

**ORDINANCE NO. 2018-028**

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA REPEALING ARTICLE V, IN CHAPTER 86, ENTITLED "MANAGEMENT OF RIGHTS- OF-WAY" OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, FLORIDA AND CREATING A NEW ARTICLE VI ENTITLED "COMMUNICATIONS FACILITIES IN RIGHTS-OF-WAY", IN CHAPTER 82 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, TO PROVIDE TERMS AND CONDITIONS FOR THE PLACEMENT AND MAINTENANCE OF COMMUNICATIONS FACILITIES OR SYSTEMS, SMALL WIRELESS FACILITIES, MICRO WIRELESS FACILITIES, UTILITY POLES, WIRELESS SUPPORT STRUCTURES AND EQUIPMENT FACILITIES IN THE CITY'S RIGHT-OF-WAYS FOR THE PROVISION OF COMMUNICATIONS, CABLE SERVICES, VIDEO SERVICES AND WIRELESS SERVICES, PROVIDING FOR ENFORCEMENT AND ADMINISTRATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, it is the intent of the City of Hialeah ("City") to repeal and replace Chapter 86, Article V, entitled "Management of Rights-of-Way" of the City of Hialeah Code of Ordinances ("City Code"), and to enact an updated ordinance that takes into consideration the developments in the industry, in technology, and in the regulatory environment to the fullest extent allowed by federal and state law governing the requirements for placement of communications facilities, small wireless facilities, micro wireless facilities, wireless support structures, utility poles and equipment facilities within the City's public rights-of-way, and establishing requirements for communications services providers, cable and video service providers, certificate holders, wireless providers and wireless infrastructure providers; and

**WHEREAS**, the City encourages competition and treatment of communications facilities, small wireless facilities, micro wireless facilities, wireless support structures, utility poles and equipment facilities within the City's public rights-of-way by communications services providers, cable and video services providers, certificate holders, wireless providers, wireless infrastructure providers and pass-through providers in a competitively neutral and

nondiscriminatory basis by granting non-exclusive access to use the City's public rights-of-way in accordance with the provisions of §337.401, F.S., and applicable laws; and

**WHEREAS**, the City Council of the City of Hialeah has determined it is in the public interest to authorize the placement of communications facilities, small wireless facilities, micro wireless facilities, wireless support structures, utility poles and equipment facilities within the City's public rights-of-way by communications services providers, cable and video services providers, certificate holders, wireless providers, wireless infrastructure providers and pass-through providers in the City's public rights-of-way.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA THAT:

**Section 1.** The foregoing facts and recitations contained in the preamble are hereby adopted and incorporated by reference as if fully set forth in this Section.

**Section 2.** Article V, in Chapter 86 of the City Code of Ordinances entitled "Management of Rights-of-Way" of the City Code of Ordinances is hereby repealed in its entirety.

**Section 3.** Chapter 82 entitled "Streets, Sidewalks and Other Public Places" is hereby amended to include a new Article VI entitled "Communications Facilities In Rights-Of-Way" as follows:

**Chapter 82**

**STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

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**ARTICLE VI – COMMUNICATIONS FACILITIES  
IN RIGHTS-OF-WAY**

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**Sec. 82-124. 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, small wireless facilities, micro wireless facilities, wireless support structures, utility poles and equipment facilities within the public rights-of-way within the city by all communications services providers, cable and video services providers, certificate holders, wireless providers, wireless infrastructure providers and pass-through providers; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § 337.401 and F.S. Chapter 610, as they may be amended, the city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, as amended, and other federal and state law; establishing reasonable rules and regulations after the effective date of this Ordinance; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the city shall be governed by and shall comply with all applicable federal and state laws.

**Sec. 82-125. Definitions.**

For the purposes of this Ordinance, the following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The terms "shall" and "will" are mandatory, and the term "may" is permissive. Words not otherwise defined in this section or in any permit that may be granted pursuant to this Ordinance shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. 151 et seq., as amended, (collectively the "Communications Act"); if not defined in the Communications Act, as amended, as defined by Federal Communications Commission Orders, if not defined by Federal Communications Commission Orders, shall be defined by Florida statutes; and if not defined by Florida statutes, as amended, shall be defined by relevant case law, and if not defined by relevant case law, shall be construed to mean the common and ordinary meaning.

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*Aerial facility* means a facility used to provide communications services or electric services that is attached onto a utility pole within the city's rights-of-way.

*Abandonment* means the permanent cessation of all uses of a communications facility, utility pole or wireless support structure 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.

*Antenna* for purposes of this Ordinance, means communications equipment that transmits or receives electromagnetic radio frequency signals used in provider wireless services.

*Applicable Codes* means this Ordinance, the Florida Building Code and fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to the aforementioned codes enacted solely to address threats of destruction of property or injury to persons.

*Applicant* means a person who submits an application to the City and is a cable services provider, video services provider, certificate holder, communications services provider, wireless provider, pass-through provider or wireless infrastructure provider.

*Application* means a request submitted by an applicant to the City for a permit to place communications facilities or collocate small wireless facilities onto a utility pole or installation of a utility pole or wireless support structure in the public rights-of-way.

