

ORDINANCE NO. 2018-002

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, "LAND DEVELOPMENT CODE," BY AMENDING ARTICLE III, "ZONING REGULATIONS," DIVISION 4, "ACCESSORY USES AND STRUCTURES," SUBDIVISION IX, "WIRELESS COMMUNICATIONS FACILITIES," SECTIONS 13-538, "ANTENNAS NOT LOCATED ON TOWERS," 13-541.1, "INTENT AND PURPOSE," 13-541.2, "REGISTRATION FOR PLACING OR MAINTAINING WIRELESS COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY," 13-541.3, "PLACEMENT OR MAINTENANCE OF A WIRELESS COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY," 13-541.4, "SUSPENSION OF PERMITS," 13-541.6, "CONDITIONAL USE OF PUBLIC RIGHTS-OF-WAY," 13-541.7, "TERMINATION OF REGISTRATION," 13-541.8, "TRANSFER OR CONTROL, SALE OR ASSIGNMENT OF ASSETS," 13-541.10, "INDEMNIFICATION," 13-541.12, "SECURITY FUND," 13-541.13, "ENFORCEMENT REMEDIES," 13-541.15, "ABANDONMENT OF A WIRELESS COMMUNICATIONS FACILITY," 13-541.17, "RESERVATION OF RIGHTS," 13-541.18, "NO LIABILITY OR WARRANTY," AND 13-541.19, "PASS-THROUGH PROVIDER FEES AND CHARGES," IN ORDER TO UPDATE THE CITY'S TELCOMMUNICATIONS ORDINANCES TO COMPORT WITH RECENT CHANGES TO STATE AND FEDERAL LAW AND TO ENSURE CONSISTENCY WITH INDUSTRY STANDARDS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 13 of the City of Coconut Creek Code of Ordinances, entitled "Land Development Code," sets forth the standards and requirements for wireless communications facilities; and

WHEREAS, staff is recommending that Sections 13-538, 13-541.1, 13-541.2, 13-541.3, 13-541.4, 13-541.6, 13-541.7, 13-541.8, 13-541.10, 13-541.12, 13-541.13,

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13-41.15, 13-541.17, 13-541.18 and 13-541.19 be amended to ensure consistency with industry standards, terminology, new technology, and State and Federal regulations related to the review and approval of wireless communications facilities; and

WHEREAS, the Planning and Zoning Board has reviewed this amendment at a duly noticed hearing on December 13, 2017, and recommended its adoption; and

WHEREAS, the City Commission finds and determines that the regulations related to wireless communications facilities are in need of amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: Ratification. That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

Section 2: That the Code of Ordinances of the City of Coconut Creek, Florida, shall be amended by amending Chapter 13 of the Code of Ordinances, “Land Development Code,” by amending Article III, “Zoning Regulations,” Division 4, “Accessory Uses And Structures,” Subdivision IX, “Wireless Communications Facilities,” Sections 13-538, “Antennas not located on towers,” 13-541.1, “Intent and purpose,” 13-541.2, “Registration for placing or maintaining wireless communications facilities in public rights-of-way,” 13-541.3, “Placement or maintenance of a wireless communications facility in public rights-of-way,” 13-541.4, “Suspension of permits,” 13-541.6, “Conditional use of public rights-of-way,” 13-541.7, “Termination of registration,” 13-541.8, “Transfer or control, sale or assignment of assets,” 13-541.10, “Indemnification,” 13-541.12, “Security fund,” 13-541.13, “Enforcement remedies,” 13-541.15, “Abandonment of a wireless communications facility,” 13-541.17, “Reservation of rights,” 13-541.18, “No liability or warranty,” and 13-541.19, “Pass-through provider fees and charges” to read as follows:

Chapter 13 - LAND DEVELOPMENT CODE

ARTICLE III. - ZONING REGULATIONS

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DIVISION 4. - ACCESSORY USES AND STRUCTURES

Subdivision IX. - Wireless Communications Facilities

Sec. 13-538. - Antennas not located on towers.

(a) Antennas shall be permitted as follows:

(1) Concealed rooftop or building mounted antennas not exceeding twenty (20) feet above roofline and not exceeding twenty (20) feet above maximum height of applicable zoning district shall be permitted as an accessory use in the following zoning districts:

- a. (B-2) Convenience shopping district (twenty-four (24) feet)
- b. (B-3) Community shopping district (thirty-six (36) feet)
- c. (B-4) Regional shopping district (thirty-six (36) feet)
- d. (IO-1) Industrial office district
- e. (IM-1) Industrial manufacturing district
- f. (PCD) ~~Portions designated a land use as noted in e. above~~ Planned Commerce District
- g. (RM-10) Medium high density multiple-family
- h. (CF) Community facility
- i. (P) Parks and recreation
- j. (PUD) portions designated a land use as noted in i. above
- k. (SU) Special utility overlay district

(2) Non-concealed rooftop or building mounted antennas shall only be permitted if not exceeding the greater of either twenty (20) feet above the highest point of roof of the subject building or the maximum height in the applicable zoning district as an accessory use in the following zoning districts subject to the procedure and requirements provided elsewhere in this chapter:

- a. (B-2) Convenience shopping district
- b. (B-3) Community shopping district
- c. (B-4) Regional shopping district
- d. (IO-1) Industrial office district
- e. (IM-1) Industrial manufacturing district

