding stealth facility is preferred. For co-locations, the applicant shall submit an application to the city's Building Department for approval.

(5) Statement. A statement or statements shall be submitted certifying that the construction of personal wireless service facilities proposed to be located in the public rights-of-way will comply with applicable standards as set forth in the Florida Building Code, latest edition, the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, and applicable electrical codes; and describing the proposed personal wireless service facilities' capacity to permit multiple users,

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including an example of the number and type of antennas or other attachments that can be accommodated on support structures. No personal wireless service facility which exceeds its support structure's loading capacity, which causes any pole or structure to exceed its loading capacity or which does not conform to applicable electrical codes shall be permitted in the public rights-of-way.

(6) Dimensional limits for cabinets, boxes and vaults. No permit or order shall be granted authorizing the placement, construction or modification in the public rights-of-way of a personal wireless service facility cabinet, box or vault having a total volume exceeding 24 cubic feet unless the applicant provides a statement explaining the need for the greater proposed dimensions and certifying that current technology provides no alternative consistent with the dimensional requirements of this division (D)(6).

(a) Height, setbacks and related location requirements.

1. The height of a new personal wireless service facility in the public right-of-way to which an antenna is attached shall not exceed the height of existing poles or structures in the public rights-of-way within 100 feet of such proposed new personal wireless service facility, or if no such existing poles are present in the public rights-of-way within 100 feet of such proposed new personal wireless service facility, the new personal wireless service facility shall be a minimum of 20 feet in height, and not exceed a height of 50 feet. Height shall be measured from the crown of the road of the nearest public street.

2. Except as otherwise provided herein, personal wireless service facilities in the public rights-of-way shall conform to the standards and requirements set forth in the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

3. No antenna attached to a freestanding pole in the public rights-of-way, other than as a co-location with an existing power, light or other utility pole, or unless installed as a stealth facility, shall be permitted within 50 feet of any principal residential structure.

4. A box or cabinet housing the equipment connected to an antenna attached to a freestanding pole in the public rights-of-way shall be placed on the ground instead of attached to the pole supporting the antenna, and shall be screened from view.

(b) Antennas.

1. Each application for a personal wireless service facility, other than for co-location, shall contain a rendering or photograph of the proposed antenna which depicts its aesthetic features including, but not limited to, the use of colors and

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screening devices. The application shall be subject to administrative review regarding consistency with the requirements of this section. The City Manager, or his or her designee, may require, to the extent possible, that aesthetic features, including but not limited, to the use of colors and screening devices, be used so that antennas blend into the surrounding environment.

2. No signals, lights, or illumination shall be permitted on an antenna or, except in the case of a light pole or a stealth facility designed to emulate a light pole, on a pole to which such antenna is attached, unless required by applicable state or federal laws or rules.

3. Antennas shall be mounted at a height and location that will not interfere with use of the public rights-of- way.

4. No exterior antenna in the public rights-of-way shall exceed the height of the pole to which it is attached unless it is attached as a co-location to an existing power, light or other utility pole or on a pole designed to emulate a light pole.

5. No antenna shall be mounted more than four inches from the pole to which it is attached unless it is attached as a co-location to an existing power, light or other utility pole.

6. Exterior looping of excess cable length installed on any personal wireless service facility located in the public right-of-way is prohibited.

7. Distance between antenna locations/number of antenna locations within a specified area. To minimize the adverse visual impacts associated with the proliferation and clustering of antennas and associated above-ground personal wireless service facilities, no antenna site in the public rights-of-way shall be located within 600 feet of any other such antenna site or telecommunications tower. Further, no more than 13 antenna sites may be located within an area of one square mile. This division (C)(6)(b)7. shall not apply to any antenna co-located on an existing power, light or other utility pole within the public rights-of-way.

