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MEMORANDUM

To: Mayor Brennan; Council Members Arena, Brandon, Johnson and Stone
Cc: Acting Manager Weinand, Clerk McWilliams
Fr: Attorney Davis

Re: Ordinance revising Village Code for use of Village rights-of-way by communications service providers.

The following describes in detail the above referenced agenda item:

As directed by the Village Council, attached is a proposed ordinance that revises and updates Village Code regarding the use of Village rights-of-way by communications service providers.

The modern trend and state of the art in communications services is “wireless”. With 4G service being the expected norm, and 5G service coming very soon, the need for wireless infrastructure to meet demand for service increases every day. In lieu of the large towers located on private property, providers are more and more looking to the use of rights of way to both increase capacity and “fill the gaps” between the large towers. In 1996, the Federal Telecommunications Act was passed. This law requires non-discriminatory and competitively neutral treatment of all communications service providers. Access and regulatory requirements must be applied equally to all providers, regardless of the technology they use (wired, wireless, DAS nodes, “small-cell” and micro wireless are all varieties of technology currently in use by providers).

Florida law allows a local government to require the registration by service providers as a prerequisite to obtaining building permits to place or maintain their facilities within the jurisdiction’s rights-of-way. Florida law, along with recently issued FCC Orders also allows regulatory features and aesthetic regulations so long as they are neither discriminatory among and between service providers, they are competitively neutral, and they do not act as a barrier to any particular provider in the provision of its services. Additionally, in 2017, Florida law was changed to add the “Advanced Wireless Infrastructure Deployment Act” which significantly preempted local government regulatory authority regarding the co-location of “small wireless facilities” in certain circumstances.

The draft ordinance has four (4) basic sections:

1. Definitions and intent provisions.
2. Registration requirements.
3. Permitting requirements. Here is where we find regulations related to protecting residential rights-of-way, preventing “pole proliferation” by encouraging co-location and imposing a variety of distance separation requirements, encouraging “stealth” design, etc.
4. Administration and enforcement.

The Village has enacted a 12-month moratorium on the acceptance and processing of applications for the placement of facilities in its rights-of-way pending the adoption of the current proposed ordinance. The moratorium is scheduled to automatically terminate in June; however, with second reading scheduled for May, the moratorium will terminate at that time.