- f. ~~(PCD) Portions designated a land use as noted in e. above~~ Planned Commerce District
- g. (RM-10) Medium high density multiple-family
- h. (CF) Community facility
- i. (P) Parks and recreation
- j. (PUD) portions designated a land use as noted in i. above
- k. (SU) Special utility overlay district
- l. (PMDD) Planned Mainstreet Design District

(b) Minimum standards. Building or rooftop antennas shall be subject to the following minimum standards:

(1) Building rooftop concealed antennas shall be subject to the following minimum standards:

- a. No lettering, text, logos, or commercial advertising shall be allowed on an antenna;
- b. No signals, lights, or illumination shall be permitted on an antenna, unless required by the Federal Communications Commission or the Federal Aviation Administration;
- c. Any related unmanned equipment compound or cabinet shall not contain more than seven hundred fifty (750) square feet of gross floor area or be more than twelve (12) feet in height;
- d. If the equipment cabinet is located on the roof of the building, the area of the equipment cabinet shall not occupy more than twenty-five (25) percent of the roof area; and
- e. Approval of the ~~director of sustainable development~~ city manager, or designee, to ensure consistency with the definition of concealed facility is required. Each application shall contain a rendering or photograph of the antenna including, but not limited to, colors and screening devices.

(2) Building rooftop non-concealed antennas shall be subject to the following minimum standards:

- a. Antennas shall only be permitted on buildings which are at least fifty (50) feet tall. Antennas may be placed on buildings less than fifty (50) feet tall in the P or CF district if public safety needs warrant the antenna;
- b. Antennas may not extend more than twenty (20) feet above highest point of a roof. Concealed antennas attached to but not above rooftop structures shall be exempt from this provision. Antennas may exceed twenty (20) feet above the roof in the P or CF district if public safety needs warrant additional height;

- c. Antennas, and related equipment compounds or cabinets, shall be located or screened to minimize the visual impact of the antenna upon adjacent properties and shall be of a material or color which matches the exterior of the building or structure upon which it is situated;
- d. No lettering, text, logos, or commercial advertising shall be allowed on an antenna;
- e. No signals, lights, or illumination shall be permitted on an antenna, unless required by the Federal Communications Commission or the Federal Aviation Administration;
- f. Any related unmanned equipment compound or cabinet shall not contain more than seven hundred fifty (750) square feet of gross floor area or be more than twelve (12) feet in height; and
- g. If the equipment cabinet is located on the roof of the building, the area of the equipment cabinet shall not occupy more than twenty-five (25) percent of the roof area.

(c) Antenna types. To minimize adverse visual impacts, concealed antenna types shall be preferred. If a non-concealed antenna is proposed, the application shall be required to demonstrate, in a technical manner acceptable to the ~~director of sustainable development~~ city manager, or designee, why the concealed antenna (i.e. an antenna incorporated into the architecture of the building or fully screened from view from sight proximate to the antenna) cannot be used for the particular application. This does not preclude a combination of the various types of antenna, including flush-mounting if concealed is not feasible.

(d) Antenna dimensions. Antenna dimensions shall be reviewed by the ~~director of development services~~ city manager, or designee, as required by existing technology. A statement shall be submitted, prepared by a professional registered engineer licensed to practice in the state, and competent to evaluate antenna choices, to certify the need for the required dimensions.

(e) Aircraft hazard. Prior to the issuance of a building permit by the building division, department of sustainable development, the application shall provide evidence that the WCF or antennas are in compliance with Federal Aviation Administration (FAA) regulations. Where an antenna will not exceed the highest point of the existing structure upon which it is to be mounted, such evidence shall not be required.

(f) Exceptions. The location of a new antenna in any zoning district other than those districts specified in this section shall be prohibited unless approved as a special land use or as specified below:

- (1) Antenna attachments (including DAS systems) may be located on existing franchised utility poles or poles owned by the city consistent with ~~F.S. §~~ Section

337.401 (7), Fla. Stat. pursuant to the provisions of 13-541.1 et seq. and the following regulations:

a. The utility poles shall be located within public easements or public rights-of-way.

b. Fees related to utility pole antenna attachment installation.

i. Fees shall be submitted to the city for a utility pole antenna attachment upon application for site development approval in accordance with Subsections 13-80(b), 13-81(7), 13-83(1), and 13-83(4) and Section 13-89. but such fees shall be limited to no more than one hundred dollars (\$100.00).

An applicant may appeal pursuant to the procedures set forth in Section 13-34, "Appeals", if they believe the expenses are unreasonable.

ii. Fees shall be submitted to the City A filing fee in the amount of six thousand five hundred dollars (\$6,500.00) for a new freestanding replacement utility pole WCF shall be submitted to the city upon application for site development approval. in accordance with Subsections 13-80(b), 13-81(7), 13-83(1), and 13-83(4) and Section 13-89. but such fees shall be limited to no more than one hundred dollars (\$100.00).

An applicant may appeal pursuant to the procedures set forth in Section 13-34, "Appeals", if they believe the expenses are unreasonable. In addition, an inspection fee of one thousand dollars (\$1,000.00) is due the city at the time of an inspection pursuant to subsection 13-537(f).

iii. An engineering permit fee may also be required in accordance with Section 13-88 if the pole is replaced to accommodate telecommunications equipment.

c. The antenna shall be of a size and placement that is structurally compatible with the engineering design of the pole pursuant to the SFBC, as may be amended from time to time and attested to by a registered engineer.

d. The antenna shall not extend more than ten (10) feet above the existing pole height. If the pole is replaced to withstand the addition of telecommunications equipment, then the same restriction shall apply except that the replacement utility pole may be ten (10) feet higher than the adjacent pole heights.