(c) Co-locations. For the purposes of this section, **CO-LOCATION** means the mounting or installation of an antenna on an existing power, light or other utility pole for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. In any co-location, the existing power, light or other utility pole may be modified or replaced to accommodate the new attachment, provided however that the modified or replacement pole complies with the height, setback and related location requirements, unless such requirements are waived. For the purposes of this section, an existing power, light or other utility pole modified or replaced to accommodate a new attachment shall continue to be considered an existing pole after replacement or modification.

(d) Approval required from other governmental agencies and owners. Each

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application for the location of a personal wireless service facility in the public rights-of-way may be required to include written approval, or a statement of no objection, from state agencies that regulate siting, design, and construction of such facilities, or have jurisdiction over the public rights-of-way, if any such agencies require the applicant to seek their review or approval. An existing facility in the public rights-of-way shall only be utilized in a manner consistent with the city code and with the written permission of the facility owner.

(e) FCC emissions standards. All personal wireless service facilities in the public rights-of-way shall comply with current radio frequency emissions standards of the Federal Communications Commission.

(f) Buffering.

1. Except in the case of an application for a co-location, as a condition of approval the City Manager, or his or her designee, may require the use of a fence as a buffer that is consistent in design and function with existing fencing used in the public rights-of-way.

2. Except in the case of an application for a co-location, as a condition of approval the City Manager, or his or her designee, may require the use of landscaping as a buffer, which landscaping is consistent with the landscaping otherwise located in the public rights-of-way. Additional landscaping may be required if deemed necessary to buffer adjacent properties. The City Manager, or his or her designee, may require landscaping in excess of the requirements of the city code to enhance compatibility with adjacent residential and nonresidential land uses.

3. All buffering required in connection with the use of personal wireless service facilities in the public rights-of-way shall be maintained by the owner of such facilities at its own cost.

(g) Equipment. The location in the public rights-of-way of any equipment or equipment cabinets associated with personal wireless service facilities shall be subject to the approval of the City Engineer. Any such cabinets or equipment must be approved by the City Engineer as to safety, and shall not interfere with the use of the public rights-of-way. The City Engineer may require a statement certifying the need for the proposed equipment and location. No generators utilized in connection with personal wireless services facilities may be placed in the public rights-of-way, except temporarily in the case of emergency and if approved in advance by the City Engineer.

(h) Signs and advertising. The use of any portion of a personal wireless service facility in the public rights-of-way for the posting of signs or for advertising purposes, including, but not limited to, the display of lights, banners and streamers

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is strictly prohibited. For purposes of emergency contact, the owner of the personal wireless service facility shall place one identification label on the equipment advising of the name and contact telephone number of the owner of the personal wireless service facility.

(i) Inspections.

1. Owners or operators of personal wireless service facilities in the public rights-of-way shall ensure that the city's Building Department has current contact information for such owner or its authorized representative.

2. The owner or operator of a personal wireless service facility in the public rights-of-way shall submit a report to the city's Building Department, certifying the integrity of the personal wireless service facility and the safety of electrical components at least once every two years.

(j) Cooperative determination. In the event an applicant demonstrates, in writing, to the satisfaction of the City Manager, or his or her designee, that the operation of this section produces a result which is either (i) a burdensome hardship on the applicant, and is inconsistent with the general public welfare; or (ii) inconsistent with the intent of the particular provisions of this section, and inconsistent with the general public welfare, the applicant and the City Manager, or his or her designee, shall cooperate to determine an appropriate location and aesthetic design for the proposed facility. In any such cooperative determination there shall be a preference for co-location with existing personal wireless service facilities or other utility facilities, or for use of unused capacity on existing personal wireless service facilities. Where facilities cannot be co-located and no such unused capacity exists, there shall be a preference for the use of free-standing stealth-type structures which are consistent, to the extent possible, with this section. The City Manager, or his or her designee, may require a written statement certifying that the proposed location is needed by a personal wireless services provider to close a significant gap in its service to the affected areas.

