

REPORT OF THE PLANNING AND DEVELOPMENT DEPARTMENT

JANUARY 18, 2017

The Planning and Development Department hereby forwards to the Planning Commission and City Council its comments and recommendations on:

ORDINANCE 2017-863

AN ORDINANCE AMENDING SECTION 656.1510 (WIRELESS COMMUNICATION ANTENNAS), *ORDINANCE CODE*; CREATING A NEW CHAPTER 711, PART 4 (COMMUNICATIONS FACILITIES), SUBPART A (REGISTRATION AND GENERAL PROVISIONS), SUBPART B (UNDERGROUND COMMUNICATIONS FACILITIES), SUBPART C (SMALL WIRELESS FACILITIES), *ORDINANCE CODE*; REPEALING CHAPTER 711, PART 4 (COMMUNICATION/REGISTRATION) AND PART 4A (SITE LEASES FOR SMALL CELL ANTENNAS ON CITY IMPROVEMENTS), *ORDINANCE CODE*; PROVIDING FOR CODIFICATION INSTRUCTIONS; PROVIDING AN EFFECTIVE DATE.

I. GENERAL INFORMATION

The bill is being proposed in part to revise and update portions of chapter 711, Part 4 that have not been revised since 2001 and also to incorporate the provisions of a revised Part 4A and a new Subpart C to address a recent change in state law regarding installation of small wireless facilities in City rights-of-way. The state law change requires local governments for the installation of such communications infrastructure and limits the type of regulations and conditions that may be imposed. This bill is intended to adopt a regulatory system to the extent permitted by the new state law.

The new Subpart A - Registration and General Provisions - contains numerous definitions and requires services providers desiring to utilize City rights-of-way to register in advance with the City and provide evidence of insurance and of a certificate of authorization or a license to provide "communications services" issued by the Florida Public Service Commission, the Federal Communications Commission or other federal or state agency. Registration is a required prelude to application for a required permit. The Subpart makes provisions for permit application, award, transfer, sale or assignment, appeals, involuntary termination for cause, insurance, indemnification, construction bonds, enforcement and other operational aspects.

The new Subpart B - Underground Communications Facilities - provides for a permitting process for underground installations, excavation regulations, reservation of the City's rights to place its own utilities in its rights-of-way, payment of relocation costs and suspension of permits.

The new Subpart C – Small Wireless Facilities – establishes a permitting and appeals process, a process for the City to explore potential alternate locations for proposed facilities, design and camouflage requirements, height limitations, collocation requirements, and a requirement that newly installed facilities must be used by a “wireless services provider” for provision of “communications services” within 9 months.

II. EVALUATION

A. The need and justification for the change

A rewrite of Chapter 711, Part 4 of the City Code, which pertains to communications facilities in the City rights-of-way. Chapter 711, Part 4 is being updated to include mandatory state provisions under the “Advanced Wireless Infrastructure Deployment Act”, which was enacted by the Florida Legislature earlier this year.

B. Summary of Bill

The bill amends Ordinance Code Chapter 711 (Communications Facilities) to delete and replace Part 4 (Communications Facilities) with a new Part 4 divided into Subparts A, B and C. It repeals Part 4A (Site Leases for Small Cell Antennas on City Improvements) and incorporates those provisions into the revised Part 4. It also amends Chapter 656 (Zoning Code) to change the terms from “small cell antennas” mounted on “city improvements” to “small wireless facilities placed, maintained or collocated in City Rights-of-Way.”

C. Consistency with the Comprehensive Plan.

The Comprehensive Plan is silent with regard to this topic.

III. RECOMMENDATIONS

Based upon examination of the proposed ordinance with respect to the goals, objectives and policies of the 2030 Comprehensive Plan, and the intent of the Zoning Code, the Planning and Development Department finds that Ordinance 2017-863 is consistent with the Comprehensive Plan and furthers the spirit and intent of the Zoning Code. Therefore, it is the recommendation of the Planning and Development Department that Ordinance 2017-863 be **APPROVED**.

1 Introduced by the Council President at the request of the Office of
2 General Counsel:
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5 **ORDINANCE 2017-863**

6 AN ORDINANCE AMENDING SECTION 656.1510
7 (WIRELESS COMMUNICATION ANTENNAS), *ORDINANCE*
8 *CODE*; CREATING A NEW CHAPTER 711, PART 4
9 (COMMUNICATIONS FACILITIES), SUBPART A
10 (REGISTRATION AND GENERAL PROVISIONS), SUBPART
11 B (UNDERGROUND COMMUNICATIONS FACILITIES),
12 SUBPART C (SMALL WIRELESS FACILITIES),
13 *ORDINANCE CODE*; REPEALING CHAPTER 711, PART 4
14 (COMMUNICATION/REGISTRATION) AND PART 4A (SITE
15 LEASES FOR SMALL CELL ANTENNAS ON CITY
16 IMPROVEMENTS), *ORDINANCE CODE*; PROVIDING FOR
17 CODIFICATION INSTRUCTIONS; PROVIDING AN
18 EFFECTIVE DATE.
19

20 **BE IT ORDAINED** by the Council of the City of Jacksonville:

21 **Section 1. Amending section 656.1510 (Wireless**
22 **Communication Antennas), Ordinance Code.** Section 656.1510 (Wireless
23 Communication Antennas), *Ordinance Code*, is hereby amended to read
24 as follows:

25 **CHAPTER 656 ZONING CODE**

26 * * *

27 **PART 15. COMMUNICATION TOWER AND ANTENNA REGULATIONS**

28 * * *

29 **SUBPART A. WIRELESS COMMUNICATION FACILITIES**

30 * * *

31 **Sec. 656.1510. - Wireless communication antennas.**

1 The placement of a new wireless communication antenna on any
2 structure within the City may be initiated only upon approval of an
3 application in accordance with the relevant procedures set forth in
4 this section; provided, however, "~~small cell antennas~~" "small
5 wireless facilities", as defined in Part 4, Ch. 711, Ordinance
6 Code, to be mounted on "City improvements" placed, maintained or
7 collocated in City Rights-of-Way as these terms are defined in Part
8 4A, Ch. 711, Ordinance Code, shall be governed by Part 4A, Ch. 711,
9 *Ordinance Code*, and not by this Ch. 656, *Ordinance Code*.
10 Applications shall be filed with the Coordinator by the owner of
11 the structure upon which the proposed antenna is to be located, or
12 his authorized agent. Within ten working days of receipt of an
13 application, the Coordinator shall determine if the application
14 form has been fully completed and all required items submitted.
15 Upon making this determination, the Coordinator shall notify the
16 applicant, in writing, of the status of the application. If the
17 Coordinator determines that the application is incomplete, the
18 Coordinator shall advise the applicant of those items that need to
19 be submitted. If the Coordinator determines that the application is
20 complete, the Coordinator shall advise the applicant of the
21 estimated schedule for processing the application and projected
22 date for obtaining either an approval or denial of same.

23 * * *

24 (b) Administratively approved antennas. Except for a historic
25 building, structure, site, object, or district, ~~small cell antennas~~
26 small wireless facilities governed by Part 4A, Ch. 711, *Ordinance*
27 *Code*, or a tower included in Section 656.1510(a), the Coordinator
28 shall issue an order authorizing the placement of a communication
29 antenna on an existing structure that meets the requirements set
30 forth in subsections (1)-(4) below.