~~e. Placement of an antenna on a utility pole shall only be on poles owned or operated by a city franchisee or the city.~~

fe. No commercial advertising shall be allowed on the antenna.

gf. The height restriction for utility poles within a special utility overlay district shall be limited to one hundred twenty (120) feet.

(g) Lease Fees.

~~1) A filing fee in the amount of four thousand dollars (\$4,000.00) shall be submitted to the city upon application for site development approval. In addition, an inspection fee of one thousand dollars (\$1,000.00) is due to the city at the time of an inspection pursuant to subsection 13-537(f).~~

(1) Public land lease agreements will be established by separate instrument in accordance with the parameters set forth in Section 337.401(7), Fla. Stat., as amended from time to time.

Sec. 13-541.1. - 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 wireless communications facilities in the public rights-of-way within the city; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § Section 337.401, Fla. Stat., as it may be amended, the city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of wireless communications facilities in the public rights-of-way; 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. The terms used in this subsection 13-541 shall have the same definitions as those set forth in Section 337.401(7)(b), Fla. Stat. The placement and maintenance of wireless communications facilities on private property or property owned, leased or controlled by the city, other than rights-of-way, is governed by sections 13-535 through 13-541 of the eCity's Code of Ordinances.

Sec. 13-541.2. - Registration for placing or maintaining wireless communications facilities in public rights-of-way.

(a) A wireless ~~communications~~ services provider or wireless infrastructure pass-through provider that desires to place or maintain a wireless ~~communications~~ facility in public rights-of-way in the city shall first register with the city in accordance with this article. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a wireless ~~communications~~ facility which has a federally licensed wireless service provider associated with such facility in public rights-of-way. A wireless ~~communications~~ services provider or wireless infrastructure pass-through provider with an existing wireless ~~communications~~ facility in the public rights-of-way of the city as of the effective date of the passage of this article has sixty (60) days

from the effective date of the passage of this article to comply with the terms of this article, including, but not limited to, registration, 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 section governs only the placement or maintenance of wireless ~~communications~~ facilities in public rights-of-way. Registration does not excuse a wireless ~~communications~~ services provider or wireless infrastructure pass-through provider from obtaining appropriate access or pole attachment agreements before locating its wireless facilities on the city's or another person's facilities. Registration does not excuse a wireless ~~communications~~ services provider or wireless infrastructure pass-through provider from complying with all applicable law, including city ordinances, codes or regulations, including this article.
- (c) Each wireless ~~communications~~ services provider or wireless infrastructure pass-through provider that desires to place or maintain a wireless ~~communications~~ facility in public rights-of-way in the city shall file a single registration with the city that shall include the following information:
- (1) Name of the registrant;
 - (2) Name, address and telephone number of the registrant's primary contact person in connection with the registration and of the person to contact in case of an emergency;
 - (3) Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article; and
 - (4) A copy of federal or state certification authorizing the registrant (or associated wireless service provider) to provide wireless communications services; a wireless infrastructure pass-through provider must furnish evidence of a legal commitment of a wireless-~~communications~~-service provider to install and operate equipment on the proposed wireless ~~communications~~ facility within nine (9) months of construction. once constructed.
 - (5) If the registrant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or by other means; and
 - (6) A security fund in accordance with section 13-541.12.
- (d) The ~~director of sustainable development~~ city manager, or designee, shall review the information submitted by the registrant. If the registrant submits information in accordance with subsection (c) above, the registration shall be effective and the city shall notify the registrant of the effectiveness of registration in writing. If the city determines that the information has not been submitted in accordance with subsection (c) above, the city shall notify the registrant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The city shall so

notify a registrant within thirty (30) days after receipt of registration information from the registrant.

- (e) A registrant may cancel a registration upon written notice to the city that the registrant will no longer place or maintain any wireless ~~communications~~ facilities in 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 wireless ~~communications~~ facilities in public rights-of-way.
- (f) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a wireless ~~communications~~ facility in any particular area in public rights-of-way within the city. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional city ordinances, as well as any state or federal laws that may be enacted.
- (g) A registrant shall renew its registration with the city by April 1 annually. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection 13-541.2(c), a registrant shall provide updated information to the city. Registration renewals shall include an inventory of the registrant's newly installed facilities or abandoned facilities since the prior registration or registration renewal. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the city restricting the issuance of additional permits until the wireless ~~communications~~ services provider or wireless infrastructure pass-through provider has complied with the registration requirements of this section.
- (h) In accordance with applicable city ordinances, codes or regulations and this article, a permit shall be required of a wireless ~~communications~~ services provider or wireless infrastructure pass-through provider that desires to place or maintain a wireless ~~communications~~ facility in public rights-of-way. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.
- (i) A registrant that places or maintains wireless ~~communications~~ facilities in the public right-of-way shall be required to pay compensation to the city as required by applicable law and ordinances of the city.

Sec. 13-541.3. - Placement or maintenance of a wireless ~~communications~~ facility in public rights-of-way.

