

ORDINANCE NO. 380

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF JUPITER ISLAND, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES BY AMENDING CHAPTER 15, ARTICLE III, ENTITLED "UTILITIES REQUIRED TO BE UNDERGROUND," SECTION 15-105; AND BY REPEALING AND REPLACING APPENDIX B - TELECOMMUNICATIONS ORDINANCE OF THE CODE OF ORDINANCES, KNOWN AS THE "TOWN OF JUPITER ISLAND TELECOMMUNICATIONS ORDINANCE," WITH A NEW APPENDIX B ENTITLED "JUPITER ISLAND COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE"; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR BONDS; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICTS; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Town of Jupiter Island ("Town") staff periodically reviews Town Ordinances and makes recommendations to the Town Commission to revise its Ordinances; and

**WHEREAS**, the Town Commission of the Town of Jupiter Island has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the Town of Jupiter Island by regulating the siting of communications facilities and utility poles within the public rights-of-way; and

**WHEREAS**, this Ordinance accommodates the growing needs and demand for communications services; and

**WHEREAS**, this Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist; and,

**WHEREAS**, in Fiscal Year 2006-2007, the Town voted to undertake the major project to underground all above ground utility lines Town-wide, including electric utility transmission and distribution lines ("undergrounding project"); and

**WHEREAS**, in 2007, the Town's residents approved a referendum to create an assessment to finance the undergrounding project; and

**WHEREAS**, the undergrounding project has been completed, with electric utility, cable television, and communications facilities being relocated underground and removing all utility poles for such facilities; and

**WHEREAS**, the Town is located on a coastal barrier island as defined in F.S. Section 161.053(1)(b)3., has a land area of less than five (5) square miles, and has less than 10,000 residents; and

**WHEREAS**, F.S. §337.401 addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

**WHEREAS**, rules and regulations imposed by a local government relating to communications service providers that desire to place or maintain communications facilities in its rights-of-way must be generally nondiscriminatory and competitively neutral; and

**WHEREAS**, on October 17, 2001, the Town Commission adopted Ordinance No. 267, known as the Town of Jupiter Island Telecommunications Ordinance, codified as Appendix B to the Town Code of Ordinances; and

**WHEREAS**, F.S. Chapter 202, known as the "Communications Services Tax Simplification Law," addresses the taxes and fees applicable to communications services in Florida; and

**WHEREAS**, F.S. Chapter 610, adopted in 2007, addresses the provision of cable and video service in Florida, and provides in F.S. Section 610.102, that the Florida Department of State is the franchising authority for a state-issued franchise for the provision of cable or video service and that a municipality or county may not grant a new franchise for the provision of cable or video service within its jurisdiction; and

**WHEREAS**, F.S. §610.114(2) provides: "Notwithstanding any other provision of law, a municipality ... may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificate holder that is placing and maintaining facilities in or on a public right-of-way in the municipality or county. In accordance with s. 337.402, the permit may require the permit holder to be responsible, at the permit holder's expense, for any damage resulting from the issuance of such permit and for restoring the public right-of-way to its original condition before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public right-of-way."; and

**WHEREAS**, F.S. §337.401(3)(g) provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, service territory, and prices of a provider of communications services; and

**WHEREAS**, in 2017, the Florida Legislature enacted and the Governor approved the Advanced Wireless Infrastructure Deployment Act, F.S. §337.401(7) ("Small Cell Statute"); and

**WHEREAS**, in 2019, the Florida Legislature enacted and the Governor approved CS/CS/CS/SB 1000 ("SB 1000"), amending F.S. §337.401, including portions of the Small Cell Statute; and

**WHEREAS**, the F.S. §337.401, including the Small Cell Statute, creates new requirements and allowances for municipalities relating to the installation of utility poles in the public rights-of-way to collocate small wireless facilities, and the placement and maintenance of small wireless facilities, micro wireless facilities, and communications facilities in the public rights-of-way; and

**WHEREAS**, the Town Commission intends to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and

**WHEREAS**, it is the Town Commission's further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; and

**WHEREAS**, the Town's rights-of-way are essential for the travel of persons and the transport of goods throughout the Town and are a unique and physically limited resource requiring proper management by the Town in order to ensure public safety, maximize efficiency, minimize costs to Town taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the

substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

**WHEREAS**, a duly noticed public hearing as required by law was held by the Town Commission of the Town of Jupiter Island, at which public hearing all residents and interested persons were given an opportunity to be heard; and

**WHEREAS**, the Town Clerk submitted notice of the first hearing on this proposed Ordinance to the Florida Secretary of State, consistent with F.S. §337.401(3)(d); and

**WHEREAS**, the Town Commission has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the Town's plans.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF JUPITER ISLAND, MARTIN COUNTY, FLORIDA:

**SECTION 1.** The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance.

**SECTION 2.** The Town Commission hereby amends the Town of Jupiter Island, Florida, Code Of Ordinances, Chapter 15, Article III, Entitled "Utilities Required to be Underground" Section 15-105, Exceptions, as follows<sup>1</sup>:

**Sec. 15-105. - Exceptions.**

Unless otherwise provided, this article and any resolution adopted pursuant hereto shall not apply to the following types of facilities:

- (1) Poles and associated overhead structures used exclusively for street lighting or signalization. This exemption shall not apply to wiring for street lighting which is required to be underground.
- (2) Overhead wires, electric supply conductors, cable, fiber, or similar facilities owned by the property owner and attached to the exterior surface of the property owner's building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street.
- (3) Radio antennae, associated equipment and supporting structures for such antennae, used by a utility company for furnishing wireless communication services, to the extent consistent with the Jupiter Island Communications Rights-of-Way Ordinance, contained in Appendix B to the Town Code, as it may be amended.
- (4) Town operated cameras and security equipment.
- (5) Pad mounted transformers, junction boxes, and service terminals on pedestals above ground used to distribute electrical, communication and community antenna television or similar or associated service in the underground systems.
- (6) Temporary poles, overhead wires and associated overhead structures located on private property used solely during the course of construction on that private property.
- (7) Temporary poles, wires, electric conductors, telephone or other communications cable, fiber optic cable and associated overhead facilities to provide temporary or emergency service installed subject to the provisions of this article.

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<sup>1</sup> Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

**SECTION 3.** The Town Commission hereby repeals in its entirety Appendix B to the Code of Ordinances, entitled "Town of Jupiter Island Telecommunications Ordinance" and a new Appendix B, entitled "Jupiter Island Communications Rights-of-Way Ordinance," is hereby created to read as follows:

**Sec. 1. Short title.**

This Ordinance shall be known and may be cited as the "Town Communications Rights-of-Way Ordinance."

**Sec. 2. Intent and purpose; Applicability; Authority to Implement.**

(a) **Intent and purpose.**

It is the intent of the Town to promote the public health, safety and general welfare by providing for the placement and maintenance of communications facilities in the public rights-of-way within the Town; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including the United States and Florida Constitutions, F.S. §337.401, as it may be amended, the Town's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, §6409(a) of the Spectrum Act of 2012, (codified as 47 U.S.C. §1455(a)), FCC regulations, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this section; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the Town shall be governed by and shall comply with all applicable federal and state laws.

(b) **Applicability.**

(1) This Ordinance shall apply to all facilities for communications services placed or maintained in the Town public rights-of-way pursuant to F.S. §337.401, including but not limited to any person holding a certificate of franchise authority pursuant to F.S. §610.103, communications services providers, pass-through providers, and wireless providers. To the extent not prohibited by applicable law, this Ordinance shall apply to all applications pending at the time of adoption of this Ordinance, to place or maintain communications facilities in the public rights-of-way. Persons seeking to place or maintain communications facilities on private property or other property to which the Town, any municipality, special district, Martin County, Martin County School Board, State of Florida, or federal government has a fee-simple or leasehold interest in real property, not within and exclusive of the public rights-of-way, located within the jurisdictional boundaries of the Town shall comply with the applicable provisions of Appendix A, Land Development Regulations, of the Town Code of Ordinances, including Article X. - Development Review And Approval: Standards And Uniform Procedures, Division 3. - Alternative Development Standards, Section 3.07. - Same—Communications Towers and/or Antennas, as it may be amended, to the extent it applies, unless such property is addressed expressly in this Ordinance or applicable law. This Ordinance is not applicable to communication facilities outside the public rights-of-way, unless addressed expressly herein. Pursuant to this Ordinance, a person may be authorized to place or to maintain communications facilities, including small wireless facilities, micro wireless facilities, utility poles for collocation of small wireless facilities, fiber, coaxial cable, and backhaul facilities in the Town public rights-of-way. Wireless support structures, telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way unless otherwise authorized in this Ordinance, to the extent not inconsistent with applicable law. This Ordinance applies to the placement of conduit, fiber or cable for the purpose of providing backhaul or communications service. Consistent with F.S. §337.401, this Ordinance applies to a cable or video service provider that has been issued and holds a certificate of franchise

authority from the Florida Department of State pursuant to F.S. §610.103, that places or maintains a cable system or wireline facilities in the Town's public rights-of-way. Rules or regulations imposed by the Town relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way shall be generally applicable to all providers of communications services, to the extent federal or Florida law does not require different treatment. Florida law requires that the Town's rules and regulations take into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities. Accordingly, in the exercise of the Town's authority, as required by Florida law, this Ordinance provides different regulations applicable to various communications facilities. This Ordinance does not apply to electric utility poles for an electric distribution system located in the Town public rights-of-way pursuant to a valid franchise agreement with the Town. However, collocation of small wireless facilities on such utility poles and any utility poles not for an electric distribution system placed or maintained by a Town franchised utility in the public rights-of-way will be governed by the applicable provisions of this Ordinance. Ordinances approving a franchise agreement and a valid franchise agreement with an electric utility shall remain in full force and effect, notwithstanding any provision of this Ordinance. This Ordinance shall not apply to communications facilities owned by the Town or to communications facilities owned by a person, including an electric cooperative, to the extent such facilities are utilized solely on an internal, non-commercial basis by said person.