31 * * *

1 (c) Public hearing for antennas. Those antennas that do not
2 satisfy the requirements set forth in Sections 656.1510(a) and
3 656.1510(b), or Part 4A, Ch. 711, Ordinance Code, shall be reviewed
4 by the Commission. Within seven days of notification from the
5 Coordinator that the application is complete, an application for an
6 antenna which is subject to a public hearing before the Commission,
7 shall be scheduled for review before the next meeting of the
8 Commission. When the Commission acts on an antenna application,
9 such action shall be deemed the final action of the City as of the
10 effective date of the final action by the Commission. A final
11 action under this Section shall not be reviewed further by the City
12 Council. Any person with standing may challenge a final action
13 taken by the Commission in whatever way authorized by federal or
14 state law. The Commission shall approve, deny or conditionally
15 approve an application for a wireless communication antenna based
16 upon its compliance with the applicable siting and design
17 standards, as follows:

18 * * *

19 **Section 2. Creating a new Chapter 711, Part 4**
20 **(Communications Facilities), Subpart A (Registration and General**
21 **Provisions), Subpart B (Underground Communications Facilities),**
22 **Subpart C (Small Wireless Facilities), Ordinance Code.** Chapter
23 711, Part 4 (Communications Facilities), Subpart A (Registration
24 and General Provisions), Subpart B (Underground Communications
25 Facilities), Subpart C (Small Wireless Facilities), *Ordinance Code*,
26 is hereby created to read as follows:

27 **CHAPTER 711 CITY RIGHTS-OF-WAY**

28 * * *

29 **PART 4. COMMUNICATIONS FACILITIES**

30 **Sec. 711.401 Title; applicability.** This Part shall be known
31 and may be cited as the Communications Facilities provisions of the

1 City of Jacksonville. The registration requirements and general
2 provisions in Subpart A of this Part shall apply to Communications
3 Facilities placed, maintained or collocated under Subpart B and
4 Subpart C of this Part.

5 **Sec. 711.402 Intent and Purpose.** It is the intent of the
6 City to promote the public health, safety and general welfare by:
7 providing for the placement, maintenance or collocation of
8 Communications Facilities in the City Rights-of-Way within the
9 City; adopting and administering reasonable rules and regulations
10 not inconsistent with State and Federal law, including Section
11 337.401, Florida Statutes (2017), as amended, the City's home-rule
12 Authority, and in accordance with the provisions of the Federal
13 Telecommunications Act of 1996, the Advanced Wireless
14 Infrastructure Deployment Act of 2017, and other Federal and State
15 law; establishing reasonable rules and regulations necessary to
16 manage the placement, maintenance or collocation of Communications
17 Facilities in the City Rights-of-Way by all Communications Services
18 Providers; and minimizing disruption to the City Rights-of-Way. In
19 regulating its City Rights-of-Way, the City shall be governed by
20 and shall comply with all applicable Federal and State laws.

21 **SUBPART A. REGISTRATION AND GENERAL PROVISIONS**

22 **Sec. 711.403 Definitions.** For purposes of this Part, the
23 following terms, phrases, words and their derivations shall have
24 the meanings given. Where not inconsistent with the context, words
25 used in the present tense include the future tense, words in the
26 plural number include the singular number, and words in the
27 singular number include the plural number. The words "shall" and
28 "will" are mandatory, and "may" is permissive. Words not otherwise
29 defined shall be construed to mean the common and ordinary meaning.

30 (a) "Abandonment" shall mean the permanent cessation of all
31 uses of a Communications Facility; provided that this term shall

1 not include cessation of all use of a Communication Facility within
2 a physical structure where the physical structure continues to be
3 used. For example, cessation of all use of a cable within a
4 conduit, where the conduit continues to be used, shall not be
5 "Abandonment" of a Communication Facility in City Rights-of-Way.

6 (b) "Antenna" means communications equipment that transmits
7 or receives electromagnetic radio frequency signals used in
8 providing wireless services.

9 (c) "Applicable codes" means uniform building, fire,
10 electrical, plumbing, or mechanical codes adopted by a recognized
11 national code organization or local amendments to those codes
12 enacted solely to address threats of destruction of property or
13 injury to persons, or local codes or ordinances adopted to
14 implement Section 337.401, Florida Statutes. The term includes the
15 objective design standards adopted under this Part 4 regarding the
16 replacement of existing utility poles. The term also includes the
17 objective design standards adopted under this Part 4 that may
18 require a small wireless facility to meet reasonable location
19 context, color, stealth, and concealment requirements.

20 (d) "Applicant" means a person who submits an application and
21 is a wireless provider.

22 (e) "Application" means a request submitted by an applicant
23 to the City for a permit to place, maintain, or collocate a
24 Communication Facility under this Part.

25 (f) "Chapter" shall mean this Chapter.

26 (g) "City" shall mean Jacksonville, Florida, a consolidated
27 county and city existing as a municipal corporation.

28 (h) "City Rights-of-Way" shall mean a public Rights-of-Way,
29 public utility easement, highway, street, bridge, tunnel or alley
30 for which the City is the authority that has jurisdiction and
31 control and may lawfully grant access to pursuant to applicable

1 law, and includes the surface, the air space over the surface and
2 the area below the surface. "City Rights-of-Way" shall not include
3 private property, any real property, City buildings and other City
4 owned or controlled infrastructure (e.g., sewers, gas or water
5 mains, storm drains, or pipes) or any other Person's facilities
6 lawfully occupying the City Rights-of-Way. "City Rights-of-Way"
7 shall include City utility poles.

8 (i) "City utility pole" means a utility pole owned by the
9 City in the City rights-of-way. The term does not include a utility
10 pole owned by a municipal electric utility, a utility pole used to
11 support municipally owned or operated electric distribution
12 facilities, or a utility pole located in the right-of-way within:

13 1. A retirement community that:

14 (I) Is deed restricted as housing for older persons
15 as defined in s. 760.29(4)(b);

16 (II) Has more than 5,000 residents; and

17 (III) Has underground utilities for electric
18 transmission or distribution.

19 2. A municipality that:

20 (I) Is located on a coastal barrier island as
21 defined in s. 161.053(1)(b) 3.;

22 (II) Has a land area of less than 5 square miles;

23 (III) Has less than 10,000 residents; and

24 (IV) Has, before July 1, 2017, received referendum
25 approval to issue debt to finance municipal-wide
26 undergrounding of its utilities for electric
27 transmission or distribution.

28 (j) "Collocate" or "collocation" means to install, mount,
29 maintain, modify, operate, or replace one or more wireless
30 facilities on, under, within, or adjacent to a wireless support
31 structure or utility pole. The term does not include the

1 installation of a new utility pole or wireless support structure in
2 the City rights-of-way.

3 (k) "Communications Services" shall mean the transmission,
4 conveyance or routing of voice, data, audio, video, or any other
5 information or signals to a point, or between or among points, by
6 or through any electronic, radio, satellite, cable, optical,
7 microwave, or other medium or method now in existence or hereafter
8 devised, regardless of the protocol used for such transmission or
9 conveyance.

10 (l) "Communications Services Provider" shall mean any Person
11 providing Communications Services through the placement or
12 maintenance of a Communications Facility in City Rights-of-Way.
13 "Communications Services Provider" shall also include any Person
14 that places, maintains or collocates a Communications Facility in
15 City Rights-of-Way but does not provide Communications Services.

16 (m) "Communications Facility" or "Facility" or "System" shall
17 mean any permanent or temporary plant, equipment and property,
18 including but not limited to cables, wires, conduits, ducts, fiber
19 optics, poles, utility poles, antennae, converters, splice boxes,
20 cabinets, hand holes, manholes, vaults, drains, surface location
21 markers, appurtenances, Wireless Communications Facilities, Small
22 Wireless Facilities, Wireless Support Structure, Underground
23 Communications Facility, and other equipment or pathway placed,
24 maintained or collocated or to be placed, maintained or collocated
25 in the City Rights-of-Way and used or capable of being used to
26 transmit, convey, route, receive, distribute, provide or offer
27 Communications Services.

28 (n) "Director" shall mean the Director of the Public Works
29 Department, or his or her designee.

30 (o) "FCC" shall mean the Federal Communications Commission.

31 (p) "In City Rights-of-Way" or "in the City Rights-of-Way"

1 shall mean in, on, over, under or across the City Rights-of-Way and
2 includes the collocation of Small Wireless Facilities under Subpart
3 C of this Part.

4 (q) "Micro wireless facility" means a small wireless facility
5 having dimensions no larger than 24 inches in length, 15 inches in
6 width, and 12 inches in height and an exterior antenna, if any, no
7 longer than 11 inches.

8 (r) "Person" shall include any individual, children, firm,
9 association, joint venture, partnership, estate, trust, business
10 trust, syndicate, fiduciary, corporation, organization or legal
11 entity of any kind, successor, assignee, transferee, personal
12 representative, and all other groups or combinations, and shall
13 include the City to the extent the City places, maintains or
14 collocates Communications Facilities in the City Rights-of-Way.