(k) Modifications or replacements. Modification or replacement of any personal wireless service facilities in the public rights-of-way shall be subject to approval of the city's Building Department. If such modification or replacement of personal wireless service facilities or equipment would, as reasonably determined by the city, result in the facility or equipment being readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, such modification shall require approval as a non-quasi judicial item before the Planning and Zoning Board. Any co-location of personal wireless service facilities, removal of personal wireless service facilities or replacement of personal wireless service facilities that substantially changes the physical dimensions of an

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antenna node site shall be subject to approval of the city's Building Department. Notwithstanding anything to the contrary in this section, for an eligible facilities request under Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, the application shall be subject only to the Building Department's review and approval process.

(I) Statements and certifications. Any statement or certification submitted by or on behalf of an applicant pursuant to the provisions of this section shall be prepared applying rational analysis by one or more engineers registered and licensed in the state, or by such other person or persons designated by the applicant who are qualified to perform the required analysis. Any person or persons providing such a statement or statements shall also certify as to his or her competence in the discipline or disciplines necessary to perform the analysis and to provide the statement.

(E) A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work after the completion of any placement or maintenance of a communications facility or personal wireless service facility in public rights-of-way or each phase thereof. If the registrant fails to make such restoration within 30 days following the completion of such placement or maintenance, the city may perform such restoration as it deems necessary and charge all costs of the restoration against the registrant in accordance with F.S. § 337.402, as it may be amended. The registrant shall guarantee its restoration work and shall correct any improper restoration work at its own expense for 12 months following the original completion of the work.

(F) Removal or relocation at the direction of the city of a registrant's communications facility or personal wireless service facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, as they may be amended.

(G) A permit from the city constitutes authorization to undertake only certain activities on public rights-of-way in accordance with this chapter, 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.

(H) A registrant shall maintain its communications facility or personal wireless service facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.

(I) 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, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public

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rights-of-way. The city may require a registrant to alter its placement or maintenance schedule as the city determines to be reasonably 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 individual city construction or maintenance schedules.

(J) The city makes no warranties or representations regarding the fitness, suitability, or availability of city's public rights-of-way for the registrant's communications facilities or personal wireless service facilities and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this chapter shall affect the city's authority to add, vacate or abandon public rights-of-way and city makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities or personal wireless service facilities.

(K) The city shall have the right to make such inspections of communications facilities and personal wireless service facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this chapter. In the event the city determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide the registrant at least three days written notice setting forth the violation and requesting correction.

(L) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. Registrant shall, if the registrant so agrees, allow city facilities to be co-located within city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between the 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, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.

(M) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its communications facilities or personal wireless service facilities to permit the work authorized by the permit. The expense of such

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temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation. If the city requests a temporary raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary raising or lowering of the facility.

ENFORCEMENT

§ 121.20 SUSPENSION OF PERMITS.

(A) Subject to § 121.21, the City Manager or his or her designee may suspend a permit for work in the public rights-of-way for one or more of the following reasons:

(1) Failure to satisfy permit conditions, including conditions set forth in this chapter or other applicable city ordinances, codes or regulations governing placement or maintenance of 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; or

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

(B) After the suspension of a permit pursuant to this section, the City Manager or his or her designee shall provide written notice of the reason for the suspension to the registrant.

§ 121.21 APPEALS OF SUSPENSION OF PERMITS OR DENIAL OF REGISTRATIONS.

(A) Final, written decisions of the City Manager, or his or her 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 Clerk within 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 Commission shall hear the appeal. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within 20 days of the hearing. Upon correction of any grounds

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that gave rise to a suspension or denial, the suspension or denial shall be lifted.

(B) Nothing in this section shall effect the remedies the city has available under applicable law.

**§ 121.22 CONDITIONAL USE OF PUBLIC RIGHTS-OF-WAY.**

(A) In the event the 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 city for such activities as may be required by applicable law.