*Attach or Attachment(s)* means the physical attachment(s) of a communications facility or small wireless facility to a legally maintained utility pole or wireless support structure consisting of cables, wires, and supporting hardware required to support the provision of communications services or wireless services as defined by the City Code.

*Cable service(s)* means: (1) The one-way transmission to subscribers of video programming or any other programming service. (2) Subscriber interaction, if any, that is required for the

selection or use of such video programming or other programming service.

*Cable service provider* means a person that provides cable service over a cable system.

*Cable system* means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;

(3) A facility that serves subscribers without using any public right-of-way;

(4) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act of 1934, except that such facility shall be considered a cable system other than for purposes of 47 U.S.C. 541(c) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(5) Any facilities of any electric utility used solely for operating its electric utility systems; or

(6) An open video system that complies with 47 U.S.C. 573.

*Camouflaged or Stealth Facility* means a communications facility and/or accompanying equipment that is attached onto an existing, new or replaced utility pole or wireless support structure designed to blend into the surrounding environment, disguised, hidden, part of an existing or proposed pole or structure, or placed

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within an existing or proposed pole or structure in a manner that makes it not readily identifiable as a communications facility, wireless support structure or accompanying equipment.

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

*City utility pole* means a utility pole owned by the City in the public rights-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

- (1) A retirement community that (i) Is deemed restricted as housing for older persons as defined in Section 760.29(4)(b), F.S.; (ii) Has more than 5,000 residents; and (iii) Has underground utilities for electric transmission or distribution.

*Collocate or collocation* means, for the purposes of this Ordinance, to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

*Communications facility or facility or system* means any permanent or temporary plant, equipment and property, including, but not limited to, cables, wires, conduits, ducts, fiber optics, 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. The term includes any permanent or temporary small wireless facility or micro wireless facility,

*Communications services* means the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by

or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, the term does not include services used to remotely facilitate, monitor or control the distribution or transmission of electricity on electric utility infrastructure, information services, installation or maintenance of wiring or equipment on a customer's premises, the sale or rental of tangible personal property, the sale of advertising, including, but not limited to, directory advertising, bad check charges, late payment charges, billing and collection services, or internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

*Communications services provider* means any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, including, but not limited to, cable service and video service providers, certificate holders and wireless providers.

*Equipment Facility* means an unmanned enclosure, room, cabinet, shelter, pedestal, build-out of an existing structure, building, or similar structure used to house ancillary equipment for the provision of communications services. Each such cabinet, shelter, or building shall be considered a separate equipment facility.

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

*Make-ready work* means a process by which existing attachments on a utility pole must be rearranged so that the utility pole can be made ready to accommodate new attachments, which may include pole replacement.

*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.

*Overlash or overlashing* means to place cables, wires, fiber optics, strands, antennas or other facilities onto existing cables,

wires, fiber optics, antennas or other facilities attached to or between utility poles or wireless support structures by a registrant or communications services provider.

*Pass-Through Provider* means any person who places or maintains a communications facility, utility pole or wireless support structure in the roads or rights-of-way of the city who does not remit taxes imposed by the city pursuant to Chapter 202, Florida Statutes.

*Person* includes any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the city to the extent permitted by applicable law.

*Place or maintain or placement or maintenance or placing or maintaining* means to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate, under, over, or within any rights-of-way. 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, constitutes "placing or maintaining" the facilities as defined herein. 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.

*Public rights-of-way* means a public right-of-way, public utility easement, highway, street, sidewalk, alley, bridge, tunnel, pier, waterway, dock, wharf, court, lane, or path, or any other 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. The term "public rights-of-way" shall not include private property or county and state rights-of-way where the city does not have control through any delegation of authority or otherwise. The term "public rights-of-way" shall not include any real or personal city property.

Registrant or facility owner means a communications services provider, cable or video service provider, wireless provider, wireless infrastructure provide, or pass-through provider or other person that has registered with the city in accordance with the provisions of this Ordinance.

Registration and register means the process described in this Ordinance whereby a communications services provider, wireless provider, certificate holder, cable or video service provider, wireless infrastructure provider or pass-through provider provides certain information to the city.

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.

Telecommunications Information Packet means a packet provided by the city that is included in a permit application, which contains questions regarding an applicant's proposed siting and installation of communications facilities, small wireless facilities, micro wireless facilities, utility poles, wireless support structures and accompanying equipment facilities in the city.

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

Video programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. 522(20).

Video service means video programming services, including cable services, provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. 332(d), video programming provided as part of, and via a service that enables end users to access content, information, electronic mail, or other services offered over the public Internet.

Video service provider means an entity providing video service.

Wireless facility means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

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

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

*Wireless provider* means a wireless infrastructure provider or a wireless services provider.

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

*Wireless services provider* means a person who provides wireless services.

*Wireless support structure* means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure that is less than 55 feet in height designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

**Sec. 82-126. Registration for placing or maintaining communications facilities, utility poles, or wireless support structures in public rights-of-way.**

(a) An applicant that desires to place or maintain a communications facility, utility pole or wireless support structure in the public rights-of-way in the city shall first register with the city in accordance with this Ordinance. Subject to the terms and conditions prescribed in this Ordinance, a registrant may place or maintain a communications facility, small wireless facility, utility pole or wireless support structure in the public rights-of-way. An applicant with an existing communications facility, utility pole or wireless support structure in the public rights-of-way of the city who has not previously registered with the city has ninety (90) days from the effective date of this Ordinance to comply with the terms of this Ordinance and register with the city or be in violation thereof.