- (a) Registrant shall at all times comply with and abide by all applicable provisions of state, federal and local law and city ordinances, codes and regulations, as amended, in placing or maintaining a ~~communications~~ facility or a personal wireless ~~service~~ facility in public rights-of-way.

(b) To the extent not otherwise prohibited by state or federal law, the city shall have the power to prohibit or limit the placement of new or additional ~~communications facilities and personal-wireless service~~ facilities within a particular area of a public right-of-way. The city shall have the power to prohibit or limit the placement of new or additional ~~communications facilities and personal~~ wireless service facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public right-of-way, for the protection of existing facilities in the public right-of-way or to accommodate city plans for public improvements or projects that the city determines are in the public's interest. The city shall have the power to prohibit the collocation of small or micro wireless facilities on a city utility pole within a public right of way, or permit the construction of a new wireless facility within a public right of way, when the location for either the collocation or new wireless facility is subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a home owner's association.

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

(d) ~~Personal W~~ wireless service facilities located in the public rights-of-way must meet the "small wireless facility" definition and size parameters set forth in Section 337.401(7), Fla. Stat., as amended from time to time, as well as the following minimum standards:

(1) Required approvals. No application for placement of ~~personal-wireless service~~ facilities in the public rights-of-way shall be permitted without approval of the department of sustainable development.

(2) a. Because an antenna must be placed above ground in order to transmit and receive signals, an applicant proposing placement of an antenna in the public right-of-way, shall submit an application for approval through the department of sustainable development. The application shall consist of the following:

i. Completed A application form provided by the city accompanied by the required ~~application~~ fees in accordance with Subsections 13-80(b), 13-81(7), 13-83(1), and 13-83(4) and Section 13-89 as applicable identifying the type of wireless facility as either:

- a. Stand-alone small wireless facility ~~cell~~ or
- b. DAS HUB system;

ii. Copy of current business tax receipt;

iii. A scaled site plan depicting an area within a six hundred (600) foot radius from the center of the proposed ~~personal wireless service~~ facility, and showing the proposed antennas, equipment, related infrastructure, sidewalks, all existing utilities, antennas, towers, concealed facilities, the

right-of-way boundaries, wireless ~~communications~~ facility boundary, road improvements, all ingress and egress to nearby streets, major vegetation, required grading, existing and proposed elevations, easements, and other significant features of the site;

~~v. Certification signed by the applicant confirming the distance separation from other personal wireless service facilities; and~~

iv. An attestation from the wireless service provider intending to utilize the proposed facility that “small cell” facilities will be installed and operational on the proposed structure within nine (9) months after the date the application is approved.

b. No permits shall be issued by the city prior to the approval of a development plan where required pursuant to this ~~§Subsection 13-609(d)(2)~~13-341.3(d)(2).

(3) Completeness review; time limitation. The city shall grant or deny a properly completed application for ~~personal wireless service~~ facilities in the public right-of-way within ~~ninety (90)~~sixty (60) days or, as required by federal and state law, after the date the application is determined to be properly completed. An application is deemed submitted or resubmitted on the date the application is received by the department of sustainable development. The department of sustainable development shall notify the applicant via e-mail within ~~twenty (20)~~fourteen (14) days after the date the application is initially submitted or additional information resubmitted, whether the application is properly completed in compliance with the city's requirements. If the application is not completed in compliance with the city's requirements, the department of sustainable development shall so notify the applicant in writing via e-mail indicating with specificity any deficiencies which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the department of sustainable development shall notify the applicant, in writing, no later than fourteen (14) days after the additional information is submitted, of any remaining deficiencies that must be cured. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the department of sustainable development may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed. Within fourteen (14) days after receipt of an application, the city may request the applicant via e-mail to move the proposed wireless facility to another utility pole within the right of way or to construct a new utility pole within the right of way. The city and applicant shall negotiate the design, location and spacing of the alternate wireless facility for thirty (30) days after the date of the request. At the conclusion of the negotiation period, the applicant shall either accept the proposed modification

which will thereafter be approved by the city or reject the proposed modification in which event the city shall process the original application for a decision to be made within ninety (90) days of original submission.

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

(5) Statement. A statement or statements shall be submitted certifying that the construction of ~~personal~~ new wireless ~~service~~ facilities proposed to be located in the public right-of-way will comply with applicable standards as set forth in the Florida Building Code, latest edition, the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, and applicable electrical codes; and describing the proposed ~~personal-wireless service~~ facilities' capacity to permit co-location of multiple users, including an example of the number and type of antennas or other attachments that can be accommodated on the proposed wireless support structures. No ~~personal-wireless service~~ facility which exceeds its wireless support structure's loading capacity, which causes any pole or support structure to exceed its loading capacity or which does not conform to applicable electrical codes shall be permitted in the public right-of-way.

(6) All equipment should be contained within the vertical infrastructure installed in the right-of-way except where insufficient interior physical space or incapable loading issues are present, in which event cabinets, boxes and vaults may be used. No permit or order shall be granted authorizing the placement, construction or modification in the public right-of-way of a ~~personal-wireless service~~ facility cabinet, box or vault exceeding ~~three (3) feet wide by three (3) feet long by five (5) feet high in size~~ twenty-eight (28) cubic feet in volume.