- (2) This Ordinance implements *inter alia*, F.S. §Section 337.401, as amended, including the Advanced Wireless Infrastructure Deployment Act, F.S. §337.401(7) ("Small Cell Statute"). By adopting this Ordinance, the Town does not waive any rights including any rights that may exist under federal law, the Florida Constitution and the U.S. Constitution. In the event F.S. §337.401, is repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law or regulation, in whole or in part, provisions of this Ordinance may no longer apply, in which case pending and future applications or requests for communications facilities in the public rights-of-way will be governed by applicable law. In addition, permits issued pursuant to this Ordinance may be suspended or revoked, and facilities installed pursuant to permits issued pursuant to this Ordinance or without permits as authorized by this Ordinance may be required to be removed at the facility owner's expense, to the extent consistent with applicable law. It is the Town's intent not to create any vested rights in placing and maintaining communications facilities in the public rights-of-way as a result of this Ordinance or any permit issued pursuant to this Ordinance, to the extent not inconsistent with applicable law.
- (3) To the extent any provision of this Ordinance conflicts with the Code of Ordinances or Land Development Regulations of the Town of Jupiter Island, this Ordinance shall control.
- (4) This Ordinance shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Ordinance, all pending applications for permits subject to this Ordinance, and all existing communications facilities placed in the public rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law. A person with existing communications facilities in the public rights-of-way shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance or prior to submitting an application for a permit pursuant to this Ordinance. This provision shall not require the removal or alteration of existing communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit or otherwise lawfully installed prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed by the Town Manager, or pursuant to enforcement of this Ordinance or applicable law.
- (5) Reservation of rights. The Town reserves the right to amend this Ordinance as it shall find

necessary in the lawful exercise of its police powers.

- (c) **Authority to implement Ordinance.** The Town Manager is authorized to adopt, to modify, and to repeal rules and regulations, not inconsistent with this Ordinance, to carry out the intent and purposes of this Ordinance.

**Sec. 3. Definitions.** For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined in this Ordinance or in any permit that may be granted pursuant to this Ordinance shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §151 *et seq.*, as amended or §6409(a) of the Spectrum Act of 2012, 47 U.S.C. §1455(a) (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the code, and if not defined in the code, shall be construed to mean the common and ordinary meaning.

**ABANDONMENT OR ABANDONED.** The cessation of all uses of a communications facility for a period of one hundred eighty (180) or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be *Abandonment* of a communications facility. A wireless infrastructure provider's failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine (9) months after the application is approved in accordance with F.S. §337.401(7)(j) shall constitute abandonment. The terms Abandonment or Abandoned are not intended to include a dropped line from a potential or existing customer in the event the communications services provider reasonably anticipates future use of the dropped line.

**ABUT.** When used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot line or boundary line with another lot or parcel of land or public right-of-way.

**ADJACENT PROPERTIES OR PROPERTIES ADJACENT.** (i) Those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

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

**APPLICABLE CODES.** Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including, but not limited expressly to the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual, the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, and Town codes or ordinances, and standards and regulations, to the extent not inconsistent with the 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual.

**APPLICANT.** A registrant who submits an application.

**APPLICATION.** A request submitted by an applicant to the Town for a permit to collocate small wireless facilities or to place a new utility pole used to support a small wireless facility in the public rights-of-way.

**AS-BUILT PLANS.** A set of final and complete drawings in a format as specified by the Town submitted upon completion of a project, signed and sealed by professional surveyor or mapper as defined in Section 472.005, F.S., that reflects all changes made during the construction process, and shows the exact dimensions, geometry and location of all elements of the work completed under the permit.

**AUTHORITY.** The Town to the extent it has jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from F.S. §337.401(7).

**AUTHORITY or TOWN UTILITY POLE.** A utility pole owned by the Town in the public right-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the right-of-way within:

- (a) A retirement community that:
  - (i) Is deed restricted as housing for older persons as defined in F.S. §760.29(4)(b).
  - (ii) Has more than 5,000 residents; and
  - (iii) Has underground utilities for electric transmission or distribution.
  
- (b) A municipality that:
  - (i) Is located on a coastal barrier island as defined in F.S. §161.053(1)(b)3.;
  - (ii) Has a land area of less than 5 square miles;
  - (iii) Has less than 10,000 residents; and
  - (iv) Has, before July 1, 2017, received referendum approval to issue debt to finance municipal-wide undergrounding of its utilities for electric transmission or distribution.

**BACKHAUL FACILITIES.** A physical transmission path, all or part of which is within the public rights-of-way controlled by the Town or any government entity, used for the transport of communications data by wire or fiber from a wireless facility to a network. A Backhaul Facility may also consist of an antenna, including a microwave antenna, installed in the public rights-of-way pursuant to a permit, used for the transport of communications data wirelessly from a wireless facility to a network.

**BELOW-GRADE COMMUNICATIONS FACILITY.** Communications facilities, including manholes or access points, that are entirely contained below grade within the public rights-of-way.

**CLEAR ZONE.** Consistent with the latest edition of the Florida Department of Transportation Index, the roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

**COLLOCATION OR COLLOCATE.** To install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

**COMMUNICATIONS FACILITY or FACILITY or SYSTEM.** Any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the Town and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services. A utility pole intended for collocation of a small wireless facility shall be considered a facility for purposes of this Ordinance.

**COMMUNICATIONS SERVICES.** The transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised,

including wireless services, regardless of the protocol used for such transmission or conveyance, and shall also include cable service and video service as defined in F.S. §§610.103(1) and (11).

**COMMUNICATIONS SERVICES PROVIDER.** Any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider.

**COMMUNICATIONS SERVICES TAX.** The local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to Section 202.19, F.S. as amended.

**CONSOLIDATED PERMIT APPLICATION.** A single permit application that would otherwise require individual permit applications for the collocation of between two (2) and thirty (30) small wireless facilities to existing structures within the public rights-of-way.

**EXCAVATE or EXCAVATION.** Consistent with the definition contained in F.S. §556.102(6), as it may be amended, any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in F.S. §373.019(22), and the term includes pipe bursting and directional drilling or boring from one point to another point beneath the surface of the earth, or other trenchless technologies.

**EXTENSION OF EXISTING FACILITIES or EXTENSION.** Those extensions from the public rights-of-way into a customer's private property for purposes of placing a service drop or those extensions from the public rights-of-way into a utility easement to provide service to a discreet identifiable customer or group of customers. An extension of fiber or cable to serve a property with multiple customers, for example, a commercial building with multiple tenants, shall not constitute an extension of existing facilities unless all tenants are served by the owner of the facilities under one agreement.

**FCC.** The Federal Communications Commission.

**FLORIDA BUILDING CODE.** The Florida Building Code promulgated under F.S. Chapter 553 and includes the applicable amendments thereto as both may be amended from time to time.

**FLORIDA GREENBOOK.** The latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

**FORCE MAJEURE EVENT.** A cause or event not within a person's control that shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a person's control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person's directors, officers, employees, contractors or agents.

**GRAFFITI.** Any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility. A wrap shall not be considered graffiti.

**HISTORIC PROPERTY.** Any prehistoric or historic district, site, building, structure, or object or other real or personal property, of historical, architectural or archaeological value to preserve the character and aesthetics of the Town, as contained in Appendix A, Land Development Regulations, Article VIII. - Historic Preservation of the Town Code of Ordinances or as designated historic and/or scenic under State or law. These properties or resources may include, but are not limited to, roadways, sidewalks, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure

troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, character, scale, or culture of the Town.

**HOMEOWNERS' ASSOCIATION.** An incorporated association whose members consist of owners of single-family homes or condominium units that manage or control property owned by the association.

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

**LICENSED ENGINEER.** A Florida registered professional engineer, or person who is exempt from such registration requirements as provided in F.S. §471.003.

**LOT.** A designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

**MICRO WIRELESS FACILITY.** A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

**ORDINANCE.** This Ordinance, codified as Appendix B to the Town of Jupiter Island Code of Ordinances.

**PARCEL.** Any piece of real property that has a single parcel identification number assigned to it by the Martin County Property Appraiser.

**PASS-THROUGH PROVIDER.** Any person, as defined in F.S. §337.401(6)(a)1., who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the Town pursuant to F.S. Chapter 202, as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this Ordinance.

**PERMIT.** The public right-of-way permit that must be obtained before a person may construct in the public right-of-way and shall include, but not be limited to, right-of-way engineering and construction permits issued by the Town.

**PERSON.** Shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the Town.

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

**PSC.** The Florida Public Service Commission.

**PUBLIC RIGHTS-OF-WAY.** A public right-of-way, public easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley, or any other way for which the Town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. **PUBLIC RIGHTS-OF-WAY** shall not include private property. **PUBLIC RIGHTS-OF-WAY** shall not include any real or personal Town property except as described above, and shall not include Town parks, buildings, fixtures, poles,

conduits, facilities or other structures or improvements, regardless of whether they are situated in the **PUBLIC RIGHTS-OF-WAY**.

**REGISTRANT or FACILITY OWNER.** A communications services provider or other person that has registered with the Town in accordance with the provisions of this Ordinance.

**REGISTRATION and REGISTER.** The process described in this Ordinance whereby a communications services provider provides certain information to the Town.

**REQUESTER.** A person who submits a request pursuant to this Ordinance.

**REQUEST.** Any request other than an Application submitted by a person, associated with the placement or maintenance of a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way. A Request includes, but shall not be limited to, a request for approval of a registration, a request to place or maintain a communications facility other than the collocation of a small wireless facility or utility pole for the collocation of a small wireless facility in the public rights-of-way and includes for example, but is not limited to, a permit to construct cable, fiber, conduit, backhaul facilities, pedestals, or a support structure that does not constitute a utility pole for the collocation of a small wireless facility in the public rights-of-way.

**SHROUD.** A covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure or wireless support structure.

**SIGNAGE.** Any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the wireless facility provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

**SMALL WIRELESS FACILITY.** A wireless facility that meets the following qualifications:

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

**SMART TECHNOLOGY.** The Town's present and future technology to support the Town's smart technology initiatives, including but not limited to, sensors and smart lights, fiber, CCTV cameras, digital signage, data sharing with traffic applications, smart solar-powered charging stations, emergency alert applications and other initiatives over time.

**STEALTH DESIGN.** A method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, or utility pole which is designed to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

**SURROUNDING NEIGHBORHOOD.** The area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

**TOWN.** The Town of Jupiter Island, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

**TOWN MANAGER.** The Town of Jupiter Island, Florida, Town Manager or his/her designee.

**UTILITY.** Any electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in F.S. §§ 337.401, 337.402, 337.403, and 337.404 as the "utility."

**UTILITY POLE.** A pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an authority grants a waiver for such pole.

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

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

**WIRELESS INFRASTRUCTURE PROVIDER.** A person who has been certificated under F.S. Chapter 364, to provide telecommunications service or under F.S. Chapter 610 to provide cable or video services in the state, and such person's affiliate, and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

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

**WIRELESS SERVICES.** Any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

**WIRELESS SERVICES PROVIDER.** A person who provides wireless services.

**WIRELESS SUPPORT STRUCTURE.** A freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other support structure for ground-based equipment not mounted on a utility pole and less than five (5) feet in height.