(b) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this

Ordinance governs the placement or maintenance of communications facilities, utility poles and wireless support structures in the public rights-of-way. Registration does not excuse an applicant from complying with all applicable federal, state and local codes or regulations, including this Ordinance.

(c) Each applicant that desires to place or maintain a communications facility, utility pole or wireless support structure in the public rights-of-way in the city shall file a single registration with the city that shall include the following information:

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

(2) A statement of whether the applicant is a communications services provider or pass-through provider that expects to provide communications or wireless services to customers within the jurisdictional boundaries of the City, or whether the applicant is a wireless infrastructure provider that intends to lease its facilities to a provider of communications or wireless services;

(3) A copy of federal or state certification authorizing the applicant to do business in the state and to provide service in the city;

(4) Acknowledgment that the applicant has received and reviewed a copy of this Ordinance, and

(5) Evidence of the insurance coverage and submission of a construction bond as required by this Ordinance.

(d) The streets department shall review the information submitted by the applicant. The city shall, in accordance with subsection (c) and within thirty (30) days of receipt of applicant's information, notify the applicant of the effectiveness or non-effectiveness of the registration in writing. An applicant may appeal a final determination of non-effectiveness of a registration by the streets department in accordance with Section 82-131.

(e) A registrant may cancel a registration upon written notice to the city that the registrant will no longer place or maintain any communications facilities, utility poles or wireless support

structures in the public rights-of-way and will no longer need to obtain permits to perform work in the public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities, utility poles or wireless support structures in public rights-of-way.

(f) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility, utility pole or wireless support structure in any particular area in public rights-of-way within the city. Registrants are expressly subject to any future amendment to this Ordinance and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.

(g) By April 1 of even numbered years, a registrant shall renew its registration in accordance with the registration requirements in this Ordinance. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (c) of this section, 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 registrant has complied with the registration requirements of this Ordinance.

(h) An effective registration shall be a condition of an applicant obtaining a permit. Any and all necessary permits must be obtained prior to any work is commenced. A registrant must obtain permission or authorization to use any existing facilities or structures in the rights-of-way not owned by the registrant. 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. However, after registration is granted by the city, permit requests for placement of utility poles, wireless support structures and small wireless facilities shall be processed in accordance with Section 82-128.

**Sec. 82-127. Placement or maintenance of a communications facility, utility pole or wireless support structure in public rights-of-way.**

(a) The registrant must at all times comply with and abide by all applicable provisions of the state statutes and city ordinances, codes and regulations in placing or maintaining a communications facility, utility pole or wireless support structure in the public rights-of-way. A registrant shall at all times be subject to all lawful exercise of the police power of the city.

(b) A registrant shall not commence to place or maintain a communications facility, utility pole or wireless support structure in the public rights-of-way until all applicable permits have been issued by the city and the registrant has complied with all applicable processes required by the city or other appropriate authority. The registrant acknowledges that as a condition of granting such permits, the city may impose reasonable rules or regulations governing the placement, maintenance or repairs of a communications facility, small wireless facility, utility pole or wireless support structure in public rights-of-way. No permit is required for routine maintenance and replacement of existing small wireless facilities and micro wireless facilities with small wireless facilities and micro wireless facilities that are substantially similar or at the same or smaller size or the placement of micro wireless facilities in the public rights-of-way unless the maintenance or replacements involves excavation, closure of a sidewalk, or closure of a vehicular lane for existing, new or replacing facilities or accompanying equipment that are underground. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. However, in cases of emergencies, meaning a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service, the registrant shall provide prompt notice to the city of the placement, maintenance or repairs of a communications facility, utility pole or wireless support structure in the public rights-of-way.

(c) As part of any permit application to place a new or replace an existing communications facility, small wireless facility, utility pole or wireless support structure in the public rights-of-way, the registrant shall complete the city's telecommunications information packet and include a proposal for construction of the communications facility, small wireless facility, utility pole or wireless support structure that sets forth at least the following:

(1) An engineering plan signed and sealed by a state registered professional engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, identifying the location of the proposed facility or structure, including a description of the facilities and structures to be installed, where it is to be located, and the approximate size of facilities, structures and equipment that will be located in public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans or "as-builts" upon completion of any installation or construction in accordance with this Ordinance. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the city's geographical database, or other format reasonably acceptable to the city. The registrant shall provide such plans at no cost to the city. The city shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended;

(2) A description of the manner in which the facility will be installed (i.e., anticipated construction methods and/or techniques);

(3) A traffic maintenance plan for any disruption or obstruction of the public rights-of-way;

(4) Information on the ability of the public rights-of-way to accommodate the proposed communications facility, small wireless facility, utility pole, wireless support structure or accompanying equipment facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons with facilities, poles or structures within 50 feet of the same public rights-of-way.) The 50-foot distance requirement may be modified if the streets department determines that the proposed location: (i) better serves the city's interests in safe, aesthetic, efficient and effective management of the public rights-of-way; (ii) is necessary to address a documented lack of capacity for one (1) or more communications services providers; or (iii) will help minimize the total number of communication facilities necessary to serve a particular area;

(5) If appropriate given the facility or structure proposed, an estimate of the cost of restoration to the public rights-of-way;

(6) The timetable for construction of the project or each phase thereof, and the areas of the city which will be affected; and

(7) Such additional information requested by the city that is reasonably necessary to review the permit application consistent with applicable law.