15 (s) "Place, maintain or collocate" or "placement, maintenance
16 or collocation" or "placing, maintaining or collocating" shall mean
17 to erect, construct, install, maintain, place, repair, extend,
18 expand, remove, occupy, locate, collocate, or relocate. A
19 Communications Services Provider that owns or exercises physical
20 control over Communications Facilities in City Rights-of-Way, such
21 as the physical control to maintain and repair, is "placing,
22 maintaining or collocating" the Facilities. A party providing
23 service only through resale or only through use of a third party's
24 unbundled network elements is not "placing, maintaining or
25 collocating" the Communications Facilities through which such
26 service is provided. The transmission and receipt of radio
27 frequency signals through the airspace of the City Rights-of-Way
28 constitutes "placing, maintaining or collocating" Facilities in the
29 City Rights-of-Way.

30 (t) "Registrant" shall mean a Communications Services Provider
31 that has Registered with the City in accordance with the provisions

1 of this Part.

2 (u) "Registration" or "Register" shall mean the process
3 described in this Part whereby a Communications Services Provider
4 provides certain information to the City.

5 (v) "Small wireless facility" means a wireless facility that
6 meets the following qualifications:

7 1. Each antenna associated with the facility is located
8 inside an enclosure of no more than 6 cubic feet in
9 volume or, in the case of antennas that have exposed
10 elements, each antenna and all of its exposed elements
11 could fit within an enclosure of no more than 6 cubic
12 feet in volume; and

13 2. All other wireless equipment associated with the
14 facility is cumulatively no more than 28 cubic feet in
15 volume. The following types of associated ancillary
16 equipment are not included in the calculation of
17 equipment volume: electric meters, concealment elements,
18 telecommunications demarcation boxes, ground-based
19 enclosures, grounding equipment, power transfer switches,
20 cutoff switches, vertical cable runs for the connection
21 of power and other services, and utility poles or other
22 support structures.

23 (w) "Underground Communications Facility" shall mean the
24 Communication Facilities that are placed and maintained in the City
25 Rights-of-Way under Subpart B of this Part. This term does not
26 include Small Wireless Facilities that are collocated in the City
27 Rights-of-Way under Subpart C of this Part.

28 (x) "Utility pole" means a pole or similar structure that is
29 used in whole or in part to provide communications services or for
30 electric distribution, lighting, traffic control, signage, or a
31 similar function. The term includes the vertical support structure

1 for traffic lights but does not include a horizontal structure to
2 which signal lights or other traffic control devices are attached
3 and does not include a pole or similar structure 15 feet in height
4 or less unless an City grants a waiver for such pole.

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

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

21 (z) "Wireless infrastructure provider" means a person who has
22 been certificated to provide telecommunications service in the
23 state and who builds or installs wireless communication
24 transmission equipment, wireless facilities, or wireless support
25 structures but is not a wireless services provider.

26 (aa) "Wireless provider" means a wireless infrastructure
27 provider or a wireless services provider.

28 (bb) "Wireless services" means any services provided using
29 licensed or unlicensed spectrum, whether at a fixed location or
30 mobile, using wireless facilities.

31 (cc) "Wireless services provider" means a person who provides

1 wireless services.

2 (dd) "Wireless support structure" means a freestanding
3 structure, such as a monopole, a guyed or self-supporting tower, or
4 another existing or proposed structure designed to support or
5 capable of supporting wireless facilities. The term does not
6 include a utility pole.

7 **Sec. 711.404 Registration for placing, maintaining or**
8 **collocating Communications Facilities in City Rights-of-Way.**

9 A. *Registration required.* A Communications Services Provider
10 that desires to place, maintain, or collocate a Communications
11 Facility in City Rights-of-Way shall first Register with the City
12 in accordance with this Subpart A. Subject to the terms and
13 conditions prescribed in this Part, a Registrant may place,
14 maintain or collocate a Communications Facility in City Rights-of-
15 Way.

16 B. *No conveyance of title.* A Registration shall not convey
17 any title, equitable or legal, to the Registrant in the City
18 Rights-of-Way. Registration under this Part governs only the
19 placement, maintenance or collocation of Communications Facilities
20 in City Rights-of-Way. Registration does not excuse a
21 Communications Services Provider from obtaining appropriate access
22 or pole attachment agreements before locating its Facilities on
23 another Person's facilities. Registration does not excuse a
24 Communications Services Provider from complying with all applicable
25 City ordinances, codes or regulations, including this Chapter.

26 C. *Registration contents.* Each Communications Services
27 Provider that desires to place, maintain or collocate a
28 Communications Facility in City Rights-of-Way shall file a single
29 Registration with the City which shall include the following
30 information:

- 31 (1) name of the Applicant;

1 (2) name, address and telephone number of the Applicant's
2 primary contact person in connection with the Registration and the
3 person to contact in case of an emergency;

4 (3) evidence of the insurance coverage required under
5 this Chapter and acknowledgment that Registrant has received and
6 reviewed a copy of this Part, which acknowledgment shall not be
7 deemed an agreement;

8 (4) the number of the Applicant's certificate of
9 authorization or license to provide Communications Services issued
10 by the Florida Public Service Commission, the Federal
11 Communications Commission, or other Federal or State City, if any;

12 (5) Any contractor or other agent acting on behalf of an
13 Applicant must have a letter from said Applicant describing the
14 scope of the proposed "use" of City Rights-of-Way and specifying
15 that said agent is authorized to act on the Applicant's behalf, all
16 "use" being subject to all terms of this Part; and

17 (6) for any Applicant that does not provide a Florida
18 Public Service Commission certificate of authorization number, if
19 the Applicant is a corporation, proof of City to do business in the
20 State of Florida, including the number of the certificate of
21 incorporation.

22 D. *Permit fees.* No Permit fees shall be required in
23 accordance with the provisions of Section 337.401, Florida
24 Statutes, and the City's waiver of fees under Section 711.416
25 herein.

26 E. *Registration review.* The City shall review the
27 information submitted by the Applicant. Such review shall be by
28 the Director. If the Applicant submits information in accordance
29 with subsection C above, the Registration shall be effective and
30 the City shall notify the Applicant of the effectiveness of
31 Registration in writing. If the City determines that the

1 information has not been submitted in accordance with subsection C
2 above, the City shall notify the Applicant of the non-effectiveness
3 of Registration, and reasons for the non-effectiveness, in writing.
4 The City shall so reply to an Applicant within thirty (30) days
5 after receipt of registration information from the Applicant.
6 Non-effectiveness of Registration shall not preclude an Applicant
7 from filing subsequent applications for Registration under the
8 provisions of this Section. An Applicant has thirty (30) days after
9 receipt of a notice of non-effectiveness of Registration to appeal
10 the decision as provided in Section 711.406.

11 F. *Registration cancellation.* A Registrant may cancel a
12 Registration upon written notice to the City stating that it will
13 no longer place, maintain or collocate any Communications
14 Facilities in City Rights-of-Way within the City and will no longer
15 need to obtain permits to perform work in City Rights-of-Way. A
16 Registrant cannot cancel a Registration if the Registrant continues
17 to place, maintain or collocate any Communications Facilities in
18 City Rights-of-Way.

19 G. *Permit required.* Registration shall not in itself
20 establish any right to place, maintain or collocate or priority for
21 the placement, maintenance or collocation of a Communications
22 Facility in City Rights-of-Way within the City, but shall establish
23 for the Registrant a right to apply for a permit, if permitting is
24 required by the City. Registrations are expressly subject to any
25 future amendment to or replacement of this Part and further subject
26 to any additional City ordinances, as well as any State or Federal
27 laws that may be enacted. In accordance with applicable City
28 ordinances, codes or regulations and Subparts B and C of this Part,
29 a permit may be required of a Communications Services Provider that
30 desires to place, maintain or collocate a Communications Facility
31 in City Rights-of-Way. An effective Registration shall be a

1 condition of obtaining a permit. Notwithstanding an effective
2 Registration, permitting requirements shall continue to apply. A
3 permit may be obtained by or on behalf of a Registrant having an
4 effective Registration if all permitting requirements are met.