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

**§ 121.23 INVOLUNTARY TERMINATION OF REGISTRATION.**

(A) The city may terminate a registration if:

(1) A federal or state authority suspends, denies, or revokes a registrant's certification or local business tax receipt to provide communications services;

(2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; or

(3) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with § 121.30 of this chapter.

(B) Prior to termination, the registrant shall be notified by the City Manager, or his or her designee, with a written notice setting forth all matters pertinent to the proposed termination action, including which of divisions (1) through (3) above is applicable as the reason therefore, and describing the proposed action of the city with respect thereto. The registrant shall have 30 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City Manager, or his or her designee, to accomplish the same. If the plan is rejected, the City Manager, or his or her designee, shall provide written notice of such rejection to the registrant and shall make a recommendation to the

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City Commission regarding a final decision as to termination of registration. A decision by a city to terminate a registration may only be accomplished by an action of the City Commission. A registrant shall be notified by written notice of any decision by the City Commission to terminate its registration. Such written notice shall be sent within seven days after the decision.

(C) In the event of termination, the former registrant shall:

(1) Notify the city of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or

(2) Provide the city with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this division, the city may exercise any remedies or rights it has at law or in equity, including but not limiting to taking possession of the facilities, requiring the registrant's bonding company within 90 days of the termination to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal, or requiring that some or all of the facilities be removed and the public rights-of-way restored to its original condition before the removal at the registrant's expense.

(D) In any event, a terminated registrant shall take such steps as are necessary to render every portion of the communications facilities remaining in the public rights-of-way of the city safe.

(E) In the event of termination of a registration, this provision does not permit the city to cause the removal of any communications facilities that are used to provide another service for which the registrant holds a valid certification or local business tax receipt with the governing federal or state agency, where required, and is properly registered with the city for such certificated or licensed service, where required.

**§ 121.24 EXISTING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY.**

A communications services provider with an existing communications facility in the public rights-of-way of the city has 60 days from the effective date of this chapter to comply with the terms of this chapter, including, but not limited to, registration, or be in violation thereof. This provision shall not require removal or alteration of communications facilities, wireless facilities, utility poles or wireless support structures placed or maintained in the public rights-of-way pursuant to a previously issued permit prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed.

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**§ 121.25 INSURANCE.**

(A) A registrant shall not commence construction, operation or maintenance of the facility without obtaining all insurance required under this section and approval of such insurance by Risk Management of the city, nor shall a registrant allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved. The required insurance must be obtained and maintained for the entire period the registrant has facilities in the public rights-of-way, and for a period thereafter as specified in the minimum coverages described below. If the registrant, its contractors or subcontractors do not have the required insurance, the city may order such entities to stop operations until the insurance is obtained and approved.

(B) Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Risk Manager Coordinator. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage. For entities that have facilities in the public rights-of-way as of the effective date of this chapter, the certificate shall be filed within 60 calendar days of the adoption of this chapter, annually thereafter, and as provided below in the event of a lapse in coverage.

(C) These certificates of insurance shall contain a provision that coverages afforded under these policies will not be canceled until at least 45 calendar days prior written notice has been given to the city. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial ratings must be no less than "A-VI" in the latest edition of *Best's Key Rating Guide*, published by A.M. Best Guide. A registrant may self-insure. Self insured status must be confirmed with certification of same by presentation of financial statements which are not more than one year old and signed by the registrant's Chief Financial Officer or designee. Information contained therein is subject to review and approval by city's Risk Management Division.

(D) In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of this contract, then in that event, the registrant shall furnish, at least 30 calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance of equal and like coverage.

(E) A registrant and its contractors or subcontractors engaged in work on the operator's behalf in, on, under or over public rights-of-way, shall maintain the following minimum insurance:

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(1) *Comprehensive general liability insurance.* To cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- (a) Bodily injury
  - (i) Each occurrence \$1,000,000
  - (ii) Annual aggregate \$3,000,000
- (b) Property damage
  - (i) Each occurrence \$1,000,000
  - (ii) Annual aggregate \$3,000,000
- (c) Personal injury
  - (i) Annual aggregate \$3,000,000

(d) Completed operations and products liability shall be maintained for two years after the abandonment of the facility by the registrant (in the case of the registrant) or completion of the work for the registrant (in the case of a contractor or subcontractor).