(7) Height, setbacks, concealment and related location requirements.

a. The height of a new ~~personal~~ wireless ~~service~~ facility in the public right-of-way to which an antenna is attached shall not exceed the height of existing poles or structures in the public rights-of-way within ~~one~~ five hundred (~~4~~ 500) feet of such proposed new ~~personal~~ wireless ~~service~~ facility, plus ten (10) feet, or if no such existing poles are present in the public rights-of-way within ~~one~~ five hundred (~~4~~ 500) feet of such proposed new ~~personal~~ wireless ~~service~~ facility, the new ~~personal~~ wireless ~~service~~ facility shall not exceed a height of ~~thirty~~ thirty (~~30~~ 3050) feet. Height shall be measured from the crown of the road of the nearest public street.

b. Except as otherwise provided herein, ~~personal~~ wireless ~~service~~ facilities in the public rights-of-way shall conform to the standards and

requirements set forth in the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

c. All new wireless facilities within a public right-of-way shall be constructed using concealment techniques. In all residential and non-residential districts, the concealment technique to be utilized shall be through the installation of a decorative banner pole capable of concealing all equipment and related appurtenances within the pole structure. In the MainStreet RAC Area, the concealment technique to be utilized shall be through the installation of a decorative banner and/or pedestrian scale light pole capable of concealing all equipment and related appurtenances within the pole structure and shall be consistent in design, shape, diameter and color with the MainStreet RAC Design Standards (Cooper Lighting Model 902-PT Series Metallic Bronze);

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

e. When incapable of being contained within the vertical infrastructure, aA-box or cabinet housing the equipment connected to an antenna attached to a freestanding pole in the public rights-of-way shall be placed on the ground instead of attached to the pole supporting the antenna, and shall be screened from view in accordance with the buffering provisions in subsection 13-541.3 (12) below.

f. ~~Personal~~ Wireless service facilities shall be located in state or county arterial or collector rights-of-way, whenever possible. Placement of ~~personal~~ wireless service facilities in city collector street, cul-de-sac, local street and marginal access street rights-of-way shall be prohibited unless the applicant cannot otherwise provide service to a particular customer or customers without doing so, and the inability to place facilities in such rights-of-way is necessary to accomplish requirements of nondiscriminatory treatment of the applicant in relation to the city's treatment of other communications service providers. In such circumstances, the applicant shall include with its city permit application, sufficient evidence consistent with industry standards, to justify such placement. Whenever ~~personal~~ wireless service facilities must be placed in a right-of-way with residential uses on one (1) or both sides, neither poles, equipment, antennas or other structures shall be placed in front of a residential structure. If a right-of-way has residential structures on only one (1) side, the ~~personal~~ wireless service facilities shall be located on the opposite side of the right-of-way whenever possible. All ~~personal~~ wireless service facilities shall be located in such a way that they do not interfere with views from residential structures.

(8) Antennas.

a. Each application for a ~~personal wireless service~~ facility shall contain a rendering or photograph of the proposed antenna which depicts its aesthetic features including, but not limited to, the use of colors and screening devices. The application shall be subject to administrative review regarding consistency with the requirements of this section. The ~~director of department of sustainable development~~ city manager, or his or her designee, may require, to the extent possible, that aesthetic features, including but not limited, to the use of colors and screening devices, be used so that antennas blend into the surrounding environment.

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

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

d. No exterior antenna in the public rights-of-way shall exceed the height of the pole to which it is attached by more than twenty-four (24) inches in length, fifteen (15) inches in width, or twelve (12) inches in height and an exterior antenna, if any, no longer than eleven (11) inches, unless it is attached as a co-location to an existing power, light or other utility pole or on a pole designed to emulate a light pole in accordance with Section 337.401(7)(b)(10), Fla.Stat., in which case it shall not exceed ten (10) feet in height above the pole, six (6) cubic feet in volume for the wireless facility itself and no more than twenty-eight (28) cubic feet in volume for all ancillary equipment. Further, if any part of the antenna extends above the top of the pole it shall not be allowed to extend away from the exterior side of the pole in an amount greater than twelve (12) inches on any side.

e. No antenna shall be mounted where the edge of the antenna is more than four (4) inches from the exterior side of the pole to which it is attached unless it is attached as a co-location to an existing power, light or other utility pole in accordance with Section 337.401(b)(10), Fla.Stat., in which case it shall not exceed ten (10) feet in height above the pole, six (6) cubic feet in volume for the wireless facility itself and no more than twenty-eight (28) cubic feet in volume for all ancillary equipment. No part of the antenna shall be allowed to extend more than twenty-four (24) inches away from the exterior side of the pole.

f. Exterior looping of excess cable length installed on any ~~personal wireless service~~ facility located in the public right-of-way is prohibited and all cabling and interconnecting wires must be concealed.

g. Distance between antenna locations/number of antenna locations within a specified area. To minimize the adverse visual impacts associated with the proliferation and clustering of antennas and associated above-ground ~~personal wireless service~~ facilities, no antenna site in the public rights-of-way shall be located within six hundred (600) feet of any other non "small cell"-antenna site or telecommunications tower that is NOT within a public right-of-way. ~~Further, no more than thirteen (13) antenna sites may be located within an area of one (1) square mile.~~ This subsection 13-541.2(d)(8) g. shall not apply to any antenna co-located on an existing power, light or other utility pole within the public rights-of-way.