5 H. *Registration renewal.* A Registrant shall renew its
6 Registration with the City by December 31st of even numbered years
7 in accordance with the Registration requirements in this Part,
8 except that a Registrant that initially registers during the even
9 numbered year when renewal would be due or the odd numbered year
10 immediately preceding such even numbered year shall not be required
11 to renew until the next even numbered year. Within thirty (30)
12 days of any change in the information required to be submitted
13 pursuant to subsection C, a Registrant shall provide updated
14 information to the City. If no information in the then-existing
15 Registration has changed, the renewal may state that no information
16 has changed. Failure to renew a Registration may result in the
17 City restricting the issuance of additional permits until the
18 Communications Services Provider has complied with the Registration
19 requirements of this Chapter.

20 **Sec. 711.405. Transfer, Sale or Assignment of Assets in City**
21 **Rights-of-Way.** If a Registrant transfers, sells or assigns its
22 assets located in City Rights-of-Way incident to a transfer, sale
23 or assignment of the Registrant's assets, the transferee, buyer or
24 assignee shall be obligated to comply with the terms of this
25 Chapter. Written notice of any such transfer, sale or assignment
26 shall be provided by such Registrant to the City within twenty (20)
27 days after the effective date of the transfer, sale or assignment.
28 If the transferee, buyer or assignee is a current Registrant, then
29 the transferee, buyer or assignee is not required to re-Register.
30 If the transferee, buyer or assignee is not a current Registrant,
31 then the transferee, buyer or assignee shall Register as provided

1 in Section 711.404 within sixty (60) days of the transfer, sale or
2 assignment.

3 **Sec. 711.406 Appeals.** Final, written decisions of the
4 Director suspending or denying a permit, denying an application for
5 a Registration or denying an application for renewal of a
6 Registration are subject to appeal as may be set forth in the City
7 Code provisions pertaining to permits and as may be covered in the
8 rules adopted pursuant to Part 5 of this Chapter, and any such
9 suspension or denial is subject to all applicable law. An appeal
10 must be filed with the Director within thirty (30) days of the date
11 of the final, written decision to be appealed. Any appeal not
12 timely filed as set forth above shall be waived. The City shall
13 hear the appeal as set forth in appeal process of Part 1
14 (Application Review Section) of this Chapter. The hearing shall
15 occur within thirty (30) days of the receipt of the appeal, unless
16 waived by the Registrant, and a written decision shall be rendered
17 within twenty (20) days of the hearing. Upon correction of any
18 grounds that gave rise to a suspension or denial, the suspension or
19 denial shall be lifted.

20 **Sec. 711.407 Conditional Use of City Rights-of-Way.** To the
21 extent that a Registrant leases or otherwise uses the facilities of
22 a Person that is duly registered or otherwise authorized to place,
23 maintain or collocate facilities in the City Rights-of-Way of the
24 City, Registrant shall make no claim, nor assert any right, which
25 will impede the lawful exercise of the City's rights, including
26 requiring the removal of such facilities from the City Rights-of-
27 Way, regardless of the effect on Registrant's ability to place,
28 maintain or collocate its own Communications Facilities in City
29 Rights-of-Way.

30 **Sec. 711.408 Involuntary Termination of Registration.**

31 1. The City may terminate a Registration if:

1 (a) a Federal or Florida authority suspends, denies, or
2 revokes a Registrant's certification or license to provide
3 Communications Services;

4 (b) the Registrant's placement, maintenance or
5 collocation of a Communications Facility in the City Rights-of-Way
6 presents an extraordinary danger to the general public or other
7 users of the City Rights-of-Way and the Registrant fails to remedy
8 the danger promptly after receipt of written notice; or

9 (c) the Registrant ceases to use all of its
10 Communications Facilities in City Rights-of-Way and has not
11 complied with Section 711.415 of this Chapter.

12 2. Prior to termination, the Registrant shall be notified by
13 the Director with a written notice setting forth all matters
14 pertinent to the proposed termination action, including which of
15 (a) through (c) above is applicable as the reason therefore, and
16 describing the proposed action of the City with respect thereto.
17 The Registrant shall have sixty (60) days after receipt of such
18 notice within which to address or eliminate the reason or within
19 which to present a plan, satisfactory to the Director, to
20 accomplish the same. If the plan is rejected, the Director shall
21 provide written notice of such rejection to the Registrant and
22 shall make a recommendation to the City Council regarding a final
23 decision as to termination of Registration. A decision by the City
24 to terminate a Registration may only be accomplished by an action
25 of the City Council. A Registrant shall be notified by written
26 notice of any decision by the City Council to terminate its
27 Registration. Such written notice shall be sent within ten (10)
28 days after the decision.

29 3. In the event of termination, the former Registrant
30 shall: (a) notify the City of the assumption or anticipated
31 assumption by another Registrant of ownership of the Registrant's

1 Communications Facilities in City Rights-of-Way; or (b) provide the
2 City with an acceptable plan for disposition of its Communications
3 Facilities in City Rights-of-Way. If a Registrant fails to comply
4 with this subsection 3., the City may exercise any remedies or
5 rights it has at law or in equity, including but not limiting to
6 taking possession of the Facilities, requiring the Registrant's
7 bonding company within 90 days of the termination to remove some or
8 all of the Facilities from the City Rights-of-Way and restore the
9 City Rights-of-Way to its original condition before the removal, or
10 requiring that some or all of the Facilities be removed and the
11 City Rights-of-Way restored to its original condition before the
12 removal at the Registrant's expense.

13 4. In any event, a terminated Registrant shall take such
14 steps as are necessary to render every portion of the
15 Communications Facilities remaining in the City Rights-of-Way safe.

16 5. In the event of termination of a Registration, this
17 provision does not permit the City to cause the removal of any
18 Communications Facilities that are used to provide another service
19 for which the Registrant holds a valid certification or license
20 with the governing Federal or State agency, where required, and is
21 properly registered with the City for such certificated or licensed
22 service, where required.

23 **Sec. 711.409 Existing Communications Facilities in City**
24 **Rights-of-Way.** A Communications Services Provider with an existing
25 Communications Facility in the City Rights-of-Way has sixty (60)
26 days from the Effective Date of this Part to comply with the terms
27 of this Chapter, including, but not limited to, Registration, or be
28 in violation thereof.

29 **Sec. 711.410 Insurance.**

30 1. A Registrant shall provide, pay for and maintain
31 satisfactory to the City the types of insurance described herein.

1 All insurance shall be from responsible companies duly authorized
2 to do business in the State of Florida and having a rating in
3 Best's Insurance Guide of A X or better or having a rating
4 acceptable to the City. All liability policies shall provide that
5 the City is an additional insured as to the activities under this
6 Chapter. The required coverages must be evidenced by properly
7 executed Certificates of Insurance forms. The Certificates must be
8 signed by the authorized representative of the insurance company
9 and shall be filed and maintained with the City annually. Thirty
10 (30) days advance written notice by registered or certified mail
11 must be given to the City of any cancellation, intent not to renew
12 or reduction in the policy coverages. The insurance requirements,
13 including without limitation the additional insured requirement,
14 may be satisfied by evidence of self-insurance or other types of
15 insurance acceptable to the City.

16 2. The limits of coverage of insurance required shall be not
17 less than the following:

18 (a) Worker's Compensation and Employer's Liability
19 Insurance

20 Worker's Compensation-Florida Statutory Requirements

21 Employer's Liability - \$100,000 limit each accident

22 \$ 500,000 limit disease/policy limit

23 \$ 100,000 limit disease/ each employee

24 (b) Comprehensive General Liability

25 Bodily injury and property damage-

26 \$ 1,000,000 combined single limit each occurrence

27 (c) Automobile Liability

28 Bodily injury and property damage-

29 \$ 1,000,000 combined single limit each accident

30 Neither approval nor failure to disapprove the required insurance
31 shall relieve the Registrant from responsibility to provide

1 insurance as required.