(e) Property damage liability insurance shall include coverage for the following hazards: X-explosion, C-Collapse, U-underground.

(2) *Workers' compensation insurance.* Shall be maintained to comply with statutory limits for all employees, and in the case any work is sublet, each registrant shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each registrant. Each registrant and its contractors and subcontractors shall maintain employers' liability insurance. The following limits must be maintained:

- (a) Workers' compensation - statutory
  - (b) Employers' liability - \$500,000 per occurrence
- (3) *Comprehensive auto liability.*

- (a) Bodily injury
  - (i) Each occurrence \$1,000,000
  - (ii) Annual aggregate \$3,000,000
- (b) Property damage
  - (i) Each occurrence \$1,000,000
  - (ii) Annual aggregate \$3,000,000

Coverage shall include owned, hired and non-owned vehicles.

(F) Each communications service provider shall hold the city, its agents, and employees, harmless on account of claims for damages to persons, property or premises arising out of its construction, operation or repair of its communications

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facility and name the city as an additional insured.

(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. Insurance under this section shall run continuously with the presence of the registrant's facilities in the public rights-of-way and any termination or lapse of such insurance shall be a violation of this 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 public rights-of-way by way of individual local business tax receipt agreements.

**§ 121.26 INDEMNIFICATION.**

(A) A registrant shall, at its sole cost and expense, 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 incurred by the city arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this chapter, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the gross negligence or wanton or willful acts of the city. This provision includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The city agrees to notify the registrant, in writing, within a reasonable time of city receiving notice, of any issue it determines may require indemnification. Nothing in this 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 section shall be construed or interpreted:

(1) As denying to either party any remedy or defense available to such party under the laws of the State of Florida;

(2) As consent by the city to be sued; or

(3) As a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as may be amended.

(B) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

**§ 121.27 CONSTRUCTION BOND.**

(A) Prior to issuing a permit where the work under the permit will require

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restoration of public rights-of-way, the city may require a construction bond to secure the restoration of the public rights-of-way. ~~Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in § 121.28.~~

(B) In the event a registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

(C) No less than 12 months after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request the City Engineer or his or her designee, to remove the requirement to continue the construction bond. Notwithstanding, the city may require a new bond for any subsequent work performed in the public rights-of-way.

(D) The construction bond shall be issued by a surety having a minimum rating of A-1 in *Best" 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 section, 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.

**~~§ 121.28 SECURITY FUND.~~**

~~At or prior to the time a registrant receives its first permit to place or maintain a communications facility or personal wireless service facility in public rights-of-way after the effective date of this chapter, the registrant may be required to file with the city, for city approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$25,000 having as a surety a company qualified to do business in the State of Florida, and acceptable to the City Manager or designee, which shall be referred to as the "security fund." The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations~~

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~~imposed upon registrant by the provisions of this chapter. The bond or guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this chapter, subject to this section, 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, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The city may in its reasonable discretion accept a corporate guarantee of the registrant or its parent company, if the registrant is a publicly traded company and maintains an insurance rating of no less than "A".~~

**§ 121.29 ENFORCEMENT REMEDIES.**

(A) A registrant's failure to comply with provisions of this chapter shall constitute a violation of this chapter and shall subject the registrant to the code enforcement provisions and procedures as provided in ~~F.S.~~ Chapter 162, Fla.Stat.F.S., § 166.0415, Fla.Stat., and §§ 32.035 et seq. of this ~~e~~Ordinances, as they may be amended. In addition, violation of this chapter may be punishable by a fine not to exceed \$250.00 for an initial violation and not more than \$500.00 for any repeat violations. ~~or by imprisonment not to exceed 60 days or by both as provided.~~

(B) In addition to any other remedies available at law, including but not limited to F.S. § 166.0415, and F.S. Chapter 162, or equity or as provided in this chapter, the city may apply any one or combination of the following remedies in the event a registrant violates this chapter, or applicable local law or order related to the public rights-of-way:

(1) Failure to comply with the provisions of this chapter or other law applicable to 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 \$100 per day or part thereof that the~~ so long as the violation continues.