**WRAP.** An aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

#### **Sec. 4. Registration For Placing Or Maintaining Communications Facilities in the Public Rights-Of-Way.**

- (a) All persons, including, but not limited to a communications services provider, pass-through provider, or wireless provider, seeking to place or maintain a communications facility, backhaul facility, utility pole for collocation of a small wireless facility, or wireless support structure in public rights-of-way in the Town pursuant to this Ordinance shall maintain an effective registration with the Town in accordance with this Ordinance before being eligible to receive a permit. Subject to the terms and conditions prescribed in this Ordinance and approval of a permit, if required, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless provider with an existing communications facility in the public rights-of-way of

the Town as of the effective date of this Ordinance has ninety (90) days from the effective date of this Ordinance to comply with the terms of this Ordinance, including, but not limited to obtaining an effective registration, or be in violation thereof.

- (b) Requirements for an effective registration. A person that places or maintains a communications facility in the Town shall file an original registration, along with two complete copies with the Town Manager 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 name, address, telephone number and email addresses of the registrant's primary contact person in the event of an emergency or issue involving its facilities, which shall be monitored 24 hours per day, 7 days per week.
  - (3) A statement as to whether the registrant is a pass-through provider in the Town as defined herein;
  - (4) Evidence of the insurance coverage required under this Ordinance;
  - (5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;
  - (6) A copy showing the number of the registrant's certificate of authorization issued by the Florida Public Service Commission, the Florida Department of State, or the FCC; and
  - (7) The registrant's federal employer identification number.
- (c) Insurance.
- (1) Registrant shall provide, pay for and maintain satisfactory to the Town, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Insurance Guide of A or better, or having a rating acceptable to the Town. All liability policies shall provide that the Town is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the Town annually. Thirty-days advance written notice by registered or certified mail must be given to the Town of any cancellation, intent not to renew, or reduction in the policy coverages. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the Town. A provider of communications services may add the Town to any existing insurance policy and the Town shall accept such proof of coverage without any conditions other than consent to venue for purposes of any litigation to which the Town is a party.
  - (2) The limits of coverage of insurance required shall be not less than the following:
    - i. Worker's compensation and employer's liability. Insurance employer's liability: Florida statutory requirements.
    - ii. Comprehensive general liability. Bodily injury and property damage: \$3,000,000 combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations, independent or contractors.
    - iii. Automobile liability. Bodily injury and property damage: \$3,000,000

- combined single limit each accident.
- iv. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The Town shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
  - v. Self-insurance. Registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan and/or retention if acceptable to the Town in its sole discretion based on the Town's evaluation of the registrant's ability to comply with the code. Registrant agrees to notify the Town, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The Town reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity to self-insure.
- (3) Right to review. Town, by and through its Town Manager, reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this Ordinance. The Town reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.
  - (4) This Ordinance shall not be construed to affect in any way the Town's rights, privileges and immunities as set forth in F.S. §768.28. Insurance under this Ordinance shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this Ordinance and subject to the remedies as set forth herein. Notwithstanding the foregoing, the Town may, in its sole discretion, require increased or decreased levels of insurance.
- (d) Review of Registration. The Town shall review the information submitted for the registration. If the information is in accordance with this subsection the Town shall notify the requester of the effectiveness of registration in writing. If the Town determines that the information has not been submitted in accordance with this subsection, the Town shall notify the requester in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The Town shall undertake to provide such notification within 30 days after receipt of registration information. A notice of non-effectiveness of a registration shall not preclude reapplying or filing subsequent requests for registration under the provisions of this Ordinance.
  - (e) Regulations Applicable to Registrations.
    - (1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Registration under this Ordinance governs only the placement or maintenance of communications facilities in public rights-of-way. To the extent not inconsistent with applicable law, registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the Town's or another person's facilities. Within 90 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the Town.

- (2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any particular area in public rights-of-way within the Town. Registrations are expressly subject to any future amendment to or replacement of this Ordinance, and further subject to any additional Town ordinances, as well as any applicable state or federal laws.
- (3) Unregistered use of public rights of way. To the extent that a communications services provider, wireless infrastructure provider or pass-through provider with facilities in the public rights-of-way, is not registered as required herein, said person shall register with the Town pursuant to this Ordinance within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way and such persons may be subject to the enforcement remedies.
- (4) Registration renewal. A registrant shall renew its registration with the Town by September 30, every five years from the first September after the effectiveness of the registration in accordance with the registration requirements in this Ordinance, as may be amended. 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 Town restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this Ordinance. An existing effective registration pursuant to the Town Code, prior to the effective date of this Ordinance shall continue to be effective and the registrant shall comply with this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance, the renewal of a registration as required herein, or prior to submitting an application for a permit.
- (5) Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, 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 Town arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, or otherwise caused by the registrant, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, provided however, that a registrant's obligations hereunder shall not extend to any damages caused solely by the negligence, negligence, or willful acts of the Town and to the extent not inconsistent with applicable law. In no event shall the Town be liable for any damage or destruction to a communications facility placed in the Town public rights-of-way including on a Town utility pole, to the extent not inconsistent with applicable law. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. Town agrees to notify the registrant, in writing, within a reasonable time of Town receiving notice, of any issue it determines may require indemnification. Nothing in this Ordinance shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost, if in the Town's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Ordinance shall be construed or interpreted:
  - i. as denying to either party any remedy or defense available to such party under the laws of the State of Florida;
  - ii. as consent by the Town to be sued; or
  - iii. as a waiver of sovereign immunity beyond the waiver provided in F.S. §768.28, as it may be amended.

- (6) A registrant may cancel a registration upon written notice to the Town that the registrant will no longer place or maintain any 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 shall not cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (7) Liens. No liens shall apply to public rights-of-way or Town property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or on a Town utility pole. Any liens on a registrant's facilities shall be subordinate to the rights of the Town pursuant to this Ordinance. In the event any liens are filed on the Town property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the Town may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.
- (8) A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on the Town's property including a utility pole as a result of a registrant's collocation on a Town utility pole. A registrant shall reimburse the Town for taxes paid by the Town as a result of a registrant's facilities being placed or maintained in the public rights-of-way or on a Town utility pole.
- (9) Reports and records.
  - (a) Upon reasonable request, a registrant shall provide the following documents to the Town as received or filed:
    - i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the Town to protect its interests under this Ordinance.
    - ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
  - (b) The Town shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.
- (10) Termination of Registration. The Town may terminate a registration if:
  - (a) A federal or state authority suspends, denies, or revokes a registrant's certification or license required to provide communications services;
  - (b) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;
  - (c) The registrant abandons its facilities in the public rights-of-way; or
  - (d) The registrant commits substantial and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.
- (11) Notice of intent to terminate. Prior to termination, the Town shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The registrant shall have thirty (30) days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the Town, to accomplish the same and to take such steps as are necessary to render every portion of the

facilities remaining in the public rights-of-way of the Town safe. If the plan is rejected by the Town, the Town shall provide written notice of such rejection within fifteen (15) days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.

- (12) Post termination action. In the event of termination, following any appeal period, the former registrant shall: (a) in accordance with the provisions of this Ordinance and as may otherwise be provided under state law, notify the Town of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in the public rights-of-way; or (b) provide the Town with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the communications facilities are deemed to be abandoned and the Town may exercise any remedies or rights it has at law or in equity as well as the Town's remedies pursuant to this Ordinance, including but not limited to, utilize or allow other persons to utilize the registrant's facilities. The obligations of the registrant hereunder shall survive the termination of a registration. A registrant that has its registration terminated by the Town under this Ordinance may reapply for registration one (1) year after the termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the Town.
- (13) When removal not authorized or required. In the event of termination of a registration, this Ordinance does not authorize the Town to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the communications facilities holds a valid certification or license with the governing federal or state agency, if required, for the provision of such service, and is registered with the Town, if required.
- (14) Transfer or control, sale or assignment of assets. If a registrant transfers, sells or assigns its registration or its 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 Ordinance. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective closing date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, and is in compliance with the provisions of this Ordinance, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Ordinance as it may have been amended, then the transferee, buyer or assignee shall register as provided in this Ordinance within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate Town officials that the transferee, buyer or assignee is the new applicant.
- (15) Pledges in trust or mortgages of the registrant may be made to any person with notice to the Town. Any mortgage, pledge, lease or other encumbrance on the communications facilities shall be subject and subordinate to the rights of the Town under this Ordinance and applicable law.
- (16) Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications 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 Ordinance shall affect the Town's

authority to add, vacate or abandon public rights-of-way, and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

- (17) Conditional use of public rights-of-way.
- (a) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the Town for such activities as may be required by applicable law.
  - (b) To the extent that any person or registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the Town, such person or registrant shall make no claim, nor assert any right which will impede the lawful exercise of the Town's rights, including requiring the removal of such facilities from the public rights-of-way of the Town, regardless of the effect on registrant's ability to place or maintain its own communications facilities in public rights-of-way of the Town.

#### **Sec. 5. Requirement of a Permit.**

- (a) In accordance with applicable law, Town ordinances, codes and regulations, including this Ordinance, a right-of-way use permit issued by the Town shall be required for a communications services provider, communications facility provider or a pass-through provider to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this Ordinance. 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. A registrant shall not commence to place or to maintain a communications facility in the public rights-of-way until all applicable permits have been issued by the Town or other appropriate authority. Registrant shall comply with all Town requirements for issuing permits, including reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The Town may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements. Requests for ancillary permits required to operate a communications facility, including but not limited to electrical permits, shall be processed pursuant to the Town's rules and regulations. The Town may deny or withhold the ancillary permit if the registrant is otherwise in violation of the Town Code.
- (b) Limited Exceptions to Permit Requirement.
  - (1) A registrant that is in compliance with this Ordinance shall be allowed to perform service restoration work on existing facilities, or repair work, including but not limited to, emergency repairs of existing facilities or extensions of such facilities for providing communications services to customers without a permit. A registrant performing work without a permit shall ensure that there is photographic and video documentation of the work, including depiction of the area of the public rights-of-way impacted, and such photographic and video documentation shall be provided to the Town within ten (10) business days, unless otherwise not required by the Town. The term EMERGENCY shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of

a pre-existing service. Registrant shall provide prompt notice to the Town of the service restoration work or repair work and, within two (2) business days of commencing the work, and shall apply for a permit if such activity required a permit under this Ordinance within 30 days. Any maintenance of traffic required for service restoration or repair work shall meet the requirements of the latest edition of the FDOT 600 Series Standard Drawings and the Manual on Uniform Traffic Devices.