2 **Sec. 711.411 Indemnification.**

3 1. A Registrant shall, at its sole cost and expense,
4 indemnify, hold harmless, and defend the City, its officials,
5 boards, members, agents, and employees, against any and all claims,
6 suits, causes of action, proceedings, judgments for damages or
7 equitable relief, and costs and expenses incurred by the City
8 arising out of the placement, maintenance or collocation of its
9 Communications System or Facilities in City Rights-of-Way,
10 regardless of whether the act or omission complained of is
11 authorized, allowed or prohibited by this Chapter, provided,
12 however, that a Registrant's obligation hereunder shall not extend
13 to any claims caused by the negligence, gross negligence or wanton
14 or willful acts of the City. This provision includes, but is not
15 limited to, the City's reasonable attorneys' fees incurred in
16 defending against any such claim, suit or proceedings. The City
17 agrees to notify the Registrant, in writing, within a reasonable
18 time of the City's receiving notice, of any issue it determines may
19 require indemnification. Nothing in this Section shall prohibit
20 the City from participating in the defense of any litigation by its
21 own counsel and at its own cost if in the City's reasonable belief
22 there exists or may exist a conflict, potential conflict or
23 appearance of a conflict. Nothing contained in this Section shall
24 be construed or interpreted: (a) as denying to either party any
25 remedy or defense available to such party under the laws of the
26 State of Florida; (b) as consent by the City to be sued; or (c) as
27 a waiver of sovereign immunity beyond the waiver provided in
28 Section 768.28, Florida Statutes, as amended.

29 2. The indemnification requirements shall survive and be in
30 effect after the termination or cancellation of a Registration.

31 **Sec. 711.412 Construction Bond.**

1 1. Prior to issuing a permit where the work under the permit
2 will require restoration of City Rights-of-Way, the City may
3 require a construction bond to secure the restoration of the City
4 Rights-of-Way. Notwithstanding the foregoing, a construction bond
5 hereunder shall only be required to the extent that the cost of the
6 restoration exceeds the amount recoverable against the Security
7 Fund as provided in Section 711.413. Six (6) months after the
8 completion of the construction of the Communications Facility and
9 satisfaction of all obligations in accordance with the bond, the
10 bond may be eliminated, and the City shall consent to the
11 elimination where necessary (however, the City may subsequently
12 require a new bond for any subsequent work in the City Rights-of-
13 Way). The construction bond shall be issued by a surety having a
14 minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty
15 Edition; shall be subject to the approval of the Director of Public
16 Works; and shall provide that: "This bond may not be canceled, or
17 allowed to lapse, until sixty (60) days after receipt by the City,
18 by certified mail, return receipt requested, of a written notice
19 from the issuer of the bond of intent to cancel or not to renew or
20 upon the sooner receipt of direction to release from the City."

21 2. The rights reserved by the City with respect to any
22 construction bond established pursuant to this Section are in
23 addition to all other rights and remedies the City may have under
24 this Chapter, or at law or equity.

25 3. The rights reserved to the City under this Section are in
26 addition to all other rights of the City, whether reserved in this
27 Chapter, or authorized by other law, and no action, proceeding or
28 exercise of a right with respect to the construction bond will
29 affect any other right the City may have.

30 **Sec. 711.413 Security Fund.** At or prior to the time a
31 Registrant receives its first permit to place, maintain or

1 collocate a Communications Facility in City Rights-of-Way after the
2 effective date of this Chapter, the Registrant may be required to
3 file with the City, for City approval, an annual bond, cash deposit
4 or irrevocable letter of credit in the sum of \$25,000 (or such
5 other appropriate lesser amount as may be determined by the
6 Director, consulting with the City's Risk Management Division),
7 having as a surety a company qualified to do business in the State
8 of Florida, and acceptable to the Director (consulting with the
9 City's Risk Management Division), which shall be referred to as the
10 "Security Fund." The Security Fund shall be maintained from such
11 time through the earlier of: (i) transfer, sale, assignment or
12 removal of all Communications Facilities in City Rights-of-Way or;
13 (ii) twelve (12) months after the termination or cancellation of
14 any Registration. The Security Fund shall be conditioned on the
15 full and faithful performance by the Registrant of all
16 requirements, duties and obligations imposed upon Registrant by the
17 provisions of this Chapter. The Security Fund shall be furnished
18 annually or as frequently as necessary to provide a continuing
19 guarantee of the Registrant's full and faithful performance at all
20 times. In the event a Registrant fails to perform its duties and
21 obligations imposed upon the Registrant by the provisions of this
22 Chapter, subject to Section 711.414 of this Chapter, there shall be
23 recoverable, jointly and severally from the principal and surety of
24 the Security Fund, any damages or loss suffered by the City as a
25 result, including the full amount of any compensation,
26 indemnification or cost of removal, relocation or abandonment of
27 any property of the Registrant, plus a reasonable allowance for
28 attorneys' fees, up to the full amount of the Security Fund. The
29 City may in its reasonable discretion not require a Security Fund
30 or may accept a Security Fund from the Registrant or its parent
31 company.

1 **Sec. 711.414 Enforcement Remedies.**

2 1. A Registrant's failure to comply with provisions of this
3 Chapter shall constitute a violation of this Chapter and shall
4 subject the Registrant to the code enforcement provisions and
5 procedures as provided in the City Code provisions on code
6 enforcement. In addition, violation of this Chapter may be
7 punishable as a class D offense by a fine not to exceed \$500.00 or
8 by imprisonment not to exceed 60 days or by both as provided in
9 Section 125.69, Florida Statutes, for counties and Section 162.22,
10 Florida Statutes, for municipalities.

11 2. Failure of the City to enforce any requirements of this
12 Part shall not constitute a waiver of the City's right to enforce
13 that violation or subsequent violations of the same type or to seek
14 appropriate enforcement remedies.

15 **Sec. 711.415 Abandonment of a Communications Facility.**

16 1. Upon Abandonment of a Communications Facility owned by a
17 Registrant in City Rights-of-Way, the Registrant shall notify the
18 City within ninety (90) days.

19 2. The City may direct the Registrant to remove all or any
20 portion of such Abandoned Facility at the Registrant's sole expense
21 if the City determines that the Abandoned Facility's presence
22 interferes with the public health, safety or welfare, which shall
23 include, but is not limited to: (a) compromises safety at any time
24 for any City Rights-of-Way user or during construction or
25 maintenance in City Rights-of-Way; (b) prevents another Person from
26 locating facilities in the area of City Rights-of-Way where the
27 Abandoned Facility is located when other alternative locations are
28 not reasonably available; or (c) creates a maintenance condition
29 that is disruptive to the City Rights-of-Way's use. In the event
30 of (b), the City may require the third Person to coordinate with
31 the Registrant that owns the existing Facility for joint removal

1 and placement, where agreed to by the Registrant.

2 3. In the event that the City does not direct the removal of
3 the Abandoned Facility, the Registrant, by its notice of
4 Abandonment to the City, shall be deemed to consent to the
5 alteration or removal of all or any portion of the Facility by the
6 City, another utility or Person at such third party's cost.

7 4. If the Registrant fails to remove all or any portion of
8 an Abandoned Facility as directed by the City within a reasonable
9 time period as may be required by the City under the circumstances,
10 the City may perform such removal and charge the cost of the
11 removal against the Registrant.

12 **Sec. 711.416 Waiver of Fees/Communications Services Tax.**

13 In consideration of the City's receipt of the "Discretionary
14 Communications Services Tax" authorized by Florida Law, the City
15 hereby waives all fees for the Registration process described in
16 this Part 4.

17 **Sec. 711.417 Additional Registration terms and conditions.**

18 1. *Compliance with laws.* Registrant shall at all times
19 comply with and abide by all applicable provisions of the State and
20 Federal law and City ordinances, codes and regulations in placing,
21 maintaining or collocating a Communications Facility in City
22 Rights-of-Way.

23 2. *Emergency placement, maintenance, or collocation.* A
24 Registrant shall not commence to place, maintain or collocate a
25 Communications Facility in City Rights-of-Way until all applicable
26 permits, if any, have been issued by the City or other appropriate
27 authority, except in the case of an emergency. The term
28 "emergency" shall mean a condition that affects the public's
29 health, safety or welfare, which includes an unplanned out-of-
30 service condition of a pre-existing service. Registrant shall
31 provide prompt notice to the City of the placement, maintenance or

1 collocation of a Communications Facility in City Rights-of-Way in
2 the event of an emergency and shall obtain an after-the-fact permit
3 if a permit would have originally been required to perform the work
4 undertaken in City Rights-of-Way in connection with the emergency.
5 Registrant acknowledges that as a condition of granting such
6 permits, the City may impose reasonable rules or regulations
7 governing the placement, maintenance, or collocation of a
8 Communications Facility in City Rights-of-Way. Permits shall apply
9 only to the areas of City Rights-of-Way specifically identified in
10 the permit. The City's Director of Public Works may issue a blanket
11 permit to cover certain activities, such as routine maintenance and
12 repair activities, that may otherwise require individual permits.