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

(C) Before imposing a fine pursuant to division (B)(1) of 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 to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation; or

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(2) File an appeal with the city to contest the alleged violation; § 121.21 of this chapter shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30 day period, the city may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(D) 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.

(E) Failure of the city to enforce any requirements of this chapter 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.

(F) In any proceeding before the city where there exists an issue with respect to a registrant's performance of its obligations pursuant to this chapter, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this chapter. The city may find a registrant that does not demonstrate compliance with the terms and conditions of this chapter in default and apply any one or combination of the remedies otherwise authorized by this chapter.

(G) The City Manager or designee shall be responsible for administration and enforcement of this chapter, and is authorized to give any notice required by law.

**§ 121.30 ABANDONMENT OF A COMMUNICATIONS OR PERSONAL WIRELESS SERVICE FACILITY.**

(A) Upon abandonment of a communications facility or personal wireless service facility owned by a registrant in public rights-of-way, the registrant shall notify the city within 90 days.

(B) The city may direct the registrant 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 is not limited to:

(1) Compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way;

(2) Prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or

(3) Creates a maintenance condition that is disruptive to the public rights-of-ways use. In the event of division (2), the city may require the third person

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to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

(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, another utility or 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.

**§ 121.31 FORCE MAJEURE.**

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

**§ 121.32 REPORTS AND RECORDS.**

(A) Each registrant shall, upon 30 calendar days written notice, if reasonably possible, but in no event less than 5 business days written notice, provide the city access to all books and records related to the construction, maintenance, or repair of the facility to the extent the city review of the books and records is necessary to manage its rights-of-way.

(B) Any and all non-proprietary or non-confidential books and records may be copied by the city. To the maximum extent permitted by F.S. § 202.195, as amended, such books and records shall be kept confidential and exempt from the provisions of F.S. § 119.07(1). A registrant is responsible for obtaining or maintaining the necessary possession or control of all books and records related to

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the construction, maintenance or repair of the facility, so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that any record that is a public record must be maintained for the period required by state law.

(C) For purposes of this section, the terms "books and records" shall be read expansively to include information in whatever format stored. Books and records requested shall be produced to the city at City Hall, except by agreement.

(D) If any books and records are too voluminous, or for security reasons cannot be copied and moved, then a registrant may request that the inspection take place at some other location mutually agreed to by the city and the registrant, provided that the registrant must make necessary arrangements for copying documents selected by the city after its review; and the registrant must pay all travel and additional copying expenses incurred by the city in inspecting those documents or having those documents inspected by its designee.

(E) Without limiting the foregoing, a registrant shall provide the city the following within 10 calendar days of their receipt or (in the case of documents created by the registrant or its affiliate) filing:

- (1) Notices of deficiency or forfeiture related to the operation of the facility; and
- (2) Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the operator or by any partnership or corporation that owns or controls the operator directly or indirectly.

(F) 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.

**§ 121.33 RESERVATION OF RIGHTS AND REMEDIES.**

(A) The city reserves the right to amend this chapter as it shall find necessary in the lawful exercise of its police powers.

(B) This chapter shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this chapter and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this chapter, to the full extent permitted by state and federal law.

(C) The adoption of this chapter is not intended to waive any rights or defenses the city may have under existing franchise, local business tax receipt or other agreements with a communications services provider.

(D) Nothing in this chapter shall affect the remedies the city has available under applicable law.