- (2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way without a permit if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation or utilities in the public rights-of-way. In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the Town identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. If routine maintenance requires the closure of the public rights-of-way regardless of the duration, a road or sidewalk closure permit consistent with the Town's rules and regulations shall be required. As-built plans shall be provided to the Town within ten (10) business days. A registrant shall be allowed to perform maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way without first obtaining a permit. All underground work or excavation without a permit shall be photographed and videotaped, and such photograph and videotape documentation shall be provided to the Town upon request or, if not requested, within ten (10) business days.
- (3) A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size. If such replacement will require the closure of a rights-of-way, the registrant shall obtain an appropriate road or sidewalk closure permit consistent with the Town's rules and regulations. A registrant shall provide 48 hours' notice to the Town prior to such work being done. As-built plans shall be provided to the Town within ten (10) business days.
- (4) A registrant shall be allowed to place or to maintain a service drop within the public rights-of-way without first obtaining a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights-of-way.
- (5) A permit shall not be required for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under F.S. Chapter 202. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, the registrant shall submit a notarized letter to the Town from or on behalf of the communications services provider, which shall be effective upon filing, attesting that the micro wireless facility's dimensions comply with F.S. § 337.401(7) and this Ordinance. A registrant's submission to demonstrate a micro wireless facility's dimensions may apply to all of the same, substantially similar, or small size micro wireless facilities sought to be placed in the public rights-of-way by such registrant. If the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way. As-built plans shall be provided to the Town within ten (10) business days.
- (6) Notwithstanding the exceptions to permit requirements contained in this subsection, a registrant shall obtain from the Town a right-of-way permit for work that involves

excavation, closure of a sidewalk regardless how temporary, or closure of a vehicular lane or parking lane regardless how temporary, unless the registrant is a communications services provider that is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, including but not limited to, the requirement to notify Sunshine 811 prior to any excavation or demolition activities in accordance with F.S. Chapter 556, and to comply with the Town Code. In such instance, to the extent not inconsistent with the 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual, the communications services provider shall provide information acceptable to the Town as to the service restoration work and shall provide reasonable advance notice to the Town so that the Town may have an observer present. The Town may require a specific method of excavation and a maintenance of traffic or sidewalk closure plan, as applicable. In addition, the registrant shall file for an after the fact permit within 30 days after completing restoration of the public rights-of-way. A registrant performing work without a permit shall ensure that the work is photographed and videotaped, including of the area of the public rights-of way impacted, and such photograph and videotape documentation shall be provided to the Town upon request or, if not requested, with the after the fact permit application.

- (c) The Town Manager may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable to appropriate enforcement remedies as set forth in this Ordinance and applicable law.

#### **Sec. 6. Permit Information Requirements and Review Procedures.**

- (a) Pre-submittal meeting. To minimize issues related to a permit request, prior to submitting materials for a permit request, which does not include an application for a small wireless facility or a new utility pole to support a small wireless facility, a registrant shall conduct a pre-submittal meeting with the Town to discuss the registrant's plans and network goals for placing or maintaining facilities in the public rights-of-way. The Town shall undertake efforts to accommodate a registrant's request for a pre-submittal meeting either in person or electronic communications within ten (10) business days. At a registrant's request, the Town, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this Ordinance. In no event shall the requirement of a pre-submission meeting be waived for a permit request that involves excavation of over 50 feet of public rights-of-way. The requirement of a pre-submittal meeting does not apply to applications. However, even if a pre-submittal meeting may not be required under applicable law, registrants are strongly encouraged to engage in a pre-submittal meeting. A pre-submittal meeting, whether required herein or voluntary on the part of a registrant, shall not commence the time frames provided herein for Town review and processing of a request or an application.
- (b) Requirements for all communications facilities in the public rights-of-way. As part of any permit application or request to place or maintain any facility pursuant to this Ordinance in the public rights-of-way, a registrant or a registrant's agent or contractor shall complete a permit form provided by the Town that, at a minimum, includes the following information:
  - (1) If the person seeking the permit is not the registrant, a statement of authority by the registrant to act on behalf of the registrant. In addition, if the person seeking the permit is a contractor, the contractor's license or registration and contractor's insurance information confirming the contractor's authority to perform construction in the Town and statements as to whether the contractor has any open permits

with the Town, and if so, the permit identification number or information.

- (2) Confirmation that the registrant or person seeking the permit engaged in a pre-submittal meeting, if required, or such meeting was waived by the Town and that the registrant has an effective registration with the Town, and is otherwise in compliance with the Town Code.
- (3) Engineering plan. An engineering plan signed and sealed by a licensed engineer, that includes the following:
  - (a) Except for applications to collocate small wireless facilities on existing utility poles in the public rights-of-way, an American Land Title Association (ALTA) or other survey pursuant to the Town's form demonstrating that the proposed location of the facility or utility pole is within the public rights-of-way, unless waived by the Town in its sole discretion, pursuant to an applicant's or requester's attestation that the proposed facility is located with the public rights-of-way;
  - (b) The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, stealth design, and concealment features of the proposed facility;
  - (c) The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six (6) decimal point precision or as otherwise required by the Town ;
  - (d) Whether the proposed facility is proposed within a location subject to restrictions pursuant to this Ordinance;
  - (e) For new communications facilities and extensions of existing communications facilities that require a permit, within a fifty (50) foot radius, a sketch showing pavement, sidewalks, driveways, ramps, trees, below-grade utilities, and other above-grade and below-grade structures and facilities located within the public rights-of-way and the distances from the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, underground utilities and other above-grade and below-grade structures and utilities located within the public rights-of-way;
  - (f) Sufficient specificity demonstrating compliance with applicable codes, as defined herein and as may be amended;
  - (g) If applicable, the routes of all transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);
  - (h) Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;
  - (i) Certification that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook;
  - (j) Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement; and
  - (k) Other engineering information that may be requested by the Town.

- (4) Trees or landscaping proposed to be removed or impacted upon the placement or maintenance of the proposed facility.
- (5) Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.
- (6) Description of installation or construction. A description of the method by which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques).
- (7) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
- (8) Temporary Traffic Control (TTC) plan. The applicant shall provide a temporary traffic lane closure and Temporary Traffic Control (TTC), if appropriate, to accommodate placement or maintenance of the facility.
- (9) Restoration plan and estimated cost of restoration of the public rights-of-way. A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way by a licensed engineer. Such good faith estimate shall be accepted by the Town unless the Town determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, multi-purpose trails, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced. Tree or landscaping removal shown on the permit shall not be considered damage or impairment to be restored to the original condition provided the applicant or requester complies with the approved mitigation plan, if any.
- (10) Timetable for construction or installation. The timetable for construction, placement or maintenance of the proposed facility or each phase thereof.
- (11) Indemnification. A statement shall be included with the permit application or request that by execution of the application or request and by filing for the permit, the registrant shall be bound to the Town with respect to the indemnification provisions set forth in this Ordinance.
- (12) Airport airspace protection. If applicable, certification of compliance with Chapter 333, F.S. and all Town, State and federal laws and regulations, as amended, pertaining to airport airspace protections.
- (13) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an authorized representative of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine (9) months after the date the application is approved.
- (14) Pole attachment agreement. If applicable for the proposed facility, except for registrants whose pole attachments are regulated by 47 U.S.C. §224, the registrant shall provide a copy of a fully executed valid pole attachment agreement between

the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the registrant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the Town, and indicating the registrant is authorized to install its facility on the identified utility pole. By submitting the Town's permit form, the registrant certifies to the Town that it has authority from the utility pole owner to collocate its facility.

- (15) Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the height and GPS location of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade in place within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.
- (16) If the permit request includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfies the applicable codes as well as codes and standards of the National Fire Protection Association.
- (17) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility or utility pole in the public rights-of-way, the applicant shall provide the following:
  - (a) Documentation to the satisfaction of the Town from a licensed engineer, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;
  - (b) Certification and description by the applicant to the satisfaction of the Town how the proposed small wireless facility or utility pole complies with the objective design standards set forth in this Ordinance. For a proposed ground-mounted small wireless facility, such information shall include whether the proposed small wireless facility includes a wrap that has been approved by the Town or is of an architectural design that is substantially similar to other infrastructure in the area of the public rights-of-way or has been approved by the Town.
  - (c) Accurate photo simulations of the proposed utility pole or small wireless facility and if applicable, as collocated on the utility pole.
- (18) Applicable permit fees including reimbursement for Town consultants, to the extent not inconsistent with applicable law. The Town acknowledges that currently, applicable law does not allow the Town to charge permit fees.
- (19) Consolidated permit application and single application or request for multiple locations. A registrant may submit a single application or request to place or to maintain multiple facilities in the public rights-of-way, where it would be more efficient for the registrant and the Town to address multiple facilities in one permit. An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application for each of the proposed small wireless facilities. In addition, prior to applying for a consolidated permit, the applicant is strongly encouraged to engage in a pre-submittal meeting with the Town to discuss all proposed small wireless facilities. If the application includes multiple small wireless facilities, the Town may separately address small wireless facility

collocations for which incomplete information has been received or which are denied. Each proposed utility pole to be placed in the public rights-of-way for the collocation of a small wireless facility shall require a separate application, and each communications facility to be placed in the public rights-of-way except for the collocation of a small wireless facility, shall require a separate request unless the Town consents at a pre-submission meeting to a single application or request for such multiple facilities.

- (20) To the extent not inconsistent with applicable law, such additional information requested by the Town reasonably necessary for the permit application or request.
- (c) Application Review and Procedures for Small Wireless Facilities and Utility Poles for Collocation of Small Wireless Facilities.
- (1) Time periods within this subsection shall be extended for the period of time impacted by a force majeure event or by a declared State of Emergency by the Town, Martin County, or Governor that impacts the Town ("force majeure extension). If a registrant opposes a force majeure extension pursuant to this subsection, it shall notify the Town within 24 hours of such extension becoming effective or the registrant shall be deemed to have consented to the extension. Except as otherwise provided herein, requests for permits for the placement of communications facilities in the public rights-of-way, including but not limited to backhaul facilities, shall be subject to the time frames and review procedures set forth in this subsection; requests shall be considered to be applications; and requesters shall be considered to be applicants for purposes of time frames as referenced in this subsection. The time frames and procedures herein shall not apply to other requests that do not involve the placement of communications facilities in the public rights-of-way, including but not limited to, request for permits to perform maintenance on existing communications facilities in the public rights-of-way.
    - (a) Unless extended by mutual consent of the applicant and Town, within 14 days after receiving an application, the Town Manager will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the Town will specifically identify the missing information. An application is deemed complete if the Town fails to provide notification to the applicant within 14 days.
    - (b) Negotiation Process.
      - (1) Unless extended by mutual consent of the applicant and the Town, within 14 days after the date of filing the application, the Town may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative Town utility pole or support structure or may place a new utility pole. The Town and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request.
      - (2) At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the Town of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.
      - (3) If an agreement is not reached, the applicant must notify the Town

of such nonagreement and the Town must grant or deny the original application within 90 days after the date the application was filed unless extended by mutual consent of the applicant and Town. Failure of the applicant to so notify the Town as required herein shall be deemed to constitute the applicant's consent to the Town's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

- (c) The Town processes all applications on a nondiscriminatory basis. Unless the Town and the applicant engage in negotiations as provided above, the Town will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within 60 days after the receipt of a completed application.
- (d) Extension of time. If the Town and the applicant do not engage in negotiations, the applicant and Town may mutually agree to extend the 60-day application review period. The Town shall grant or deny the application at the end of the extended period.
- (e) Basis to Deny Applications. The Town may deny an application for a proposed collocation of a small wireless facility or to place a utility pole used to support a small wireless facility in the public rights-of-way if the proposed small wireless facility or utility pole to support a small wireless facility:
  - (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Materially fails to comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual;
  - (5) Fails to comply with applicable codes;
  - (6) Fails to comply with objective design standards set forth in this Ordinance; or
  - (7) Fails to comply with the Town Code, to the extent not inconsistent with applicable law.
- (f) Cure Procedure.
  - (1) If the application or request is denied, the Town will specify the basis for the denial, including the specific code provisions on which the denial was based, on the day the Town denies the application or request.
  - (2) The registrant may cure the deficiencies identified by the Town and resubmit the application or request within 30 days after the

notice of denial is sent.