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

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

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

(12) Buffering.

a. Vaulting underground freestanding equipment cabinets or shelters and/or power meters are preferred. Unless the applicant demonstrates that underground water table or floodplain issues prevent vaulting the supporting ground equipment then it may be placed on the ground. In no instance shall supporting equipment be located farther than two (2) feet from the base of the structure and it shall not interfere with pedestrian or vehicular traffic.

b. Equipment shelters or cabinets not vaulted shall appear consistent with the general character of the neighborhood/zoning district in which it is

located. Equipment shelters or cabinets shall be screened from the public view by using landscaping, materials and colors consistent with the surrounding backdrop.

c. As a condition of approval the ~~director of the department of sustainable development~~ city manager, or his or her designee, may require the use of a fence as a buffer that is consistent in design and function with existing fencing used in the public rights-of-way.

d. As a condition of approval the ~~director of the department of sustainable development~~ city manager, or designee, may require the use of landscaping as a buffer, which landscaping is consistent with the landscaping otherwise located in the public rights-of-way. Additional landscaping may be required if deemed necessary to buffer adjacent properties. The ~~director of the department of sustainable development~~ city manager, or designee, may require landscaping in excess of the requirements of the city code to enhance compatibility with adjacent residential and nonresidential land uses.

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

(13) Equipment. The location in the public rights-of-way of any equipment or equipment cabinets associated with ~~personal wireless service~~ facilities shall be subject to the approval of the ~~director of the department of sustainable development~~ city manager, or designee. Any such cabinets or equipment must be approved by the ~~director of the department of sustainable development~~ city manager, or designee, as to safety, and shall not interfere with the use of the public rights-of-way. The ~~director of department of sustainable development~~ city manager, or designee, may require a statement certifying the need for the proposed equipment and location. No generators utilized in connection with ~~personal wireless services~~ facilities may be placed in the public rights-of-way, except temporarily in the case of emergency and only if approved within forty-eight (48) hours of placement by the ~~director of department of sustainable development~~ city manager, or designee.

(14) Signs and advertising. The use of any portion of a ~~personal wireless service~~ facility in the public rights-of-way for the posting of signs or for advertising purposes, including, but not limited to, the display of lights, banners and streamers is strictly prohibited. For purposes of emergency contact, the owner of the personal wireless service facility shall place one (1) identification label on the equipment advising of the name and contact telephone number of the owner of the ~~personal wireless service~~ facility.

(15) Inspections.

a. Owners or operators of ~~personal wireless service~~ facilities in the public rights-of-way shall ensure that the department of sustainable

development has current contact information for such owner or its authorized representative.

b. The owner or operator of a ~~personal-wireless service~~ facility in the public rights-of-way shall submit a report to the department of sustainable development, certifying the integrity of the personal wireless service facility and the safety of electrical components at least once every two (2) years.

c. Following the completion of construction of a wireless facility within a public right of way, the owner shall submit a report to the department of sustainable development certifying “as-built” compliance with the permitted structural and electrical parameters. The city shall conduct a post-construction inspection to verify the submitted report and confirm the constructed facility does not present a public safety hazard to vehicular and pedestrian traffic. The fee for the post-construction inspection shall be as provided in Subsection 13-538(f) above and shall be paid by the owner to the City.

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

(17) Modifications or replacements. Modification or replacement of any ~~personal wireless service~~ facilities in the public rights-of-way shall be subject to approval of the department of sustainable development. Any co-location of ~~personal wireless service~~ facilities, removal of ~~personal-wireless service~~ facilities or replacement of ~~personal wireless service~~ facilities that substantially changes the physical dimensions of an antenna or the ancillary equipment node-site shall be subject to approval of the department of sustainable development. Notwithstanding anything to the contrary in this section, for an eligible facilities

request under section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, (47 USC § 1455(a)), the application shall be subject only to the department of sustainable development's review and approval process.

(18) Statements and certifications. Any statement or certification submitted by or on behalf of an applicant pursuant to the provisions of this section shall be prepared applying rational analysis by one (1) or more engineers registered and licensed in the state, or by such other person or persons designated by the applicant who are qualified to perform the required analysis. Any person or persons providing such a statement or statements shall also certify as to his or her competence in the discipline or disciplines necessary to perform the analysis and to provide the statement.

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

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

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

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

(i) In the interest of the public's health, safety and welfare, upon request of the city, a registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way. The city may require a registrant to alter its placement or maintenance schedule as the city determines to be reasonably necessary so as to minimize disruptions and disturbance in the public rights-of-way. The city may provide a more definite time frame based on individual city construction or maintenance schedules.

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

(k) The city shall have the right to make such inspections of ~~communications facilities and personal wireless service~~ facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article. In the event the city determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the city will provide the registrant at least three (3) days' written notice setting forth the violation and requesting correction.

(l) The city reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the city in public rights-of-way occupied by the registrant. Registrant shall, if the registrant so agrees, allow city facilities to be co-located within city's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between the registrant and the city and may be subjected to other city rights-of-way requirements. The city further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as same may from time to time be altered.

(m) A registrant shall, on the request of any person holding a permit issued by the city, temporarily raise or lower its ~~communications facilities or personal wireless service~~ facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of wireless 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 a temporary raising or lowering of a wireless facility for a public purpose, the city shall not be charged for the temporary raising or lowering of the wireless facility.