13 3. *Safety practices; skills.* All safety practices required
14 by applicable law or accepted industry practices and standards
15 shall be used during the placement, maintenance or collocation of
16 Communications Facilities. Registrant shall use and exercise due
17 caution, care and skill in performing work in the City Rights-of-
18 Way and shall take all reasonable steps to safeguard work site
19 areas.

20 4. *No property rights created.* A permit from the City
21 constitutes authorization to undertake only certain activities on
22 City Rights-of-Way in accordance with this Chapter, and does not
23 create a property right or grant City to impinge upon the rights of
24 others who may have an interest in the City Rights-of-Way.

25 5. *Coordination of scheduling.* In the interest of the
26 public's health, safety and welfare, upon request of the City, a
27 Registrant shall coordinate placement, maintenance or collocation
28 activities under a permit with any other work, construction,
29 installation or repairs that may be occurring or scheduled to occur
30 within a reasonable timeframe in the subject City Rights-of-Way and
31 Registrant may be required to reasonably alter its placement,

1 maintenance or collocation schedule as necessary so as to minimize
2 disruptions and disturbance in the City Rights-of-Way.

3 6. *Use of industry standards and practices.* A Registrant
4 shall place, maintain or collocate its Communications Facility in
5 City Rights-of-Way in a manner consistent with accepted industry
6 standards and practices and applicable law.

7 7. *No interference with use of City Rights-of-Way.* All
8 Communications Facilities shall be placed, maintained or collocated
9 so as not to unreasonably interfere with the use of the City
10 Rights-of-Way by the public and with the rights and convenience of
11 property owners who adjoin any of the City Rights-of-Way. The use
12 of trenchless technology (i.e., directional bore method) for the
13 installation of Underground Communications Facilities in the City
14 Rights-of-Way as well as joint trenching or the co-location of
15 facilities in existing conduit is strongly encouraged, and should
16 be employed wherever feasible. The Director may promulgate
17 reasonable rules and regulations pursuant to Part 5 of this Chapter
18 concerning the placement, maintenance or collocation of a
19 Communications Facility in City Rights-of-Way consistent with this
20 Part and other applicable law.

21 8. *Restoration of City Rights-of-Way.* A Registrant shall, at
22 its own expense, restore the City Rights-of-Way to its original
23 condition before such work after the completion of any placement,
24 maintenance or collocation of a Communications Facility in City
25 Rights-of-Way or each phase thereof. If the Registrant fails to
26 make such restoration within thirty (30) days, or such other
27 reasonable time as may be required by the City under the
28 circumstances, following the completion of such placement,
29 maintenance, or collocation the City may perform restoration and
30 charge the costs of the restoration against the Registrant in
31 accordance with Section 337.402, Florida Statutes, as amended. The

1 Registrant shall guarantee its restoration work and shall correct
2 any improper restoration work at its own expense for twelve (12)
3 months following the original completion of the work.

4 9. *Removal or relocation.* Removal or relocation at the
5 direction of the Director of a Registrant's Communications Facility
6 in City Rights-of-Way shall be governed by the provisions of
7 Sections 337.401, 337.403 and 337.404, Florida Statutes, as
8 amended, as applicable.

9 10. *No warranties or representations.* The City makes no
10 warranties or representations regarding the fitness, suitability,
11 or availability of City's Rights-of-Way for the Registrant's
12 Communications Facilities and any performance of work or costs
13 incurred by Registrant or provision of services shall be at
14 Registrant's sole risk. Nothing in this Part shall affect the
15 City's authority to add, vacate or abandon City Rights-of-Way and
16 the City makes no warranties or representations regarding the
17 availability of any added, vacated or abandoned City Rights-of-Way
18 for Communications Facilities.

19 11. *City right to inspect.* The City shall have the right to
20 make such inspections of Communications Facilities placed,
21 maintained or collocated in City Rights-of-Way as it finds
22 necessary to ensure compliance with this Chapter.

23 **SUBPART B. UNDERGROUND COMMUNICATIONS FACILITIES**

24 **Sec. 711.418 Applicability.** This Subpart B shall apply to
25 Underground Communications Facilities that are placed or maintained
26 in the City Rights-of-Way.

27 **Sec. 711.419. Permit application for Underground**
28 **Communications Facilities.** As part of any permit application to
29 place a new or replace an existing Underground Communications
30 Facility in City Rights-of-Way, the Registrant shall provide the
31 following:

1 (a) A plan showing the location of the proposed Underground
2 Communications Facility, including a description of the Underground
3 Communications Underground Communications Facilities to be
4 installed, where it is to be located, and the approximate size of
5 Facilities that will be located in City Rights-of-Way. If the
6 plans so provided require revision based upon actual installation,
7 the Registrant shall promptly provide revised plans. The plans
8 shall be in a hard copy format or an electronic format specified by
9 the City, provided such electronic format is maintained by the
10 Registrant. Such plans in a format maintained by the Registrant
11 shall be provided at no cost to the City;

12 (b) A description of the manner in which the Underground
13 Communications Facility will be installed (i.e. anticipated
14 construction methods or techniques);

15 (c) A maintenance of traffic plan for any disruption of the
16 City Rights-of-Way;

17 (d) Information on the ability of the City Rights-of-Way to
18 accommodate the proposed Underground Communications Facility, if
19 available (such information shall be provided without certification
20 as to correctness, to the extent obtained from other Persons);

21 (e) If appropriate given the Underground Communications
22 Facility proposed, an estimate of the cost of restoration to the
23 City Rights-of-Way;

24 (f) The timetable for construction of the project or each
25 phase thereof, and the areas of the City which will be affected;
26 and

27 (g) Such additional information as the City finds reasonably
28 necessary with respect to the placement or maintenance of the
29 Underground Communications Facility that is the subject of the
30 permit application, to review such permit application. The City
31 will review an application and notify the Applicant of its decision

1 on the application within 30 days from the date an application is
2 submitted.

3 **Sec. 711.420 Application approval or denial.** Applications
4 for permits submitted by a Registrant under this Subpart shall be
5 approved or denied in accordance with the provisions of Part 1 of
6 this Chapter.

7 **Sec. 711.421 Limitation on new or additional Underground**
8 **Communications Facilities.** To the extent not otherwise prohibited
9 by State or Federal law, the City shall have the power to prohibit
10 or limit the placement of new or additional Underground
11 Communications Facilities within a particular area of City Rights-
12 of Way.

13 **Sec. 711.422 Excavation.** In connection with excavation in
14 the City Rights-of-Way, a Registrant shall, where applicable,
15 comply with the Underground Facility Damage Prevention and Safety
16 Act set forth in Chapter 556, Florida Statutes, as amended.

17 **Sec. 711.423 No damage to underground infrastructure.** A
18 Registrant shall not place or maintain its Communications
19 Facilities so as to interfere, displace, damage or destroy any
20 infrastructure, including but not limited to, sewers, gas or water
21 mains, storm drains, pipes, cables or conduits of the City or any
22 other Person's facilities lawfully occupying the City Rights-of-
23 Way.

24 **Sec. 711.424 Reservation by City.** The City reserves the
25 right to place and maintain, and permit to be placed or maintained,
26 sewer, gas, water, electric, storm drainage, communications, and
27 other facilities, cables or conduit, and to do, and to permit to be
28 done, any underground and overhead installation or improvement that
29 may be deemed necessary or proper by the City in City Rights-of-Way
30 occupied by the Registrant. The City further reserves without
31 limitation the right to alter, change, or cause to be changed, the

1 grading, installation, relocation, or width of the City Rights-of-
2 Way within the limits of the City and within said limits as same
3 may from time to time be altered.