- (3) If an attempt to cure is submitted by the registrant within such 30-day period, the Town will approve or deny the revised application or request within 30 days after receipt of the revised application. If the registrant revises any information in the application or request other than to address expressly the deficiencies identified by the Town, the registrant shall submit a new application or request and the denial of the pending application or request shall be final.
- (4) The Town's second and subsequent reviews of revised applications or requests will be limited to the deficiencies cited in the denial notice.
- (g) A permit issued pursuant to an approved application or request to install a new communications facility shall remain in effect for one (1) year unless otherwise extended, suspended, or revoked by the Town pursuant to this Ordinance. If a communications facility including a small wireless facility or utility pole is going to be installed without a permit pursuant to this Ordinance or applicable state or federal law, the applicant or requester shall nevertheless be required to have an effective registration, comply with development standards and provide the bonds required in this Ordinance prior to performing construction.
- (h) A permit from the Town constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (2) Review Procedures and Basis to Deny Requests.
  - (a) Time Frames. The Town shall review and process other requests that are not for the placement of communications facilities, including but not limited to, requests for a permit to perform maintenance or to remove facilities, consistent with time frames required under applicable law and the Town's standard procedures.
  - (b) Basis to Deny. Except for applications for permits to collocate small wireless facilities or for utility poles to support the collocation of a small wireless facility addressed above, the Town may deny a request for a permit to place or to maintain communications facilities in the public rights-of-way, including but not limited to, a permit to place backhaul facilities, consistent with applicable law and the Town's standard procedures.
  - (c) Review procedures for wireless facilities modifications pursuant to the Spectrum Act. A registrant may file an eligible facilities request to modify an existing tower or base station in the public rights-of-way, that does not substantially change the physical dimensions of such tower or base station, pursuant to Section 6409(a) of the Spectrum Act of 2012, 47 U.S.C. §1455(a), and FCC regulations adopted thereto, 47 C.F.R. §1.6100, as amended. Such request shall include the following: (1) confirmation that the registrant possesses an effective registration and submitted a permanent performance bond with the Town; (2) a statement that it is an eligible facilities request, (3) a report, signed and sealed by a licensed engineer, that addresses the factors set forth in the FCC regulations, including a description of proposed modifications and the

factors regarding whether the proposed modifications constitute a substantial change, and (4) a certified copy of the permit for the existing tower or base station that is proposed to be modified. The Town shall review such request pursuant to the procedures set forth in the FCC regulations, notwithstanding other provisions of this Ordinance. The procedures in this Ordinance for appeal shall apply.

(3) Suspension and revocation of permits.

(a) The Town may order the suspension of placement and maintenance work under a permit and ultimately may suspend or revoke any permit, in the event of a material breach of the terms and conditions of any applicable codes, this Ordinance, State and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:

- (1) The violation of any material provision of the permit or applicable codes;
- (2) An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the Town;
- (3) Any material misrepresentation of fact in the process of permittee's request or application for a permit or registration;
- (4) The failure to maintain the required performance cash bond or insurance;
- (5) The failure to properly restore the public rights-of-way;
- (6) The failure to comply within the specified time with an order issued by the Town;
- (7) The failure to register, renew a registration, or provide notice of transfer in accordance with this Ordinance;
- (8) The failure to relocate or remove facilities pursuant to this Ordinance and F.S. §§337.402, 337.403 and 337.404, as amended;
- (9) Conducting work in the public rights-of-way without a permit, if required.

(b) If the Town determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes or this Ordinance, the Town shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the Town may place additional or revised permit conditions on the permit following a substantial breach. In addition, the Town may refuse to issue new permits and may deny an application or request for a new permit to a registrant or registrant's contractor that has materially violated any provisions of a permit or applicable codes or this Ordinance, until such time as the registrant cures the violation to the satisfaction of the Town, including paying any damages, costs or penalties that may have been assessed.

(c) Within thirty (30) days of receiving notification of the breach, the permittee shall contact the Town and provide a plan, acceptable to the Town. The Town shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the Town, or the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be

cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the Town's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens the health, safety or welfare of persons or property.

- (d) If a permit is revoked, the permittee shall reimburse the Town for the Town's reasonable costs, including restoration costs, administrative costs, and the cost of collection. These costs may also be deducted from the registrant's permanent performance cash bond in the Town's discretion.
  - (e) The Town Manager may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.
- (4) Requests for waivers.
- (a) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.
  - (b) A waiver may be granted by the Town Manager in those circumstances where a competitively neutral use of the public rights-of-way is impaired by strict application of the requirements of this Ordinance, in violation of applicable law.
  - (c) A request for a waiver shall be filed either prior to or contemporaneously with the permit application. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:
    - (1) A detailed explanation, with supporting engineering information by a Florida licensed engineer or other data, as to why a waiver from the requirements of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;
    - (2) Nature and characteristics of the surrounding neighborhood;
    - (3) Any special conditions and circumstances affecting the proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;
    - (4) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
    - (5) Design of the proposed facility with particular reference to achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;

- (6) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. §12101, *et seq.*, and applicable codes;
  - (7) A request for waiver of the objective design standards contained herein shall include a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or utility pole, or are technically infeasible with supporting information from a licensed engineer, or that the design standards impose an excessive expense on the registrant with information as to the additional costs of compliance with the standards and the registrant's anticipated revenue from the proposed facility or assets. The Town shall grant or deny a request for a waiver of objective design standards within forty-five (45) days after receiving the request for waiver unless the applicant and Town consent to an extension, subject to a force majeure event.
  - (8) Any other information the Town may reasonably require to process the request for waiver.
- (d) Except for a request for a waiver of objective design standards, the Town shall grant or deny a request for a waiver of any other provisions of the Town Code pursuant to its standard procedures for requests for waivers or variance of its Code, consistent with applicable law. If a request for waiver or variance is not processed by the Town within the time frame for granting or denying an application or request for a permit, the Town shall deny the permit application or request unless the Town and the registrant consent to an applicable extension. In granting any waiver, the Town may impose conditions to the extent the Town determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public.
  - (e) Should a request for waiver, and ultimately a permit, be denied by the Town, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Ordinance.
- (5) Appeals.
    - (a) Final, written decisions of a designee of the Town Manager, including but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration or denying a request for a waiver, or imposing costs or a fine, are subject to appeal to the Town Manager. An appeal must be filed with the Town Manager within thirty (30) days of the date of the final, written decision to be appealed. An appeal that is not timely filed as set forth herein shall be waived. The Town Manager shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the Town and no new information shall be considered. Subject to a force majeure event, the hearing shall occur within 30 days of the receipt of the appeal, unless waived by the applicant, and a written decision shall be rendered within 20 days of the hearing.
    - (b) An appeal from a decision of the Town Manager or a hearing officer may be appealed to the Town Commission within 30 days, by filing a written

notice of appeal with the Town Clerk and providing copies to the Town Manager and the Town Attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee to be established by administrative order of the Town Manager. The Town Commission may affirm, modify or reverse the decision of the Town Manager. The Town Manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the Town commission. Nothing contained herein shall preclude the Town Commission from seeking additional information prior to rendering a final decision. The decision of the Town Commission shall be by resolution and a copy of the decision shall be forwarded to the Town Manager and the appealing party. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the Town Commission may appeal an adverse decision to the Circuit Court In And For Martin County or applicable federal district court. The party making the appeal shall be required to pay to the Town Clerk a fee to be established by administrative order of the Town Manager, to defray the costs of preparing the record on appeal. Said fee shall be effective upon approval by the Commission. To the extent required by applicable law, the Town shall waive any claim or defense based on failure to exhaust administrative remedies if the Town's administrative review is not complete within 45 days after a person files a complete request for review.

**Sec. 7. Performance construction bond and permanent performance bond.**

- (a) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to this Ordinance, a registrant or contractor that applies for a permit on behalf of a registrant shall deposit with the Town a performance construction bond acceptable to the Town to secure the restoration of the public rights-of-way, and to ensure the registrant's or contractor's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the code. The performance construction bond shall be conditioned upon the full and faithful compliance by the registrant or contractor with all requirements, duties, and obligations imposed by the permit and provisions of this Ordinance during and through completion of the placement or maintenance project. The performance construction bond shall be in an amount as determined by the Town based on one-hundred ten percent (110%) of the estimated costs of the restoration of the public rights-of-way submitted by the registrant. For a consolidated permit, the registrant or contractor shall provide a performance construction bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event, shall be less than ten thousand dollars (\$10,000). Notwithstanding any provision herein, the minimum amount of the performance construction bond for a new or replaced utility pole or small wireless facility over six (6) cubic feet shall be twenty-five thousand dollars (\$25,000). The Town shall not require a performance construction bond if the estimated cost of restoration of the public rights-of-way is less than one thousand dollars (\$1,000).
- (b) In the event a registrant or contractor subject to such a performance construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit or code, there shall be recoverable, from such construction bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the

registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.