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**§121.35 – SMALL AND MICRO WIRELESS FACILITIES**

This Section was adopted pursuant to the authority provided in chapter 2017-136, Laws of Florida, which enacted Section 337.401(7), Fla.Stat., known as the “Advanced Wireless Infrastructure Deployment Act,” as may be amended from time to time. To the extent of any conflict between this section and state law, the applicable provisions of state law shall control. To the extent of any conflict between this section and any other provision of Chapter 121, this section shall control.

(A). Definitions. For purposes of this Section, the following definitions shall apply:

**ANTENNA** means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

**APPLICABLE CODES** means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement Section 337.401, Fla.Stat. The term includes objective design standards adopted by ordinance that may require a new Utility Pole that replaces an existing Utility Pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a Small Wireless Facility to meet reasonable location context, color, stealth, and concealment requirements.

**APPLICANT** means a person who submits an Application and is a Wireless Provider.

**APPLICATION** means a request submitted by an Applicant to the City for a permit to Collocate Small Wireless Facilities.

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**CITY UTILITY POLE** means a Utility Pole owned by the City and located in the right-of-way.

**COLLOCATE OR COLLOCATION** means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a Wireless Support Structure or Utility Pole. The term does not include the installation of a new Utility Pole or Wireless Support Structure in the Public Rights-of-Way.

**MICRO WIRELESS FACILITY** means a Small Wireless Facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior Antenna, if any, no longer than 11 inches.

**SMALL WIRELESS FACILITY** means a wireless facility that meets the following qualifications:

- (1) Each Antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of Antennas that have exposed elements, each Antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- (2) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and Utility Poles or other support structures.

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

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

**WIRELESS PROVIDER** means a wireless infrastructure provider or a wireless services provider.

**WIRELESS SUPPORT STRUCTURE** means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a Utility Pole.

(B). Location; alternative location procedure. Small Wireless Facilities shall not be subject to the minimum separation distances set forth in Sec. 121.12(D)(6)(b)7 of the City code, except as expressly permitted by law. Within 14 days after the date of filing a complete Application for a Small Wireless Facility, the City may request that the proposed location of a Small Wireless Facility be moved to another location in the right-of-way and placed on an alternative City Utility Pole or support structure or may place a new Utility Pole. The City and the Applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the Applicant, the Applicant must notify the City of such acceptance and the Application shall be deemed granted for any new location for which there is agreement and all other locations in the Application. If an agreement is not reached, the Applicant must notify the City of such non-agreement and the City shall grant or deny the original Application within 90 days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail

(C). Height. The height of a Small Wireless Facility shall not exceed 10 feet above the Utility Pole or structure upon which the Small Wireless Facility is to be Collocated. Unless waived by the City, the height for a new Utility Pole is limited to the tallest existing Utility

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Pole as of July 1, 2017, located in the same right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the height of the Utility Pole upon which the Small Wireless Facility is to be collocated shall not exceed 50 feet.

(D). Collocation application process. Within 14 days after receiving an Application for a permit to place a Small Wireless Facility, the City shall determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the City shall specifically identify the missing information. An Application is deemed complete if the City fails to provide notification to the Applicant within 14 days. Pursuant to Section 337.401(7), Fla.Stat., as may be amended from time to time, a complete Application to place a Small Wireless Facility is deemed approved if the City fails to approve or deny the Application within 60 days after receipt of the Application. If the City does not use the 30-day negotiation period provided in subsection (B) above, the parties may mutually agree to extend the 60-day Application review period. The City shall grant or deny the Application at the end of the extended period. A permit issued pursuant to an approved Collocation Application shall remain effective for 1 year unless extended by the City.