(d) The city shall have the power to prohibit or limit the placement of new or additional communications facilities, utility poles, wireless support structures or accompanying equipment facilities within the public rights-of-way if it will materially interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation, pedestrians, or interferes with compliance with the Americans with Disabilities Act or similar federal or Florida standards regarding pedestrian access or movement, or fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, as may be amended, or fails to accommodate imminent city plans for public improvements or projects that the city determines are in the public interest for public safety and to the extent not prohibited by applicable law.

(e) To the extent not inconsistent with Florida Public Service Commission regulations, the city may require the use of trenchless technology (i.e., directional bore method) for the installation of communications facilities in the public rights-of-way underground as well as joint trenching for the installation 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 economic and technical feasibility of such requests. The registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The appropriate city official may issue such rules and regulations concerning the placement or maintenance of a communications facility, small wireless facility, utility pole, wireless support structure or accompanying equipment facility in the public rights-of-way as may be consistent with this Ordinance and other applicable codes or law.

(f) If the city determines there is potential interference with public safety prior to the commencement of any work by the registrant in the rights-of-way, the city may require the registrant to issue notice of the work using reasonable means to property owners whose property either adjoins or lies within 100 feet of such rights-of-way.

(g) All safety practices required by applicable law or accepted industry practices and standards shall be used by registrant during the placement or maintenance of communications facilities, utility poles and wireless support structures. A registrant's system and facilities shall comply with the FCC's rules and regulations of the emergency alert system when applicable.

(h) A registrant shall, at its own expense, keep all affected areas in a reasonably clean and workmanlike manner, and restore the public rights-of-way to at least its original condition or improved condition than what existed prior to commencement of work in the public rights-of-way. The registrant shall warrant its restoration for a period of twelve (12) months after completion of such restoration. If the registrant fails to make such restoration within twenty (20) calendar days after completion of construction, or such other time as may be required by the city, the city may, after written notice to the registrant, perform such restoration using city employees, agents or contractors, and withdraw the amount of all costs related to the restoration from the registrant's current construction bond and require replenishment of the bond and reimbursement of any excess within thirty (30) days after the submission of the invoice by the city to the registrant.

(i) Removal or relocation at the direction of the city of a registrant's communications facility, utility pole, wireless support structure or accompanying equipment facility in the public rights-of-way shall be governed by the provisions of F.S. § 337.403, as amended. If the registrant fails to remove and/or relocate registrant's communications facility, utility pole, wireless support structure or accompanying equipment facility in the public rights-of-way, the city may, after written notice to the registrant, perform such removal and relocation using city employees, agents or contractors, and withdraw the amount of all costs related to the removal and relocation of registrant's communications facility, utility pole, wireless support structure or accompanying equipment

facility in the public rights-of-way from the registrant's current construction bond and require replenishment of the bond, and reimbursement of any excess within thirty (30) days after the submission of the invoice by the city to the registrant.

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

(k) A registrant shall maintain its communications facility, utility pole or wireless support structure in the public rights-of-way in a manner consistent with accepted industry practice, standards and applicable law, as amended or adopted.

(l) All construction, installation and maintenance of a registrant's communications facilities, utility poles and wireless support structures in the public rights-of-way shall comply with the National Electrical Safety Code, the National Electric Code, the state building code, accepted industry practices and standards, applicable codes, and all laws established by all local, state or federal authorities, and as hereinafter may be amended or changed. The registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas.

(m) In connection with excavation or placement of its facilities underground in the public rights-of-way, a registrant shall, where applicable, shall maintain appropriate membership in the one-call notification system and comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 56, Florida Statutes, as it may be amended.

(n) 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 thirty (30) days 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 timeframe based on specific city construction or maintenance schedules.

(o) Upon the city's request, registrant's employees, contractors and subcontractors must provide a picture identification badge and telephone number indicating that they work for the registrant and/or contractor for city employees to contact. A registrant or contractor shall also require all company vehicles to prominently display the name under which the registrant or contractor is doing business, and logo, if any, in a manner clearly visible to the public.

(p) A registrant shall not place or maintain its communications facilities, utility poles wireless support structures or equipment facilities so as to interfere, displace, damage or destroy any facilities, including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the city, landscaped areas and swales, or any other person's facilities lawfully occupying the public rights-of-way of the city. Further, a registrant shall not place or maintain its communications facilities, utility poles or wireless support structures, company or contractor vehicles, or related equipment facilities so as to interfere with the safety of the public.

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

(r) The city shall have the right to make such visual inspections of facilities or structures placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. In the event the city determines that a violation exists

with respect to the registrant's placement or maintenance of facilities or structures 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 no less than three (3) days' written notice setting forth the violation and requesting correction. A registrant shall, upon receipt of written notice from the city, be given a time schedule to cure the violation. Failure to commence to cure the violation within thirty (30) days and to complete cure, to the city's satisfaction, within sixty (60) days, or such longer time as the city may specify, may result in revocation of any registration or permit and the city may seek any remedy or damages to the full extent of the law. The registrant may appeal the revocation of any registration or permit in accordance with Section 82-131. This shall not preclude other penalties allowed by law.