(n) Prior to the issuance of any permit pertaining to the placement and maintenance of ~~personal wireless service~~ facilities within the public rights-of-way located in residential zoning districts, the ~~director of the department of sustainable development~~ city manager, or designee, shall require the registrant to issue notice of

the work to property owners who adjoin such rights-of-way (the "notification area"), and based on the scope of the proposed work, the number of affected property owners, and the potential severity of the impact to such property owners, shall further require the registrant to hold a public information meeting for purposes of answering questions and taking comments from affected property owners. Comments may be submitted in person or in writing to the city. The process for submitting written comments shall be provided to all property owners in the notification area by the registrant. The notification area may be expanded at the city's discretion and notice shall be affected in a manner deemed appropriate by the ~~director of sustainable development~~ city manager, or designee. Should a public information meeting be required, the registrant shall submit a report to the city, no later than ten (10) days after such meeting, stating the public comments received and any responses provided by the registrant. The registrant shall meet with city staff as soon as practical to review comments received at the public information meeting, and attempt to resolve all negative comments or issues raised. No permits shall be issued by the city until this process, if required, has been completed.

Sec. 13-541.4. - Suspension of permits.

- (a) Subject to ~~§~~Section 13-541.5 below and to providing reasonable notice and an opportunity to cure, the ~~director of sustainable development~~ city manager, or designee may suspend a permit issued or deny an application for a subsequent permit to a registrant for work in the public rights-of-way for one (1) or more of the following:
 - (1) Failure to satisfy permit conditions, or conditions set forth in this article or other applicable city codes or regulations governing placement or maintenance of ~~communications facilities or wireless~~ communications facilities in public rights-of-way, including without limitation, failure to take reasonable safety precautions to alert the public of work at the work site, or to restore any public rights-of-way;
 - (2) Misrepresentation or fraud by registrant in a registration or permit application to the city;
 - (3) Failure to properly renew or ineffectiveness of registration.
 - (4) Failure to relocate or to remove facilities as may be lawfully required by the city.
- (b) After the suspension or denial of a permit pursuant to this section, the city shall provide written notice of the reason to the registrant.

Sec. 13-541.6. - Conditional use of public rights-of-way by communication facilities.

- (a) For the purposes of Subsections 13-541.6 through 13-541.19, “communication facility” shall mean electronic components that transmit or receive communication signals either through a wired network or wirelessly. In the event registrant desires to use its existing communications facilities or to construct new communications facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of ~~wireless~~ communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from city for such activities as may be required by applicable law.
- (b) To the extent that any person or registrant leases or otherwise uses the communications facilities of a person that is duly registered or otherwise authorized to place or maintain communications facilities in the public rights-of-way of the city, such person or registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the city's rights, including requiring the removal of such communications facilities from the public rights-of-way of the city, regardless of the effect on registrant's ability to place or maintain its own communications facilities in public rights-of-way of the city.

Sec. 13-541.7. - Termination of registration.

- (a) The involuntary termination of a previously effective registration may only be accomplished by an action of the city commission. The city may declare the registration terminated and revoke and cancel all privileges granted under that registration if: (a) a federal or Florida authority suspends, denies, or revokes a registrant's certification or license to provide wireless communications service, (b) 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, (c) the registrant abandons all of its communications facilities in the public rights-of-way, or (d) a pass-through provider fails to comply with the requirements of section 13-541.19.
- (b) Prior to such termination for any of the reasons set forth in this section, the ~~director of sustainable development~~ city manager, or designee, 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 commission, to accomplish the same.
- (c) In the event of a vote by the city commission to terminate the registration, the registrant shall, within a reasonable time following such termination, provide an acceptable plan for transferring ownership of the ~~wireless~~ communications facilities to another person in accordance with this article or shall remove or abandon the communications facilities and take such steps as are necessary to render every portion of the communications facilities remaining in the public rights-of-way of the city safe. If the registrant has either abandoned its communications facilities or

chooses to abandon its communications-facilities, the city may either (a) require the registrant or the registrant's bonding company to remove some or all of the communications facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal; or (b) require that some or all of the communications facilities 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 (c) utilize or allow other persons to utilize the registrant's abandoned communications facilities. The obligations of the registrant hereunder shall survive the termination of a registration. In the event of a declaration of termination of registration, this provision does not permit the city to cause the removal of any communications facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered with the city, for such certificated service, where required.

Sec. 13-541.8. - Transfer of control, sale or assignment of assets.

- (a) If a registrant transfers, sells or assigns its registration or its ~~wireless~~ communications facilities 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 article. Written notice of any such transfer, sale or assignment shall be provided to the city within twenty (20) days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in ~~s~~Section 13-541.2 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 ~~wireless~~ communications facilities shall be subject and subordinate to the rights of the city under this article and applicable law.

Sec. 13-541.10. - Indemnification.

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 ~~wireless~~ communications facilities in public rights-of-way, regardless of whether the act

or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation hereunder shall not extend to any damages caused solely 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. city agrees to notify the registrant, in writing, within a reasonable time of city receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own cost if in the city's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) as consent by the city to be sued; or (3) as a waiver of sovereign immunity beyond the waiver provided in ~~F.S. §~~Section 768.28, Fla. Stat., as it may be amended.

Sec. 13-541.12. - Security fund.