- (c) The performance construction bond shall be non-cancelable and shall be for a term of not less than one(1) year but not more than 18 months after the anticipated date of the later of completion of construction, restoration and Town inspection. No less than one-year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant or contractor may request that the Town remove the requirement to continue the performance construction bond. In accordance with the current standards of the Town, and satisfaction of all obligations in accordance with the bond, the Town shall return the performance construction bond without interest. Notwithstanding, the Town shall require a new performance construction bond for any subsequent work performed in the public rights-of-way as required by this Ordinance. Notwithstanding this provision, to the extent required by applicable law, the Town shall accept a letter of credit or similar financial instrument as a construction bond issued by any financial institution that is authorized to do business within the United States, provided that a claim against the financial instrument may be made by electronic means, including by facsimile. A provider of communications services may add the Town to any existing bond, or other relevant financial instrument, and the Town shall accept such proof of coverage without any conditions other than consent to venue in Martin County for purposes of any litigation to which the Town is a party.
- (d) Permanent Performance Bond.
  - (1) The Town is concerned that, based on past experience in the Town and throughout the State, the placement and maintenance of communications facilities in the public rights-of-way has the potential to cause significant damage to the public rights-of-way and to utilities within the public rights-of-way, creating disruption to the Town residents, businesses and the travelling public. In addition, the Town is concerned that it will not be able to obtain adequate security to address damage to public rights-of-way or to utilities, because of restrictions on construction bonds, placement and maintenance of facilities lawfully or unlawfully without permits, inaccurate locates, permits issued by other government entities within the Town that could impact Town utilities, and other issues associated with such facilities in the public rights-of-way. Accordingly, pursuant to the Town's authority and obligation to manage the public rights-of-way and to provide for the public safety in the exercise of its police power, and to the extent not inconsistent with applicable law, the Town shall require all persons that place or maintain communications facilities in the public rights-of-way to establish a permanent performance bond in the Town's favor.
  - (2) A Registrant or Facility Owner who places or maintains communications facilities in the public rights-of-way, shall file with the Town, for Town approval, a permanent performance bond in the amount of twenty-five thousand dollars (\$25,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a separate account or Town account. The letter of credit shall be issued by a United States financial institution that allows drawing on the letter of credit via electronic means including facsimile, agrees to the jurisdiction of the appropriate court within Martin County, and shall be in a form and issued by a financial institution acceptable to the Town Attorney. The permanent performance bond shall be conditioned on the full and faithful performance by the Registrant or Facility Owner of all requirements, duties, and obligations imposed by the provisions of this Ordinance and applicable law, including but not limited to requirements to restore the public rights-of-way and to guarantee such restoration, to remove any abandoned communications facilities, to indemnify the Town as required herein, and to pay for any damage to Town or other facilities in the public rights-of-way. The permanent performance bond shall not constitute a fee, tax or other imposition on a dealer of communications services in its

capacity as a dealer of communications services or compensation for use of the public rights-of-way and shall not be used by the County as such. Should the Town draw upon the permanent performance bond, the Town shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed by the provisions of this Ordinance, subject to providing prior notice and a reasonable opportunity to cure the failure, there shall be recoverable, jointly and severally from the principal and surety of the permanent performance bond, including a letter of credit, any damages or loss suffered by the Town as a result, including the full amount of any damages, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees. The cash deposit or letter of credit shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the person's full and faithful performance at all times. A registrant may change the form of the permanent performance bond on file with the Town on an annual basis. A registrant may request that the Town return the permanent performance bond or approve the cancellation of the performance bond upon the expiration of a registrant's obligations pursuant to the Town Code and in no event while a registrant maintains any obligations with respect to facilities in the public rights-of-way. If the Town determines it is appropriate to return the permanent performance bond, a cash deposit retained by the Town shall be returned without interest.

- (3) For new registrants seeking to place or to maintain communications facilities in the public rights-of-way, the permanent performance bond required herein must be filed with the Town prior to any construction associated with the placement or maintenance of a communications facility in the public rights-of-way. For existing registrants, permanent performance bonds currently on file with the Town, either in the form of a cash deposit or letter of credit, shall satisfy the requirement of this subsection and shall continue to be maintained by the Town. To the extent that a communications services provider, wireless provider, or pass-through provider with facilities in the public rights-of-way, does not have a permanent performance bond filed with the Town as required herein, said person shall submit the permanent performance bond as provided herein, within ninety (90) calendar days from the effective date of this Ordinance. No permits shall be issued to a person for placement or maintenance of facilities within the public rights-of-way without a permanent performance bond filed with the Town. For activity that does not require a permit, no placement or maintenance of a communications facility in the public rights-of-way shall be performed by or on behalf of a registrant that does not have a permanent performance bond on file with the Town. In addition to other remedies provided herein, including but not limited to, revoking a registration, denying or withholding permits, or issuing a stop work order, the Town may pursue code enforcement actions against any person who violates this subsection.
- (4) Any person who seeks a waiver of the requirement of a permanent performance bond or seeks to pursue a challenge to such requirement shall submit an appeal to the Town Manager setting forth the basis for such person's position, pursuant to the procedures set forth in this Ordinance. The Town Manager shall render a decision which the person may appeal to the Town Commission, pursuant to the procedures set forth in this Ordinance.
- (e) The rights reserved by the Town with respect to any performance construction bond or permanent performance bond established pursuant to this division are in addition to all other rights and remedies the Town may have under this Ordinance, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance construction bond or permanent performance bond will affect any other right the Town may have.

**Sec. 8. Construction Methods for Placing or Maintaining Communications Facilities in Public Rights-of-Ways.**

- (a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable codes and must comply with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. For purpose of complying with the notice and approval requirements contained within the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, the registrant shall provide notice and seek approval from the Town Manager. All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas including maintenance of traffic.
- (b) In connection with excavation in the public rights-of-way, the requirements of this Ordinance shall control to the extent of any conflict with inconsistent provision of the Town Code.
- (c) In addition, in connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.
- (d) To the extent not inconsistent with applicable codes, underground cables, where required, shall have consistent alignment parallel with the edge of pavement, a thirty-six-inch (36") depth of cover for the paved portion of roadways, sidewalks and driveway aprons a twenty-four-inch (24") to thirty-inch (30") depth of cover in all areas except the paved portion of roadways, sidewalks and driveway aprons, and shall have a three-foot (3') horizontal clearance from underground utilities and their appurtenances. Below grade communication facility shall not be allowed under a swale or ditch unless such restriction is waived by the Public Works Operation Manager or Town Manager with appropriate conditions of a permit that the registrant or permittee clean or re-excavate the swale or ditch to its appropriate grade prior to installation of the facility.
- (e) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and FDOT Standard specification 635 and be listed on the FDOT Approved Products List. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.
- (f) Consistent with applicable codes and Town regulations, the Town may require the use of trenchless technology (i.e., directional bore method) or may prohibit underground missile boring for the installation of facilities underground in the public rights-of-way. The registrant shall be solely liable for the displacement, damage or destruction of any property, public rights-of-way, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The Town may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this Ordinance and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the Town.
- (g) In an effort to minimize adverse impacts and disruption in the public rights-of-way and to

other municipal improvements, the Town may require a communications services provider to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the communications services provider's permit application. The Town may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules. Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers to the extent consistent with the federal requirements of 47 U.S.C. §224. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the Town or other appropriate governmental authority, and, where applicable, from the private property owner.

- (h) Limits on excavation in restored rights-of-way. To avoid continual disruption and degradation to the public rights-of-way and in the interest of public safety, an area of the public rights-of-way that has been subject to excavation and restored shall not be subject to re-excavation until at least two (2) years following the completion of such restoration, to the extent not inconsistent with applicable codes and law, unless waived by the Town. If the areas where the excavation is to occur has not been fully restored by a permittee, the subsequent permittee may apply for and the Town may issue a permit that requires the subsequent permittee to restore the public rights-of-way to the original condition and to warrant such restoration consistent with this Ordinance. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way.
- (i) Trees. A registrant shall comply with the requirements of the Town's Land Development Regulations with respect to the proposed removal or disturbance of any trees on private property. A registrant shall not prune, remove or materially disturb trees during placement or maintenance of communications facilities, small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way, unless approved pursuant to an applicable permit issued by the Town, to the extent not inconsistent with applicable law. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be disturbed or removed during placement or maintenance of communications facilities pursuant to a permit issued by the Town. The Town may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan.
- (j) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the Town's satisfaction upon inspection. Registrant shall warrant its restoration for a period of twelve (12) months after completion of such restoration. If the registrant fails to make such restoration within seven (7) calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. §337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the Town to the registrant. Consistent with the Town Code, if the registrant fails to complete restoration work by the estimated date for completion listed in the permit, following notice to the registrant or permittee, the Town shall have the right to restore the right-of-way and to charge the registrant or permittee for actual costs of such restoration work plus 25 percent of such costs for administrative expenses, to the extent not inconsistent with F.S. §337.402, as it may be amended. The costs and

administrative expenses shall not be eligible for credit against any other payments that may be owed by the registrant to the Town. Consistent with the Town Code, the Town Manager shall make inspections to administer and enforce the provisions of this subsection. The registrant or permittee shall notify the Town Manager 48 hours prior to commencing construction and at the time of completion of work under the permit. Upon completion, the Town Manager shall inspect the work to determine whether the restoration has been acceptably completed. In such event, the Town shall notify the applicant in writing that the 12-month restoration warranty period has begun.

- (k) A registrant shall immediately notify the Town of any damage to Town utilities, Town fiber or other Town facilities as a result of a registrant's construction in the public rights-of-way. The registrant shall repair such damage at its expense within the time frame required by the Town given the nature of the damage and impact on Town services. In its discretion, the Town may repair or arrange for the repair of such damage and charge such expense to the registrant.
- (l) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the Town to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon thirty (30) days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. §337.403. The Town may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.
- (m) Removal or relocation at the direction of the Town of a registrant's communications 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. Subject to F.S. §337.403, whenever an order of the Town requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the Town may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. §337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the Town.
- (n) Subject to F.S. §337.403, whenever it shall be necessary for the Town to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the Town Commission to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. §337.404.
- (o) A final order of the Town shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's bond.
- (p) The Town retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the Town, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall attempt to notify the registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.
- (q) The Town shall have the right to make such inspections of facilities placed or maintained

in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. The Town shall have access without charge to any manholes or hand holes at any time, of a communications services provider in which the Town has facilities, provided the Town has given such provider reasonable prior notice so that such provider can have trained personnel present when the accesses such manholes. Notwithstanding the foregoing, the Town, in the proper exercise of its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and hand holes without charge of such provider. In the event the Town 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 Town will provide registrant no less than three days written notice setting forth the violation and requesting correction.

- (r) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, the registrant shall promptly provide revised plans and "as-builts" upon completion of any installation or construction. The plans shall be in a digitized PDF and CAD (Computer Aided Design) file formats, showing the two-dimensional location of the facilities, based on the Town's geographical database or other format acceptable to the Town. The registrant shall provide such plans at no cost to the Town. The Town shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. §202.195, as it may be amended.
- (s) The Town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, fiber, 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 Town in public rights-of-way occupied by the registrant. To the extent not inconsistent with applicable law, a registrant shall allow Town facilities to be collocated within Town'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 registrant and Town and may be subjected to other Town rights-of-way requirements. The Town 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 Town and within said limits as same may from time to time be altered.
- (t) A registrant shall, on the request of any person holding a permit issued by the Town, temporarily raise or lower its communications 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 30-days advance written notice to arrange for such temporary relocation. If the Town requests a temporary raising or lowering of a facility for a public purpose, the Town shall not be charged for the temporary raising or lowering of the facility.
- (u) This Ordinance does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.
- (v) Abandonment. Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-way is to be abandoned, the provider shall notify the Town no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The Town may independently establish that a communications facility has been abandoned. In reaching such determination, the Town may request documentation and/or affidavits from the communications services provider or registrant regarding the active use

of the facility. If the provider or registrant fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant or communications services provider at its expense within thirty (30) days of receipt of notice from the Town. Failure to remove an abandoned facility within the thirty (30) days' period shall be deemed to be the registrant's or communications provider's consent for the Town to remove the facility at the registrant's or provider's expense or for the Town to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection.