4 **Sec. 711.425 Cooperation by Registrant.** A Registrant
5 shall, on the request of any Person holding a permit issued by the
6 City, temporarily raise or lower its Underground Communications
7 Facilities to permit the work authorized by the permit. The
8 expense of such temporary raising or lowering of Underground
9 Communications Facilities shall be paid by the Person requesting
10 the same, and the Registrant shall have the City to require such
11 payment in advance. The Registrant shall be given not less than
12 thirty (30) days advance written notice to arrange for such
13 temporary relocation.

14 **Sec. 711.426 Relocation costs.** Where any Underground
15 Communications Facility in City Rights-of-Way is interfering with a
16 project to maintain, improve, extend or expand such City Rights-of-
17 Way undertaken for the benefit of or as a result of a specific
18 development, the developer shall pay relocation costs for any
19 agreed-to relocation of the Underground Communications Facility.

20 **Sec. 711.427 Suspension of Permits.** The City may suspend
21 a permit for work in the City Rights-of-Way for one or more of the
22 reasons set forth in other Chapters of the City Code and for
23 failure to relocate or remove Underground Communications Facilities
24 as may be lawfully required by the City. In addition, the City may
25 assess penalties for failure to pull a permit by a registered
26 communications company in an amount equal to those penalties
27 assessed non-communication service providers to the extent allowed
28 to do so under applicable law.

29 **SUBPART C. SMALL WIRELESS FACILITIES**

30 **Sec. 711.428 Applicability.** This Subpart C shall apply to
31 Small Wireless Facilities that are collocated in the City Rights-

1 of-Way.

2 **Sec. 711.429 Permit application for Small Wireless Facilities.**

3 As part of any permit application to collocate a Small Wireless
4 Facility in City Rights-of-Way, the Registrant shall provide the
5 following:

6 (a) A plan showing the location of the proposed Small
7 Wireless Facility, including a description of the facilities to be
8 collocated, the City Utility Pole it is to be collocated on, and
9 the approximate size of facilities that will be located in City
10 Rights-of-Way. If the plans so provided require revision based
11 upon actual installation, the Registrant shall promptly provide
12 revised plans. The plans shall be in a hard copy format or an
13 electronic format specified by the City, provided such electronic
14 format is maintained by the Registrant. Such plans in a format
15 maintained by the Registrant shall be provided at no cost to the
16 City;

17 (b) A description of the manner in which the Small Wireless
18 Facility will be collocated on the City Utility Pole (i.e.
19 anticipated construction methods or techniques);

20 (c) A maintenance of traffic plan for any disruption of the
21 City Rights-of-Way;

22 (d) Information on the ability of the City Utility Pole to
23 accommodate the proposed Small Wireless Facility, if available
24 (such information shall be provided without certification as to
25 correctness, to the extent obtained from other Persons);

26 (e) If appropriate given the Small Wireless Facility
27 proposed, an estimate of the cost of restoration to the City
28 Rights-of-Way;

29 (f) The timetable for construction of the project or each
30 phase thereof, and the areas of the City which will be affected;

31 (g) Specifications for the Small Wireless Facility to be

1 collocated in the City Rights-of-Way, including the size;

2 (h) Photo documentation of the site and immediate
3 surroundings for purposes of illustrating compatibility of the
4 size, color, and placement with the surroundings; and

5 (i) Such additional information as the City finds reasonably
6 necessary with respect to the collocation of the Small Wireless
7 Facility that is the subject of the permit application, to review
8 such permit application.

9 **Sec. 711.430 Alternate Location Review.** Upon receipt of a
10 permit application to install a Small Wireless Facility, the City
11 shall have thirty (30) days to review the application to determine
12 whether the proposed Small Wireless Facility shall be placed on an
13 alternative City Utility Pole or if the Applicant may place a new
14 Utility Pole. In making such a determination, the Director shall
15 consider the following objective design standards and reasonable
16 spacing requirements for ground-based equipment:

17 (a) All Small Wireless Facilities shall use camouflage
18 techniques which incorporate architectural treatment to conceal or
19 screen their presence from public view through design to
20 unobtrusively blend in aesthetically with the surrounding
21 environment.

22 (b) New and replacement Wireless Support Structures and
23 Utility Poles that support Small Wireless Facilities shall match
24 the style, design, and color of the existing Utility Poles in the
25 surrounding area. Further, all Wireless Support Structures and
26 Utility Poles shall meet current safety standards in Applicable
27 Codes.

28 (c) Ground-based equipment boxes for Small Wireless
29 Facilities must be located in areas with existing foliage or
30 another aesthetic feature to obscure the view of the equipment box.
31 Additional plantings may be required to meet this condition. Any

1 new landscaping in the City Rights-of-Way must be approved by the
2 Director, who may require a landscape maintenance agreement to be
3 executed prior to approval.

4 (d) With the exception of electric meters and disconnect
5 switches, equipment such as back-haul components shall not be
6 mounted on the exterior of the pole.

7 (e) No exposed wiring or conduit is permitted.

8 (f) The grounding rod may not extend above the top of
9 sidewalk and must be placed in a pull box, and the ground wire
10 between the pole and ground rod must be inside an underground
11 conduit.

12 (g) All pull boxes must be vehicle load bearing, comply with
13 FDOT Standard specification 635 and be listed on the FDOT Approved
14 Products List. A concrete apron must be installed around all pull
15 boxes not located in the sidewalk. No new pull boxes may be located
16 in pedestrian ramps.

17 **Sec. 711.431 Alternate Location Negotiation.** The Director
18 shall negotiate any alternate location with the Applicant. If an
19 agreement is not reached within thirty days after the date the
20 Director requests an alternate location, the Applicant must notify
21 the Director of such non-agreement and the Director must grant or
22 deny the original application within 90 days after the date the
23 application was filed. A request for an alternate location, and
24 acceptance of an alternate location, or a rejection of an alternate
25 location must be in writing and provided by electronic mail.
26 Additionally, the design standards may be waived by the Director
27 upon a showing by the Applicant that the design standards are not
28 reasonably compatible for the particular location of a Small
29 Wireless Facility or that the design standards impose an excessive
30 expense. The waiver shall be granted or denied within thirty days
31 after the date of the request.

1 **Sec. 711.432 Height Limitations for Small Wireless**
2 **Facilities.** The height of Small Wireless Facilities shall not
3 exceed ten (10) feet above the City Utility Pole, Utility Pole, or
4 Wireless Support Structure on which the Small Wireless Facility is
5 to be collocated.

6 **Sec. 711.433 Height of Utility Poles.** The height of a new
7 Utility Pole is limited to the tallest existing Utility Pole as of
8 July 1, 2017, located in the same right-of-way, other than a
9 Utility Pole for which a waiver has previously been granted,
10 measured from grade in place within 500 feet of the proposed
11 location of the Small Wireless Facility. If there is no Utility
12 Pole within 500 feet, the height of the new Utility Pole shall be
13 limited to 50 feet.

14 **Sec. 711.434 Time for Completing Completeness Review of**
15 **Applications.** For applications in which the Director does not
16 request use of an alternate location, the Director must make a
17 determination as to whether an application is complete within 14
18 days. If an application is deemed incomplete, the Director must
19 specifically identify the missing information. An application is
20 deemed complete if the Director fails to provide notification to
21 the Applicant within 14 days.

22 **Sec. 711.435 Applications Processed on a Nondiscriminatory**
23 **Basis.** The Director shall process applications on a
24 nondiscriminatory basis. Thus, applications shall be processed on a
25 first-come, first-served basis.

26 **Sec. 711.436 Time for Completing Approval or Denial.** The
27 Director shall grant or deny an application within sixty days after
28 receipt of the application. If the Director fails to take action on
29 a complete application within 60 days, the application shall be
30 deemed approved. If the Director elects not to negotiate an
31 alternate location, the Applicant and Director may mutually agree

1 to extend the review period. The Director shall grant or deny the
2 application at the end of the extended period.

3 **Sec. 711.437 Effective Life of Approved Permit Application.**

4 A permit issued pursuant to an approved application shall remain
5 effective for one year unless extended by the Director for an
6 additional year. The Director may only grant a single extension.

