

ORDINANCE NO. 2017- XXX

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 TELECOMMUNICATIONS TOWERS", 13-541.3, "PLACEMENT OR MAINTENANCE OF A WIRELESS COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY"; AND 13-541.13, "ENFORCEMENT REMEDIES"; 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 and Sections 13-541.1 through 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

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A line of *** indicates existing text not shown.

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 Telecommunications Towers”, 13-541.3, “Placement or Maintenance of a Wireless Communications Facility in Public Rights-of-Way”; and 13-541.13, “Enforcement Remedies”, to read as follows:

Chapter 13 - LAND DEVELOPMENT CODE

ARTICLE III. - ZONING REGULATIONS

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:

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(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
- 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
- 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

(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, and
- 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.
- e. Approval of the director of sustainable development 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, 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 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. § 337.401 (7), 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. 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 for a utility pole antenna attachment. In addition, a post construction 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).

ii. 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 addition, ~~an~~ post-construction 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 be required 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 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.

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

g. 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) —

(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. 13-541.3. - 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.

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

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

(1) Required approvals. No application for placement of personal wireless service facilities in the public rights-of-way shall be permitted without approval of the 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 Application form provided by the city accompanied by the required application fee identifying the type of wireless facility as either:

- a. Stand-alone small 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.

iv. Certification signed by the applicant confirming the distance separation from other non right-of-way personal wireless service facilities.

v. 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).

(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 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 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 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 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 facility is 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 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 multiple users, including an example of the number and type of antennas or other attachments that can be accommodated on support structures. No personal wireless service facility which exceeds its support structure's loading capacity, which causes any pole or structure to exceed its loading capacity or which does not conform to applicable electrical codes shall be permitted in the public 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 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 five hundred (~~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 five hundred (~~500~~) feet of such proposed new personal wireless service facility, the new personal wireless service facility shall not exceed a

height of fifty (50) 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 personal wireless service 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 with the MainStreet RAC Design Standards;

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. A box or cabinet housing the equipment connected to an antenna attached to a freestanding pole in the public rights-of-way shall be placed on the ground instead of attached to the pole supporting the antenna, and in accordance with the buffering provisions in subsection (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, 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 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, 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. 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. 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. 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 be 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, or materials and colors consistent with the surrounding backdrop.

c. As a condition of approval the director of the department of sustainable development, 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, 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, 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 or designee. Any such cabinets or equipment must be approved by the director of the department of sustainable development 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 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 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 personal wireless service 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 Section 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, 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, 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 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, 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 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. § 337.402 as it may be amended. The registrant shall guarantee its restoration work and shall correct any improper restoration work at its own expense for 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. § 337.403 and 337.404 as they may be amended.

(g) A permit from the city constitutes authorization to undertake only certain activities on public rights-of-way in accordance with this 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 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 facility for a public purpose, the city shall not be charged for the temporary raising or lowering of the 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 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 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. 13-541.13. - 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 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 or designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law.

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 ____ DAY OF _____, 2017.

PASSED SECOND READING THIS ____ DAY OF _____, 2017.

Rebecca A. Tooley, Mayor

Attest:

Leslie Wallace May, City Clerk

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

File Path:
Initials:
Date:

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Words in underline type are additions to existing text.
Asterisks (**) indicate existing text not shown.