- (w) If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

**Sec. 9. Development and Objective Design Standards for the Placement or Maintenance of Communications Facilities in the Public-Rights-Of-Way.**

- (a) Terms and conditions for collocation on Town utility poles.
  - (1) The Town utility poles do not constitute authority utility poles within the meaning of F.S. §337.401(7). Accordingly, the Town, in its discretion, may reject a registrant's request to collocate a communications facility on a Town utility pole in the public rights-of-way. Any registrant allowed to collocate a communications facility on a Town utility pole shall enter into an agreement with the Town that is acceptable to the Town Commission. The Town shall not enter into an exclusive arrangement with any person for the right to attach equipment to Town utility poles. The Town reserves the right to enter into agreements for collocation on Town utility poles in its discretion.
  - (2) Reservation of space on Town utility poles. The Town may reserve the useable space of the vertical pole component of all Town utility poles in the public rights-of-way for future public safety uses. The Town may allow a registrant to replace a Town utility pole at the registrant's sole cost if necessary to accommodate the collocation of the small wireless facility and the town's use. The replaced pole shall continue to be owned by the Town.
  - (3) The rate to collocate a small wireless facility on a Town utility pole in the public rights-of-way shall be negotiated between the Town and registrant.
  - (4) A collocation of a small wireless facility on a Town utility pole shall comply with all applicable codes and this Ordinance, and shall not compromise the Town utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.
  - (5) A collocation of a small wireless facility on a Town utility pole shall not affect the Town's ability to remove or to replace the pole in its sole discretion. A Town utility pole that has been partially removed or has been designated to be removed by the Town shall not be available for collocation or repurpose for collocation. Within thirty (30) days after receiving notification that the Town intends to remove or to

replace the utility pole, the registrant shall remove its collocated small wireless facility at its cost. In the interest of public safety and safety of Town employees, a Town structure in the public rights-of-way used to support an avian structure or facility shall not be available for collocation or repurpose or replacement for collocation. A Town building or Town utility pole extending from a building in the public rights-of-way shall not be available for collocation, or repurpose or replacement for collocation.

- (b) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements unless waived by the Town. In conjunction with granting such waiver, the Town may require conditions on the permit approving such facility.
- (1) A registrant shall comply with and abide by all applicable provisions of the state law and Town ordinances, applicable codes and regulations, quasi-judicially approved conditions for approvals, settlement agreements, applicable contracts, applicable court orders, and applicable provisions of federal statutes, FCC regulations and PSC regulations in placing or maintaining a communications facility in the public rights-of-way. Wireless facilities shall be considered to be structures under the Florida Building Code, Building Risk Category IV, Structures, Chapter 16 Section 1620 – 1621, High Velocity Hurricane Zone Area.
  - (2) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual obstruction to the traveling public's the use of the public rights-of-way or the use of bicycle lanes or multipurpose trails. To avoid such visual obstructions, not utility poles for collocation of small wireless facilities or ground mounted small wireless facilities shall be located within traffic circles.
  - (3) For public safety purposes, aboveground communications facilities, including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on multipurpose trails.
  - (4) Communications facilities shall be placed between the property line and the curb line of a street and shall not be located within a clear zone.
  - (5) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights, accessibility and safety of property owners who abut any of the public rights-of-way. By way of example, the placement or maintenance of a communications facility in the public rights-of-way shall not cause excessive noise or light levels in violation of Chapter 22, Art. III, Section 22-69, of the Town Code, shall not impede ingress and egress to adjacent property, materially block views from or into a business or residence, or materially block visibility of address or other signage on abutting properties.
  - (6) A registrant shall not place or maintain its communications facilities to interfere, displace, damage or destroy any facilities, including but not limited to, the Town drainage plan, sewers, ponds, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities or utilities lawfully occupying the public rights-of-way of the Town, unless waived by the Town.
  - (7) The Town may prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities and utilities in the proposed location of the public rights-of-way, to safely accommodate additional

installations at any location, for the protection of existing facilities and utilities in the public rights-of-way, or to accommodate Town plans for public improvements, other approved capital improvements projects as part of the Town Comprehensive Plan, the Town's smart technology or projects the Town determines are in the public interest.

- (8) Placement within South Beach Road and Blowing Rocks Preserve. Consistent with the Town's Comprehensive Plan, to protect the natural and scenic character of Blowing Rocks Preserve, the Town discourages and will not issue permits for following activities associated with facilities on South Beach Road, unless waived by the Town Manager:
1. Excavation except to repair or to replace existing underground communications facilities;
  2. Installation and maintenance of utility poles for the collocation of communications facilities, including small wireless facilities;
  3. Installation and maintenance of small wireless facilities;
  4. Installation and maintenance of micro wireless facilities;
  5. Collocation of antenna; and
  6. Installation and maintenance of ancillary services, including but not limited to, electric power for such facilities.
- (9) Facilities to be installed underground.
- a) All facilities shall be subject to the Town's non-discriminatory undergrounding requirements that prohibit above-ground structures and utilities in the public rights-of-way.
  - b) Unless waived by the Town, pursuant to the Town's undergrounding project described in the recitals, all communications facilities shall be placed underground, to the extent that utilities other than fire hydrants are required to be located underground, including electric and communications utilities in accordance with the Town Code. In addition, to the extent required by applicable PSC rules and regulations, applicable codes, restrictive covenants, quasi-judicially approved conditions of a development, planned unit development, community development district, or court order, a registrant shall install its facilities underground.
  - c) A registrant shall not place or maintain utility poles for the collocation of small wireless facilities or small wireless facilities in a location in the public rights-of-way where there are no existing electric or communications utility poles and where electric and communications utilities are required to be installed underground to the extent not inconsistent with applicable law.
  - d) New proposed wireline fiber, coaxial cable, or backhaul facilities for small wireless facilities shall be installed underground, unless waived by the Town.
  - e) For purposes of this subsection, unless inconsistent with applicable law, adoption of a final resolution by the Town Commission shall constitute an undergrounding requirement over any area of the public rights-of-way. This subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that if the Town notifies the registrant of the micro wireless facility that aerial communications or electric distribution utilities will be converted to underground utilities, the registrant shall remove its micro wireless facility at its expense within the time frame required by the Town.

- f) Conversion of overhead utilities to underground. Consistent with the Town's completed undergrounding project, no utility poles for the collocation of small wireless facilities, micro wireless facilities, or communications facilities shall be placed in a location in the public rights-of-way where the Town Commission has determined that existing above ground electric and communications utilities should be removed and relocated underground. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the Town's requirements to convert above ground utilities to underground. To comply with the Town's undergrounding requirements, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within 60 days of being notified by the Town that such facilities must be removed. The Town shall have the right to remove such facilities at the registrant's expense if the registrant fails to do so. For small wireless facilities installed before the Town adopts requirements that public utility lines in a particular area must be placed underground, the Town, in its discretion, shall: (a) allow a wireless provider to maintain the small wireless facility in place subject to any applicable pole attachment agreement with the pole owner; or (b) allow the wireless provider to replace the associated pole within 50 feet of the prior location in accordance with the objective design standards contained within this Ordinance.
- g) Notwithstanding the provisions of this subsection, the Town may approve a permit for a new utility pole for collocation of a small wireless facility in an area where all public utility lines must be placed underground, if a wireless provider satisfies the following:
  - i. The wireless provider provides information from a licensed engineer that the Town has not allowed structures to remain above ground that are reasonably available to the wireless provider for the collocation of small wireless facility and that may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;
  - ii. The proposed utility pole otherwise complies with this Ordinance; and
  - iii. The wireless provider provides information acceptable to the Town from a licensed engineer that it is not reasonably able to provide wireless service by collocation on a remaining utility pole or other structure in the rights-of-way.
- (10) Prohibition against placement in violation of OSHA or NESC or NERC rules and regulations. Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities shall not be placed in a location which violates rules and regulations set by Occupational Safety and Health Administration or the National Electrical Safety Code or the North American Electric Reliability Corporation standards. By way of example and not limitation, if required by such rules and regulations, a small wireless facility or utility pole intended to support the collocation of a small wireless facility may not be placed within a ten (10) foot radius of an electric distribution facility or within a twenty (20) foot radius of an electric transmission line.
- (11) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a

homeowners' association unless specifically authorized by the homeowners' association. For purposes of this subsection, to the extent not inconsistent with applicable law, a location in a public right-of-way that abuts parcels within a homeowners' association on both sides of its width shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.

- (12) Placement in relation to adjacent uses of property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design standard, or such spaces do not exist in those locations on existing properties, new communication facilities and new utility poles for collocation of small wireless facilities shall be placed in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building located on property that abuts the public rights-of-way.
- (13) Specific locations, capital improvement projects, districts and community redevelopment agency areas.
  - (a) A registrant shall not place new utility poles for the collocation of small wireless facilities, small wireless facilities or micro wireless facilities within the public rights-of-way in such a location that would interfere with or impair the Town's ability to pursue the projects identified within the Town's Capital Improvement Program (CIP), unless waived by the Town Manager. In conjunction with granting such waiver, the Town may require conditions on the permit approving such facility so as to minimize the impact on the CIP. A registrant shall relocate at its expense, its utility poles, small wireless facilities and micro wireless facilities that need to be relocated to accommodate the Town's CIP construction, to the extent not inconsistent with applicable law.
  - (b) Small wireless facilities, utility poles for collocation of small wireless facilities and aerial communications facilities shall not be permitted in an area within the public rights-of-way that would interfere with a public art program. The Town may notify a registrant to relocate at its cost a utility pole used for collocation of a small wireless facility or ground mounted small wireless facility if such location interferes with a planned installation of art. A registrant that damages an object of art installed pursuant to an art program shall be responsible for the costs of the art and shall indemnify the Town as required in this Ordinance. The Town reserves the right to require an additional bond in conjunction with an application to place or maintain a communications facility in an area where an art object has been located.
- (14) A structure granted a permit and installed pursuant to this Ordinance shall comply with F.S. Chapter 333, and Town or federal regulations pertaining to airport airspace protections.
- (15) Historic preservation. This Ordinance does not limit the Town's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. §332(c)(7), the requirements for facility modifications under 47 U.S.C. §1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws.