(s) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, poles 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. The registrant shall allow city facilities to be installed within city's public rights-of-way through the use of a joint trench during the registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.

(t) Subject to applicable law, a registrant shall, on the request of any person holding a permit issued by the city, temporarily support, protect, raise or lower its communications facilities, utility poles or wireless support structures to permit the work authorized by the permit. The expense of such temporary support, protection, raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation. If the city requests the temporary support,

protection, raising or lowering of a facility for a public purpose, the city shall not be charged for the temporary support, protection, raising or lowering of the facility, subject to Section 337.403, Florida Statutes.

(u) No wireless support structures in excess of 55 feet in height, or telecommunications towers as defined by the city code, may be installed or placed in the public rights-of-way.

(v) *Installation standards for communications facilities, utility poles, wireless support structures and accompanying equipment facilities.* For the purposes of this subsection, to the extent not expressly prohibited by federal law, state law, the City Code or applicable Florida Public Service Commission rules and regulations, a communications facility, utility pole, wireless support structure or equipment facility placed in the public rights-of-way shall be subject to the following criteria:

(1) All new utility poles that replace existing utility poles must be of substantially similar design, material, and color;

(2) All communications facilities, utility poles, wireless support structures and equipment facilities in the public rights-of-way must be camouflaged, with substantially similar design, material, and the color of existing utility poles or wireless support structures;

(3) All communications facilities, utility poles and wireless support structures shall not have any type of lighted signal, lights, or illuminations unless it is a light pole or required by an applicable federal, state, or local rule, regulation, law or the city code;

(4) No commercial advertising shall be allowed on a communications facility, small wireless facility, utility pole, wireless support structure or accompanying equipment facility in the public rights-of-way;

(5) No back-up power sources, including, but not limited to, generators and fuel storage tanks, may be installed or placed in the public rights-of-way;

(6) The preferred location for placement of any accompanying equipment facilities or cabinets used in association with a communications facility, utility pole or wireless support structure in order of ranking is from highest (i) to lowest (iii). Where a lower ranked alternative is proposed, the registrant must demonstrate in its registration application that higher ranked options are not available.

(i) Underground in the public rights-of-way; or

(ii) Mounted onto the utility pole or wireless support structure itself; or

(iii) On the ground in the public rights-of-way;

(7) Space permitting, accompanying equipment facilities installed on the ground in the public rights-of-way must be located in areas with existing foliage or another aesthetic feature to obscure the view of the equipment facilities.

(8) For public safety purposes, no registrant may overlash on or between utility poles or wireless support structures for the provision of communications services in the public rights-of-way if the facilities suspended on cables or wires strung between utility poles or wireless support structures or attached to utility poles or wireless support structures fail to comply with load capacity required by applicable codes and laws, as amended.

(9) To the extent reasonably practicable, no exposed conduit or wiring is permitted.

(10) Such design standards may be waived by the city upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request.

**Sec. 82-128. Requirements and Procedures for Small Wireless Facilities, Micro Wireless Facilities, Utility Poles & Wireless Support Structures.**

A request by a registrant to collocate a small wireless facility to a utility pole in the rights-of-way shall be processed in accordance with this section.

(1) Within fourteen (14) days after receiving an application, the City must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the city must specifically identify the missing information. An application is deemed complete if the city fails to provide notification to the applicant within fourteen (14) days.

(2) Within fourteen (14) days after the date of filing an application for collocation of a small wireless facility to a utility pole, the city may request that the proposed location of a small wireless facility be moved to another location in the rights-of-way and placed on an alternative utility pole or support structure or may place a new utility pole. The city and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for thirty (30) days after the date of the request. 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 nonagreement and the city must grant or deny the original application within ninety (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.

(3) A complete application is deemed approved if the City fails to approve or deny the application within sixty (60) days after receipt of the application. If the City does not use the thirty (30) day negotiation period provided in subparagraph (2) above, the parties may mutually agree to extend the sixty (60) day application review period. The City shall grant or deny the application at the end of the extended period. A permit issued pursuant to an

approved application shall remain effective for 1 year unless extended by the city.

(4) The city must notify the applicant of approval or denial by electronic mail. The city shall approve a complete application unless it does not meet the regulations provided by this Ordinance or other applicable codes. If the application is denied, the city must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the city denies the application. The applicant may cure the deficiencies identified by the city and resubmit the application within thirty (30) days after notice of the denial is sent to the applicant. The city shall approve or deny the revised application within thirty (30) days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(5) An applicant seeking to collocate small wireless facilities within the city may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to thirty (30) small wireless facilities. If the application includes multiple small wireless facilities, an authority may separately address small wireless facility collocations for which incomplete information has been received or which are denied.

(6) The city may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:

(i) Materially interferes with the safe operation of traffic control equipment.

(ii) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

(iii) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

(iv) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, as amended.

(v) Fails to comply with applicable codes.

(7) The city may reserve space on the city's utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the city's 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.