At the time of registration and as a condition of receiving its first permit to place or maintain a ~~wireless~~ communications facility in public rights-of-way after the effective date of this article, the registrant shall be required to file with the city, for city approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of fifty thousand dollars (\$50,000.00) having as a surety a company qualified to do business in the State of Florida, and acceptable to the ~~director of sustainable development~~ city manager, or designee, which shall be referred to as the "security fund." The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this article. The bond or guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to ~~s~~Section 13-541.13 of this article, there shall be recoverable, jointly and severally from the security fund and/or from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The city may in its reasonable discretion accept a corporate guarantee of the registrant or its parent company.

Sec. 13-541.13. - Enforcement remedies.

(a) In addition to any other remedies available at law, including but not limited to ~~F.S. §~~ Section 166.0415, Fla. Stat., and ~~F.S. ch. 162, Fla. Stat.~~, or equity or as provided in this article, the city may apply any one (1) or combination of the following

remedies in the event a registrant violates this article, or applicable local law or order related to the public rights-of-way:

(1) Failure to comply with the provisions of the article or other law applicable to occupants of the public rights-of-way, may result in imposition of penalties to be paid by the registrant to the city in an amount of not less than five hundred dollars (\$500.00) per day or part thereof that the violation continues.

(2) Failure of an approved small cell wireless facility to be installed and operational within nine (9) months after application approval pursuant to this Section shall constitute a failure to comply with the provisions of this Article and shall result in the revocation of permit granted herein.

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

(b) Before imposing a fine pursuant to 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 ten (10) days to either: (a) cure the violation to the city's satisfaction and the city shall make good faith reasonable efforts to assist in resolving the violation; or (b) file an appeal with the city to contest the alleged violation. Section 13-541.5 shall govern such appeal. If no appeal is filed and if the violation is not cured within the thirty-day period, the city may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

(c) In determining which remedy or remedies are appropriate, the city shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the city determines are appropriate to the public interest.

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

(e) In any proceeding before the city where there exists an issue with respect to a registrant's performance of its obligations pursuant to this article, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this article. The city may find a registrant that does not demonstrate compliance with the terms and conditions of this article in default and apply any one (1) or combination of the remedies otherwise authorized by this article.

(f) ~~The director of sustainable development~~ city manager, or designee, shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law.

Sec. 13-541.15. - Abandonment of a wireless communications facility.

- (a) Upon abandonment of a ~~wireless~~ communications facility owned by a registrant located 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 ~~wireless~~ communications facility at the registrant's sole expense if the city determines that the abandoned wireless communications facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:
 - (1) Compromises safety at any time for any public right-of-way user or during construction or maintenance in public right-of-way;
 - (2) Prevents another person from locating communications facilities in the area of public rights-of-way where the abandoned communications facility is located when other alternative locations are not reasonably available; or
 - (3) Creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of subsection 13-541.15(b)(2), the city may require the third person to coordinate with the registrant that owns the existing communications facility for joint removal and placement, where agreed to by the registrant.
- (c) In the event that the city does not direct the removal of the abandoned communications facility, the registrant, by its notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the communications facility by the city or another person at such third party's cost.
- (d) If the registrant fails to remove all or any portion of an abandoned ~~wireless~~ communications facility as directed by the city within a reasonable time period as may be required by the city under the circumstances, the city may perform such removal and charge the cost of the removal against the registrant.

Sec. 13-541.17. - Reservation of rights.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This provisions of this article shall be applicable to all wireless ~~communications~~ facilities placed in the public rights-of-way on or after the effective date of the ordinance from which the provisions derive and shall apply to all existing ~~wireless~~ communications facilities placed in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law, except that any provision of this article regarding size, composition, or location of physical facilities shall not apply to physical facilities lawfully placed within any public right-of-way prior to the effective date of the ordinance from which such provision is derived.

Sec. 13-541.18. - No liability or warranty.

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

Sec. 13-541.19. - Pass-through provider fees and charges.

- (a) Pass-through providers shall pay to the city on an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of ~~wireless~~ communications facilities placed and/or maintained in the city's rights-of-way. For purposes of this section, the city's rights-of-way do not include rights-of-way that extend in or through the city but are state, county or another authority's rights-of-way.
- (b) The amounts charged pursuant to this section shall be based on the linear miles of rights-of-way where ~~wireless~~ communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.
- (c) Any annual amount charged shall be reduced for a prorated portion of any twelve-month period during which the pass-through provider remits taxes imposed by the city pursuant to ~~F.S. ch.~~ Section 202, Fla. Stat.
- (d) 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.
- (e) If the payments required by this section are not made within ninety (90) days after the due date, the ~~director of sustainable development~~ city manager, or designee, may withhold the issuance of any permits to the registrant until the amount past due is paid in full.

Section 3: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 4: Severability. That should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 5: Codification. That the provisions of this Ordinance shall be codified within the Code of Ordinances of the City of Coconut Creek, Florida, and any paragraph or section may be renumbered to conform with the Code of Ordinances.

Section 6: Effective Date. That this Ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 25TH DAY OF JANUARY, 2018.

PASSED SECOND READING THIS ___ DAY OF _____, 2018.

Rebecca A. Tooley, Mayor

Attest:

Leslie Wallace May, City Clerk

	<u>1st</u>	<u>2nd</u>
Tooley	<u>Aye</u>	_____
Rydell	<u>Aye</u>	_____
Sarbone	<u>Absent</u>	_____
Belvedere	<u>Aye</u>	_____
Welch	<u>Aye</u>	_____