Communications facilities shall not be permitted to be collocated on or to interfere with historic property or landmark that may be within or adjacent to the public rights-of-way unless waived by the Town. The Town shall not allow small wireless facilities, utility poles for the collocation of small wireless facilities or micro wireless facilities to be located in a manner that would impact negatively historic property or landmark unless waived by the Town. Historic properties and landmarks may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in the Florida or Town Register of Historic Places, consistent with Town codes, administrative rules, or regulations that were adopted by Town ordinance on or before April 1, 2017, which are applicable to a historic area designation by the state or Town. Any person seeking a permit from any governmental entity with jurisdiction over any historic property within the Town's boundaries shall first submit a request for historic impact review with the appropriate historic governmental authority and shall provide a copy of such request to the Town. Nothing herein shall waive or otherwise impact the Town's requirement and procedures for a certificate of appropriateness in accordance with Appendix A, Land Development Regulations, Article VIII, of the Town Code of Ordinances, if applicable.

(c) Objective design standards.

- (1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed in such a manner to maximize compatibility with the surrounding neighborhood and to minimize any negative visual impact on the surrounding neighborhood. The objective design standards contained in this Ordinance regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the Town.
- (2) Applicants shall not place or maintain signage on communications facilities, including small wireless facilities or utility poles for collocation of small wireless facilities, in public rights-of-way, unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.
- (3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, a permit issued by the Town, or state and federal laws and regulations or as permitted by the Town.
- (4) Design standards for Utility Poles. Stealth design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall comply with applicable codes and shall meet the design standards contained in this subsection unless waived by the Town.
  - (a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be in substantially the same location as the original utility pole.
  - (b) The replaced or restructured utility pole shall be substantially similar in finish, base and pole design, diameter, material and height as the original pole being replaced, unless the Town requires a different design, color or composition to be consistent with applicable Town standards for new utility

poles.

- (c) Unless waived by the Town, the height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same right-of-way, measured from grade, in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet in the same public right-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, antennas, masts or other attachments to the utility pole.
  - (d) Unless waived by the Town, a new utility pole shall be designed to be substantially similar in design to the predominant type of other utility poles at the proposed location in the same block or vicinity of the public rights-of-way. Such design aspects to follow include the material, base, pole diameter and style, location and style of attachments, finish, and cap, as applicable. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed substantially similar to such light poles and to the extent consistent with location context regulations, equidistant between existing poles. Unless waived by the Town, any such stealth utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the code, at the expense of the registrant to the extent not inconsistent with applicable law. By way of example, if a registrant installs a utility pole for collocation of a small wireless facility to resemble a nearby light pole, the registrant is encouraged to include a light that is operated in the same manner as other light poles, at the registrant's expense. The Town Manager may, in the exercise of discretion, approve a collocation of a small wireless facility on a Town light pole that would otherwise not qualify for collocation under this Ordinance.
  - (e) Notwithstanding this subsection, if the proposed location of a new utility pole for collocation of a small wireless facility is within a public right-of-way that is within a particular zoning district, planned unit development, community development district, community redevelopment agency, or a homeowners' association that has design standards applicable to utility poles, such proposed utility pole shall substantially comply with such design standards.
  - (f) If there are no existing utility poles in close proximity to a proposed new utility pole for collocation of a small wireless facility, a proposed new utility pole shall be required to demonstrate the factors required for a proposed utility pole where all utility lines must be located underground.
  - (g) This subsection does not authorize the installation of a new utility pole for collocation of a small wireless facility in a location that is otherwise prohibited pursuant to court order, applicable codes, Florida law, or Town Code including this Ordinance.
- (5) Stealth design for collocation of small wireless facilities.
- (a) Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a shroud. No exposed wires or cables are permitted.

- (b) If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side-mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility, to the extent not inconsistent with applicable law. Unless consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a utility pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.
  - (c) Slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole at the level of the antenna attachment by more than six inches, or if applicable for other than round poles, by more than six inches on each side, and side mounted enclosures, if any, do not extend more than twenty-four (24) inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna.
  - (d) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.
- (6) Small wireless facilities not collocated on utility poles or existing structures.
- (a) Ground-mounted small wireless facilities up to 28 cu. ft. in dimension shall be located within a ten (10) foot radius of the existing structure or utility pole for the collocated small wireless facility.
  - (b) The ground-mounted small wireless facility shall be architecturally designed and of the same materials and color finish to be substantially similar to other at-grade infrastructure within 500 feet of the proposed location in the public rights-of-way such as waste receptacles or utility facilities. If the ground-mounted small wireless facility is not substantially similar to other at-grade infrastructure as set forth herein, the proposed small wireless facility shall be submitted to the Town for review and approval.
  - (c) To the extent not inconsistent with applicable codes, at the Town's direction, ground-mounted small wireless facilities shall be enclosed in a wrap the design of which has been approved by the Town staff. The registrant shall maintain the wrap in good condition at its sole cost and expense. The Town may designate specific areas of the Town where all ground-mounted small wireless facilities must be enclosed in a wrap.
  - (d) To the extent not inconsistent with applicable codes, at the Town's direction the registrant owner of a ground mounted small wireless facility or other ground mounted communications facilities in the public rights-of-way shall

conceal the facility with landscaping and plantings. Landscaping and plantings pursuant to this subsection shall be subject to the Town's approval and be maintained by the registrant at its sole cost and expense consistent with the code for so long as the small wireless facility or communications facility remains in the public rights-of-way.

- (e) The Town Manager is authorized to create a manual showing figures of acceptable and unacceptable designs for facilities to be placed or maintained in the public rights-of-way.
- (7) Development standards for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities.
- (a) Dimensional limits. No communications facility other than small wireless facilities located aboveground, excluding utility poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed within the corporate limits of the Town on any public rights-of-way unless:
    - (1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and
    - (2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and
    - (3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians at the proposed site and does not negatively impact or violate location and other regulations contained in this Ordinance: and
    - (4) The communications facility proposed by the communications provider does not otherwise create a hazard to the public health, safety and welfare
  - (b) Notice to residential areas. Whenever a communications service provider subject to this subsection submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection within residentially-zoned districts in the Town, the applicant shall provide notice by posting an 18" x 24" sign, satisfactory to the Town,

at the proposed location advising residents that they may review the permit application at the Town and provide their comments to the Town. The sign shall be posted a minimum of 30 days prior to any decision being made on the permit application to allow adequate time for input by residents and so as not to unduly delay the processing of any application.

**Sec. 10.Fees and Taxes for Access to Public Rights-of-Way.**

- (a) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay fees and taxes as required by applicable law and ordinances of the Town, including this Ordinance.
- (b) Pass-through providers shall pay to the Town on an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Ordinance shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.
- (c) The Town shall discontinue charging pass-through provider fees to a person that has ceased being a pass-through provider. Any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits communications services taxes imposed by the Town pursuant to Chapter 202, F.S., as amended.
- (d) The initial amount of pass-through provider fees shall be paid prior to issuance of a permit to a pass-through provider based on the facilities authorized to be installed in the public rights-of-way pursuant to the permit. The amount due may be modified based upon the as-builts submitted by the pass-through provider. Subsequent annual payments of pass-through provider fees shall be due and payable on October 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 Town 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 Town may have for additional sums due and payable. All fee payments shall be subject to audit by the Town, 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 Town, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made. A pass-through provider shall provide an annual notarized statement identifying the total number of linear miles of pass-through facilities in the Town's rights-of-way. Upon request from the Town, limited to no more than once annually, a pass-through provider must provide reasonable access to maps of pass-through facilities located in the rights-of-way of the Town. The scope of the request shall be limited to only those maps of pass-through facilities from which the calculation of the linear miles of pass-through facilities in the public rights-of-way can be determined. The request shall be accompanied by an affidavit that the person making the request is authorized by the Town to review tax information related to the revenue and mileage calculations for pass-through providers.
- (e) If the payments required by this Section are not made within ninety (90) days after the due date, the Town may withhold the issuance of any permits to the registrant until the amount past due is paid in full, in addition to any other remedies available pursuant to this Ordinance and applicable law, including but not limited to drawing upon a registrant's permanent performance bond.
- (f) The Town shall not charge fees for registrations and to process applications for permits

*pursuant to this Ordinance to the extent such fees are not authorized by applicable law.*

**Sec. 11. Enforcement Remedies.**

- (a) Nothing in this Ordinance shall affect or limit the remedies the Town has available under applicable law. In addition to any other remedies available at law, including but not limited to F.S. §§166.0415(municipalities) and Ch. 162, (municipalities and counties), or equity or provided in this section, the Town may apply any one or combination of the following remedies in the event a registrant violates this Ordinance, or applicable local law or order related to the public rights-of-way.
- (b) In addition to the Town's ability to terminate a registration pursuant to this Ordinance or to deny, suspend or revoke permits, the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible person to the Town in an amount of not less than \$100.00 per day or part thereof that the violation continues. A registrant's or person's failure to obtain a permit before commencing work, except where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the Town in an amount of not less than \$1,000.00 or maximum amount allowed under applicable law, per day or part thereof that the violation continues.
- (c) In addition to or instead of any other remedy, the Town may seek legal or equitable relief from any court of competent jurisdiction.
- (d) Before imposing a fine, the Town 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 person shall have 30 days to either:
  - i. Cure the violation to the Town's satisfaction, and the Town shall make good faith reasonable efforts to assist in resolving the violation; or
  - ii. File an appeal with the Town to contest the alleged violation pursuant to this Section, which shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30-day period, the Town may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.
- (e) In determining which remedy or remedies are appropriate, the Town or Special Magistrate 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 to prevent further violations, and such other matters as the Town or Special Magistrate determines are appropriate to the public interest.
- (f) Failure of the Town to enforce any requirements of this Ordinance shall not constitute a waiver of the Town's right to enforce that violation or subsequent violations of the same type, or to seek appropriate enforcement remedies.
- (g) In any proceeding before the Town where there exists an issue with respect to a registrant's performance of its obligations pursuant to this Ordinance, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The Town may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Section.
- (h) *Force majeure.* In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a *force majeure* cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant

uses all practicable means to cure or correct any such inability to comply expeditiously.

**SECTION 4.** It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the Town Code, which provisions may be renumbered or re-lettered and the ordinance be changed to "section," "article," or other appropriate word to accomplish such intention.

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

All other ordinances of the Town of Jupiter Island, Florida, or parts thereof in which conflict with this or any part of this ordinance are hereby repealed to the extent of such conflict.

**SECTION 6.** Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

**SECTION 7.** Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

[REMAINDER OF PAGE LEFT BLANK]

PASSED UPON FIRST READING THIS 10<sup>th</sup> OF May, 2021.  
PASSED AND ADOPTED UPON SECOND READING FOLLOWING PUBLIC HEARING THIS 9<sup>th</sup> DAY  
OF June, 2021.

(seal)

TOWN OF JUPITER ISLAND

Walter P. L...  
MAYOR

Mauro M. Calloni  
VICE MAYOR

Michael C. Brooks  
COMMISSIONER

Temple D. Townsend  
COMMISSIONER

[Signature]  
COMMISSIONER

ATTEST:

Kimberly K...  
Town Clerk



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