(8) The city shall limit:

(i) The height of a small wireless facility to ten (10) feet above the utility pole or structure upon which the small wireless facility is to be collocated;

(ii) The height for a new utility pole to the tallest existing utility pole as of July 1, 2017, that is located in the same rights-of-way measured from grade in place within five-hundred (500) feet of the proposed location of the small wireless facility. This subsection does not include a utility pole for which a waiver has previously been granted. The height limitation may be waived by the city's streets department; or

(iii) If there is no utility pole within five-hundred (500) feet, the city shall limit the height of the new utility pole to fifty (50) feet.

(9) Except as provided in subparagraphs (2) and (8), the installation of a utility pole in the public rights-of-way designed to support a small wireless facility shall be subject to the city's rules or regulations governing the placement of utility poles in the public rights-of-way and shall be subject to the application review timeframes in this subsection.

(10) A structure granted a permit and installed pursuant to this subsection shall comply with F.S. chapter 333 and federal regulations pertaining to airport airspace protections.

(11) The city may not require approval or require fees or other charges for:

(i) Routine maintenance;

(ii) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or

(iii) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with this Ordinance by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under F.S. chapter 202, otherwise fees must be remitted to the city in accordance with Section 82-129(b) or (c).

(12) For a city utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations. The city shall not be responsible for any make-ready work costs. The good-faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

(13) For a city utility pole that does not support an aerial facility used to provide communications services or electric service, the city shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within sixty (60) days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed by applicant within sixty (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 for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole

that is substantially similar in color and composition. The city may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the city.

(14) The city may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(15) A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements of the city, in the event the city prohibits above-ground structures in public rights-of-way, provided, however, that such undergrounding requirement shall not apply to above-grade facilities that must be located above grade specifically for the transmission or reception of electromagnetic radio frequency signals used in providing wireless services.

(16) A wireless infrastructure provider may apply to the city to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within nine (9) months after the date the application is approved. The city shall accept and process the application in accordance with subparagraph (a)(9) and this Ordinance, any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

(17) This subsection does not limit the City's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as

amended, and the regulations adopted to implement such laws. The city may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or authority. An authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the state if the intent to adopt such changes has been publicly declared on or before April 1, 2017. The city may waive any ordinances or other requirements that are subject to this paragraph.

(18) This subsection does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately-owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(19) This subsection does not authorize a person to collocate or attach small wireless facilities or micro wireless facilities on a utility pole, unless otherwise permitted by federal law, or erect a wireless support structure in the right-of-way located within a retirement community that:

(i) Is deed restricted as housing for older persons as defined in F.S. §760.29(4)(b);

(ii) Has more than 5,000 residents; and

(iii) Has underground utilities for electric transmission or distribution.

This paragraph does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by the city's underground utilities ordinance.

(20) This subsection does not authorize a person to collocate small wireless facilities or micro wireless facilities on a City utility pole or erect a wireless support structure in a location

subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities.

**Sec. 82-129. Compensation for use of rights-of-way.**

(a) A registrant that places or maintains communications facilities, utility poles or wireless support structures in the public rights-of-way that provides communications services, as defined in F.S. § 202.11, within the City shall comply with communications services tax regulations as required by state and other applicable law. If a registrant does not remit communications services taxes in accordance with F.S. § 202.11, then a registrant must remit fees to the city in accordance with subsections (b) and (c) below.

(b) A registrant that collocates a small wireless facility on a City utility pole in the public rights-of-way shall remit \$150 per pole per year to the city. Agreements between the city and wireless providers that are in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on city utility poles, remain in effect, subject to applicable termination provisions. The registrant may accept the rates, fees, and terms established under this subsection for small wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.

(c) A registrant, communications services provider, pass-through provider, wireless infrastructure provider that makes physical use of the public rights-of-way with any communications facility, utility pole, wireless support structure, cable, fiber optic or other pathway and who is not providing communications services as defined in F.S. § 202.11(1), or who is not serving a communications services customer at retail within the jurisdictional limits of the city at the time the registrant begins to make physical use of the public right-of-way, shall pay to the city annually no less than \$500.00 per linear mile, or portion thereof, up to the maximum amount allowed under Section 337.401, Florida Statutes, whichever is greater, to the extent that Section 337.401 is applicable, as follows:

(1) Annual payments shall be due and payable on April 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the 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; and

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

(d) Except to the extent prohibited by applicable law: (1) Any fee payments made pursuant to this section shall not be deemed to be a tax; (2) Such fee payments shall be in addition to any and all taxes of a general applicability; and (3) A registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said city taxes or other fees or charges of general applicability which registrant is required to pay to the city, except as required by law.

(e) The fee specified herein is the minimum consideration for use of the public rights-of-way, including all public easements, for the purpose of installing and maintaining a communications facility, utility pole or wireless support structure.

**Sec. 82-130. Suspension of permits.**

The streets department 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 comply with permits or regulations governing placement or maintenance of communications facilities, utility poles, wireless support structures or accompanying equipment facilities in the public rights-of-way, including, without limitation, failure to take reasonable public safety precautions, or to restore any public rights-of-way as set forth by this Ordinance, city code or other applicable law;

(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 to remove facilities, poles or structures as may be lawfully required by the city.