(E). Written approval or denial. The City shall notify the Applicant of approval or denial by electronic mail. The City shall approve a complete Application unless it does not meet the Applicable Codes. If the Application is denied, the City shall specify in writing the basis for denial, including the specific code provision(s) on which the denial was based, and send the documentation to the Applicant by electronic mail on the day the City denies the Application. The Applicant may cure the deficiencies identified by the City and resubmit the Application within 30 days after notice of the denial is sent to the Applicant. The City shall approve or deny the revised Application within 30 days after receipt or the Application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

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(F). Consolidated Application. An Applicant seeking to Collocate Small Wireless Facilities within the City may, at the Applicant's direction, file a consolidated Application and receive a single permit for the Collocation of up to 30 Small Wireless Facilities. If the Application includes multiple Small Wireless Facilities, the City may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

(G) Basis for denial. The City may deny a proposed Collocation of a Small Wireless Facility in the Public Rights-of-Way if the proposed Collocation:

- (1) Materially interferes with the safe operation of traffic control equipment;
- (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
- (5) Fails to comply with Applicable Codes.

(H) Exemptions: The following shall not require permit approval, fees, or other charges:

- 1) Routine maintenance;
- 2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or
- 3) Installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Services Provider authorized to occupy the Rights-of-Way and who is remitting taxes under Chapter 202, Florida Statutes.

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(I) Collocation on City Utility Poles.

- 1) The fee to Collocate a Small Wireless Facility on a City Utility Pole shall be \$150 per pole annually.
- 2) The City may reserve space on a City Utility Pole for future public safety uses. However, a reservation of space may not preclude Collocation of a Small Wireless Facility. If replacement of the City Utility Pole is necessary to accommodate the Collocation of the Small Wireless Facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.
- 3) For a City Utility Pole that supports an aerial facility used to provide communication services or electrical service, the City and Applicant shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the City for any make-ready work necessary to enable the pole to support the requested Collocation must include pole replacement, if necessary.
- 4) For a City Utility Pole that does not support an aerial facility used to provide communications services or electric service, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Collocation, including necessary pole replacement, within 60 days after receipt of a complete Application. Make-ready work, including any pole replacement, shall be completed within 60 days after written acceptance of the good faith estimate by the Applicant. Alternatively, the City may require the Applicant seeking to Collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense of the work necessary to support the Small Wireless Facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The City may not condition or restrict the

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manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration for work in the rights-of-way.

5) The make-ready work specified in subsections (3) and (4) above shall be subject to the City's usual construction restoration standards for work in the right-of-way. The replaced or altered City Utility Pole shall remain the property of the City.

(J) Design standards. The City's design standards set forth in the Applicable Codes may be waived by the City Manager, or his designee, upon a showing that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense for a Small Wireless Facility. The waiver shall be granted or denied within 45 days after the date of the request.

(K) Permitting. An Applicant for installation of a Small Wireless Facility shall obtain a right-of-way permit from the City for any work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

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

(M) No authorization to Collocate on City Utility Poles; no Application to Homeowner's Association restricted pole. This section does not authorize a person to Collocate Small Wireless Facilities or Micro Wireless Facilities on a City Utility Pole, unless otherwise permitted by applicable law, or erect a Wireless Support Structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association.

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**SECTION 3.** It is the intention of the City Commission of the City of Pembroke Pines that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Pembroke Pines, Florida, and that the Sections of this ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

**SECTION 4.** If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

**SECTION 5.** All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

**SECTION 6.** This Ordinance shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA, ON THE FIRST READING, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018.**

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ORDINANCE NO. \_\_\_\_\_  
PASSED ADOPTED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE  
PINES, FLORIDA, ON THE SECOND AND FINAL READING, THIS \_\_\_\_ DAY OF  
\_\_\_\_\_, 2018.

CITY OF PEMBROKE PINES, FLORIDA

By: \_\_\_\_\_

ATTEST:

MAYOR FRANK C. ORTIS

\_\_\_\_\_  
MARLENE GRAHAM, CITY CLERK

ORTIS \_\_\_\_\_

APPROVED AS TO FORM:

GOOD \_\_\_\_\_

CASTILLO \_\_\_\_\_

SCHWARTZ \_\_\_\_\_

\_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

SIPLE \_\_\_\_\_

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