7 **Sec. 711.438 Notification of Approval or Denial.** The Director
8 shall notify an Applicant of any approval or denial by electronic
9 mail on the same day a decision is made. Additionally, the Director
10 shall inform any adjacent property owner of the approval or denial
11 by U.S. Mail. If the Director denies an application, the denial
12 must state in writing the basis for the denial, including the
13 specific code provisions on which the denial was based. In the
14 event of a denial, the Applicant may cure the deficiencies
15 identified by the Director and resubmit the application within 30
16 days after notice of the denial. The Director shall approve or deny
17 the revised application within 30 days after receipt or the
18 application is deemed approved. Any subsequent review shall be
19 limited to the deficiencies cited in the denial.

20 **Sec. 711.439 Consolidated Applications.** An Applicant who
21 seeks to collocate Small Wireless Facilities may, at the
22 Applicant's discretion, file a consolidated application and receive
23 a single permit for the collocation of up to 30 Small Wireless
24 Facilities. If the application includes multiple Small Wireless
25 Facilities, the Director may separately address Small Wireless
26 Facility collocations for which incomplete information has been
27 received or which are denied.

28 **Sec. 711.440 Permitting Criteria.** The Director may deny a
29 proposed collocation of a Small Wireless Facility in the City
30 Rights-of-Way if the proposed Collocation:

31 (a) Materially interferes with the safe operation of traffic

1 control equipment;

2 (b) Materially interferes with sight lines or clear zones for
3 transportation, pedestrians, or public safety purposes;

4 (c) Materially interferes with compliance with the Americans
5 with Disabilities Act or similar federal or state standards
6 regarding pedestrian access or movement;

7 (d) Materially fails to comply with the 2010 edition of the
8 Florida Department of Transportation Utility Accommodation Manual;
9 and

10 (e) Materially fails to comply with any Applicable Codes.

11 **Sec. 711.441 Collocation on City Utility Poles.** Collocation
12 of Small Wireless Facilities on City Utility Poles shall meet the
13 following requirements:

14 (a) The City may not enter into an exclusive arrangement with
15 any person for the right to attach equipment to City Utility Poles.

16 (b) The rates and fees for Collocations on City Utility Poles
17 must be nondiscriminatory, regardless of services provided by the
18 collocating person.

19 (c) The rate to collocate a Small Wireless Facility on a City
20 Utility Pole shall be \$150.00 per pole annually.

21 (d) Agreements between the City and Wireless Providers that
22 are in effect on July 1, 2017, and that relate to the collocation
23 of Small Wireless Facilities in the City Rights-of-Way, including
24 the collocation of Small Wireless Facilities on City Utility Poles,
25 remain in effect, subject to application of termination provisions.
26 The Wireless Provider may accept the rates, fees, and terms
27 established under this subsection for Small Wireless Facilities and
28 Utility Poles that are the subject of an application submitted
29 after the rates, fees, and terms become effective.

30 (e) A person owning or controlling a City Utility Pole shall
31 offer rates, fees, and other terms that comply with this

1 subsection. By the later of January 1, 2018, or three months after
2 receiving a request to Collocate its first Small Wireless Facility
3 on a Utility Pole owned or controlled by the City, the person
4 owning or controlling the City Utility Pole shall make available
5 the rates, fees, and terms for the collocation of Small Wireless
6 Facilities on the City Utility Pole which comply with this
7 subsection.

8 1. The rates, fees, and terms must be nondiscriminatory
9 and competitively neutral and must comply with this
10 subsection.

11 2. For a City Utility Pole that supports and aerial
12 facility used to provide Communications Services or electric
13 service, the parties shall comply with the process for make-
14 ready work under 47 U.S.C. s. 224 and implementing
15 regulations. The good faith estimate of the person owning or
16 controlling the pole for any make-ready work necessary to
17 enable the pole to support the requested collocation must
18 include pole replacement if necessary.

19 3. For an City Utility Pole that does not support an
20 aerial facility used to provide Communications Services or
21 electric service, the City shall provide a good faith estimate
22 for any make-ready work necessary to enable the pole to
23 support the requested collocation, including necessary pole
24 replacement, within 60 days after written acceptance of the
25 good faith estimate by the Applicant. Alternatively, the City
26 may require the Applicant seeking to collocate a Small
27 Wireless Facility to provide a make-ready estimate at the
28 Applicant's expense for the work necessary to support the
29 Small Wireless Facility, including pole replacement, and
30 perform the make-ready work. If pole replacement is required,
31 the scope of the make-ready estimate is limited to the design,

1 fabrication, and installation of a Utility Pole that is
2 substantially similar in color and composition. The City may
3 not condition or restrict the manner in which the Applicant
4 obtains, develops, or provides the estimate or conducts the
5 make-ready work subject to usual construction restoration
6 standards for work in the City Rights-of-Way. The replaced or
7 altered Utility Pole shall remain the property of the City.

8 4. A City may not require more make-ready work than is
9 required to meet applicable code or industry standards. Fees
10 for make-ready work may not include costs related to
11 preexisting damage or prior noncompliance. Fees for make-ready
12 work, including any pole replacement, may not exceed actual
13 costs or the amount charged to Communications Services
14 Providers other than Wireless Services Providers for similar
15 work and may not include any consultant fee or expense.

16 **Sec. 711.442 Attestation of Wireless Services.** A Wireless
17 Infrastructure Provider must include within its Application to
18 place a Utility Pole in the City Rights-of-Way an attestation that
19 the Small Wireless Facility will be used by a Wireless Services
20 Provider for the provision of Communications Services within nine
21 months of the date the application is approved. In the event a
22 Wireless Services Provider fails to provide Communications Services
23 within the nine months, the City may begin proceedings for
24 revocation.

25 **Sec. 711.443 Historic Preservation.** The City may require an
26 Applicant to obtain a Certificate of Appropriateness from the
27 Historic Preservation Board under Chapter 66, Article IV of this
28 Code where an application may impact a Historic Resource, as that
29 term is defined under that Article.

30 **Sec. 711.444 Privately-Owned Utility Poles.** Nothing in this
31 section authorizes a person to collocate or attach Wireless

1 Facilities, including any Antenna, Micro Wireless Facility, or
2 Small Wireless Facility, on a privately-owned Utility Pole, a
3 Utility Pole owned by an electric cooperative or a municipal
4 electric utility, a privately-owned Wireless Support Structure, or
5 other private property within the consent of the property owner.

6 **Sec. 711.445 Limitation on Permitting of Small Wireless**
7 **Facilities.** Any permit approval by the City for the installation,
8 placement, maintenance, or operation of a Small Wireless Facility
9 under this section does not authorize the provision of any voice,
10 data, or video Communications Services or the installation,
11 placement, maintenance, or operation of any Communications
12 Facilities other than Small Wireless Facilities in the City Rights-
13 of-Way.

14 **Section 3. Repealing Chapter 711 (City Rights-of-Way),**
15 **Part 4 (Communications/Registration) and Part 4A (Site Leases for**
16 **Small Cell Antennas on City Improvements), Ordinance Code.** Chapter
17 711 (City Rights-of-Way), Part 4 (Communications/Registration) and
18 Part 4A (Site Leases for Small Cell Antennas on City Improvements),
19 *Ordinance Code*, are hereby repealed in its entirety. A copy of the
20 repealed Chapter 711, Part 4 and Part 4A are attached hereto as
21 **Exhibit 1.**

22 **Section 4. Codification Instructions.** The Codifier and
23 the Office of General Counsel is authorized to make all chapter and
24 division "tables of contents" consistent with the changes set forth
25 herein, including but not limited to, correcting all cross-
26 references, terms, and sections in Chapter 711, *Ordinance Code*.
27 Such editorial changes and any others necessary to make the
28 *Ordinance Code* consistent with the intent of this legislation are
29 approved and directed herein, and changes to the *Ordinance Code*
30 shall be made forthwith and when inconsistencies are discovered.

31 **Section 5. Effective Date.** This ordinance shall become

1 effective upon signature by the Mayor or upon becoming effective
2 without the Mayor's signature.

3

4 Form Approved:

5

6 /s/ Lawsikia J. Hodges

7 Office of General Counsel

8 Legislation Prepared By: Lawsikia J. Hodges

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