**Sec. 82-131. Appeals.**

Final, written decisions of the streets department 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 thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed shall be waived. The city shall hear or appoint a hearing officer to consider the appeal. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. An appeal to the Mayor from the hearing officer must be filed with the city clerk within thirty (30) days of the date of written decision by the hearing officer. An applicant or registrant may pursue any further legal or equitable remedies available under applicable law following the Mayor's decision. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted. Nothing in this Ordinance shall affect or limit the remedies the city has available under applicable law.

**Sec. 82-132. Termination of registration.**

(a) The involuntary termination of a previously effective registration may only be accomplished by an action of the Mayor. The Mayor may declare the registration terminated and revoke and cancel all privileges granted under that registration if:

(1) A federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communications service or wireless service;

(2) 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

(3) The registrant abandons all of its facilities, poles or structures in the public rights-of-way.

(b) Prior to such termination for any of the reasons set forth in this section, the streets department shall notify the registrant in writing setting forth the matters pertinent to such reasons and describing the proposed action of the city with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the city, to accomplish the same. In the event the registrant fails to cure the matter within sixty (60) days, the matter will be scheduled for a hearing before a hearing officer for review. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. An appeal to the Mayor from the hearing officer's decision must be filed with the city clerk within thirty (30) days of the date of written decision by the hearing officer. An applicant or registrant may pursue any further legal or equitable remedies available under applicable law, following the Mayor's decision.

(c) In the event the Mayor terminates the registration, the registrant shall, within a reasonable time following such termination, provide an acceptable plan for transferring ownership of the facilities, poles or structures to another person in accordance with this Ordinance or shall remove or abandon the facilities and

take such steps as are necessary to render every portion of the facilities, poles or structures remaining in the public rights-of-way of the city safe. If the registrant has either abandoned or chooses to abandon its facilities, poles or structures the city may either:

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

(2) Require that some or all of the facilities, poles or structures be removed and the public rights-of-way restored to its such condition at the registrant's expense, using city employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement; or

(3) Utilize or allow other persons to utilize the registrant's abandoned facilities, poles or structures.

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

(e) A final order of the city imposed pursuant to state statutes, and applicable provisions of this Ordinance and the City Code, if any, shall constitute a lien on any property of the owner and may be enforced.

**Sec. 82-133. Transfer of control, sale or assignment of assets.**

(a) If registrant transfers, sells or assigns its registration or its facilities, poles or structures in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Ordinance. To the extent allowed by applicable law, written notice of any such transfer, sale or assignment or

transfer of ownership or control of a registrant's business shall be provided to the city within thirty (30) business days of the effective closing date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in Section 82-126 within sixty (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 appropriate city officials that the transferee, buyer or assignee is the new applicant.

(b) Any mortgage, pledge, lease or other encumbrance on the facilities, poles or structures shall be subject and subordinate to the rights of the city under this Ordinance and applicable law.

**Sec. 82-134. Insurance.**

(a) A registrant shall provide, pay for and maintain satisfactory to the city the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Key Rating Guide of at least a VII and be licensed to do business in the state. All policies shall be occurrence and not claims made forms. Registrant's insurance policies shall be primary to any liability insurance policies carried by the city. The registrant shall be responsible for all deductibles and self-insured retentions on registrant's liability insurance policies. All liability policies shall provide that the city is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the city annually. Thirty (30) days advance written notice by registered or certified mail must be given to the city of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.

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

(1) Worker's compensation and employer's liability insurance. Employer's liability: \$1,000,000.00 limit each accident, \$1,000,000.00 limit per each employee.

(2) Comprehensive general liability. Bodily injury and property damage: \$1,000,000.00 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: \$1,000,000.00 combined single limit each accident.

(c) Umbrella or excess liability. The registrant may satisfy the minimum limits required above for commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The 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.

(d) Self-insurance. The registrant may satisfy the insurance requirements and conditions of this section under a self-insurance plan and/or retention. The registrant agrees to notify the city, and/or indicate on the certificate(s) of insurance, when self-insurance is relied upon or when a self-insured retention exceeds \$100,000.00. The city reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity to self-insure.

(e) Right to review. 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 throughout the life of this section. 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) 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 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.

**Sec. 82-135. 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, facilities, poles or structures in the public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance; provided, however, that a registrant's obligation hereunder shall not extend to any damages caused by the negligence, 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 in representation, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted as:

(1) Denying to either party any remedy or defense available to such party under the laws of the state;

(2) Consent by the city to be sued; or

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

**Sec. 82-136. Construction bond.**

(a) At the time of registration and as a condition of receiving its first permit to place or maintain a communications facility, small wireless facility or wireless support structure in the public rights-of-way, and prior to performing any work in the public rights-of-way, the city shall require the registrant to establish in the city's favor a construction bond to ensure the registrant's faithful performance and completion of any installation of communications facilities, utility poles, wireless support structures, equipment facilities or any other construction, and secure the restoration of the public rights-of-way to the city's satisfaction.

(b) In the event a registrant fails to complete the work in accordance with the provisions of the permit and this Ordinance, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond. In the event the city withdraws funds from the current construction bond, registrant must replenish the bond to the full amount within thirty (30) days after registrant receives written notice that the funds have been withdrawn.

(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 to remove the requirement to continue the construction bond and the city may release the bond within thirty (30) days. Notwithstanding the foregoing, the city may require a new construction 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's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the city attorney, and shall provide that:

"Unless released by the city, 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.

**Sec. 82-137. Reports and records; inspections.**

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

(1) Upon reasonable request, any pleadings, petitions, notices, and documents which may directly impact the obligations under this Ordinance and which are reasonably necessary for the city to protect its interests under this Ordinance.

(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 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, poles and structures in the public rights-of-way and schematics indicating the location of its facilities, poles and structures for a specific site to ensure the safety of its residents.

(d) The city shall keep any documentation, books and records of the registrant confidential, unless disclosure is required by state statutes.

**Sec. 82-138. Abandonment of a communications facilities, small wireless facility, utility pole or wireless support structure.**

(a) Upon abandonment of a communications facility, small wireless facility, utility pole or wireless support structure 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, pole or structure 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, pole or structure:

(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, poles or structures in the area of public rights-of-way where the abandoned facility or structure is located when other alternative locations are not reasonably available; or

(3) Creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of subsection (b)(2) of this section, the city may require the third person to coordinate with the registrant that owns the existing facility or structure 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, pole or structure, 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 or structure 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, pole or structure 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. 82-139. Administration.**

The streets department, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and other applicable law. The streets department shall be empowered to take all administrative actions on behalf of the city, except for those actions specified in this Ordinance that are reserved to the Mayor and/or City Council.

**Sec. 82-140. Enforcement remedies.**

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

(1) Failure to comply with the provisions of the Ordinance 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 as provided by code enforcement penalties in the City Code.

(2) In addition to or instead of any other remedy, the city may seek legal or equitable relief from any court of competent jurisdiction in accordance with this Ordinance or applicable law.

(b) Before imposing a fine pursuant to subsection (a)(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 thirty (30) days to cure the violation to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation.

(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) The city's recourse for a violation of state law, including, but not limited to Chapter 610, Florida Statutes, as amended, may be remedied in a court of competent jurisdiction or as otherwise provided by applicable law.

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

(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 Ordinance, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The city may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Ordinance.

(g) The streets department shall be responsible for administration and enforcement of this Ordinance, and is authorized to give any notice required by law.

(h) If a registrant is found by a court of competent jurisdiction not to be in compliance with the requirements of this Ordinance, the registrant shall have a reasonable period of time, as specified by the court, to cure such noncompliance.

(i) Venue for any action or proceeding brought under this Ordinance shall be in Miami-Dade County, Florida.

**Sec. 82-141. Force majeure.**

In the event a registrant's performance of or compliance with any of the provisions of this Ordinance 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 Ordinance, 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 the registrant's control, and thus not falling within this section, shall include, without limitation, the 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. 82-142. Reservation of rights.**

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

(b) This Ordinance shall be applicable to all communications facilities, utility poles, wireless support structures and equipment facilities placed or applied to the City to place in the public rights-of-way on or after the effective date of this Ordinance and shall apply to all existing communications facilities, utility poles, wireless support structures and equipment facilities placed in the public rights-of-way prior to the effective date of the Ordinance, to the full extent permitted by state and federal law.

**Section 4. Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 5. Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 6. Savings.** All fees and other dollar amounts owed to the City under

any contract, Agreement, or other provision of the City Code as of the effective date of this Ordinance, whether known or unknown, shall not be affected by the adoption of this Ordinance and the City expressly reserves its rights with respect to such amounts.

**Section 7. Penalties.** Every person convicted of a violation of any provision of

the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 8. Inclusion in Code.** The provisions of this Ordinance shall be included

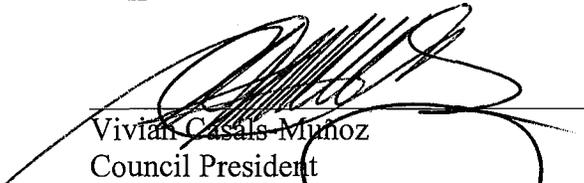
and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment

thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

**Section 9. Effective Date.** This Ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 24 day of April, 2018.

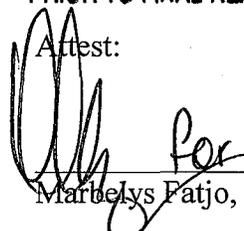
THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

  
Vivian Casals-Munoz  
Council President

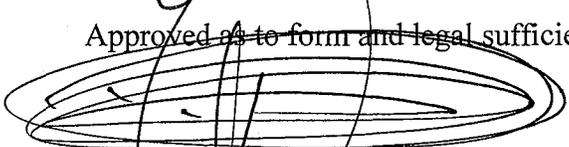
Approved on this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

  
Mayor Carlos Hernandez

Attest:

  
Marbelys Fatjo, City Clerk

Approved as to form and legal sufficiency:

  
Lorena E. Bravo, City Attorney

~~Strikethrough indicates deletion.~~ Underline indicates addition.

Ordinance was adopted by a (6-0-1) vote with Councilmembers, Caragol, Zogby, Hernandez, Lozano, Garcia-Martinez and Casals-Munoz voting "Yes". Councilwoman Cue-Fuente absent