

**ORDINANCE NO. 11-19**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF TEQUESTA, FLORIDA, AMENDING THE VILLAGE CODE OF ORDINANCES AT CHAPTER 63. ARTICLE II. RIGHT-OF-WAY REGULATIONS, TO RE-NAME THIS ARTICLE AS “PLACEMENT AND MAINTENANCE OF UTILITY AND COMMUNICATION SERVICE FACILITIES IN VILLAGE RIGHTS-OF-WAY”; TO UPDATE AND ADD CERTAIN DEFINITIONS IN COMPLIANCE WITH FEDERAL AND FLORIDA LAW; TO RECOGNIZE WIRELESS COMMUNICATIONS FACILITIES THAT MAY BE PLACED IN RIGHTS OF WAY AND ACKNOWLEDGE THE “ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT”; TO PROVIDE NEW AESTHETIC REQUIREMENTS AND PROCEDURAL REQUIREMENTS FOR PLACEMENT OF CERTAIN FACILITIES IN RIGHTS-OF-WAY; TO RECOGNIZE PASS-THROUGH PROVIDERS AS SEPARATE AND DISTINCT ENTITIES, AND TO PROVIDE FOR THE COLLECTION OF PASS-THROUGH PROVIDER FEES IN ACCORDANCE WITH STATE LAW; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 63. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Village Council of the Village of Tequesta desires to amend the Village Code of Ordinances at Chapter 63. Right-of-Way Regulations, to update and add certain definitions in compliance with federal and Florida law; to recognize wireless communications facilities that may be placed in rights of way and acknowledge the “Advanced Wireless Infrastructure Deployment Act”; to provide new aesthetic requirements and procedural requirements for placement of certain facilities in rights-of-way; to recognize pass-through providers, communications facility providers, and wireless infrastructure providers as separate and distinct from communications service providers, and to provide for the collection of pass-through provider fees in accordance with state law; and

**WHEREAS**, the Village Council of the Village of Tequesta believes that these regulations will help protect residential property values, maintain aesthetics through residential neighborhoods and generally insure that the residential character of these zones is not damaged

by a proliferation of above ground telecommunications facilities and utilities in rights-of-way; and

**WHEREAS**, the Village Council of the Village of Tequesta believes it to be in the best interests of the health, safety, and welfare of the citizens of the Village of Tequesta that the Village amend its right-of-way ordinance as stated herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF TEQUESTA, FLORIDA, THAT:**

**Section 1:** Chapter 63. Right-of-Way Regulations. of the Code of Ordinances of the Village of Tequesta is hereby amended at Article II, to provide new requirements for placement and maintenance of certain Utility facilities in rights-of-way; providing that Chapter 63 Article II shall hereafter read as follows:

**ARTICLE II. PLACEMENT AND MAINTENANCE OF UTILITY AND COMMUNICATION SERVICE FACILITIES IN VILLAGE RIGHTS-OF-WAY REGULATIONS**

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**DIVISION 1. In General.**

**Sec. 63-25. Title.**

This Article shall be known as the “Placement and Maintenance of Utility and Communication Service Facilities in Village Rights-of-way” ordinance.

**Sec. 63-26. Purpose.**

The purpose of this Article is:

- (a) To establish a competitively neutral policy for the use of the Village’s Public Rights-of-way by all Communications Services Providers, including Wireless Service Providers, as well as Communications Facilities Providers, Wireless Infrastructure Providers, and Pass-Through Providers, for the Placement and Maintenance of Communications Facilities, including Wireless Communications Facilities, and the provision of Communications Services, including Wireless Communications Services and other Utilities, including but

not limited to, those defined in Section 337.401, *Florida Statutes*, as same may be amended from time to time ~~provision of communications services by communications services providers and other utilities; and~~

- (b) To regulate the Placement and Maintenance of Communications Facilities, including Wireless Communications Facilities ~~placement of communications facilities~~ and Utilities in the Village's Public Rights-of-way pursuant to its governmental powers as set forth at Chapter 166, *Florida Statutes*, as same may be amended from time to time, including the encouraging of Co-location and Re-purposing existing Facilities and Structures ~~F.S. ch. 166; and~~
- (c) To prescribe reasonable rules ~~for such uses~~ pursuant to Section 337.401, *Florida Statutes*, the Federal Communications Act of 1934, including without limitation Sections 332 and 253, Section 6409(a) of 47 USC § 1455(a) and Orders issued by the FCC, as each may be amended from time to time, and other federal and State law ~~F.S. §§ 337.401 and 364.0361~~, so as to minimize disruption of services in the Village's Public Rights-of-way, regulate the use of the Village's Public Rights-of-way by all Communications Services Providers, including Wireless Service Providers, as well as Communications Facilities Providers, Wireless Infrastructure Providers, and Pass-Through Providers, and to regulate the Placement and Maintenance of Communications Facilities, including Wireless Communications Facilities, in the Village's Public Rights-of-way ~~communications services providers and other utilities, and to regulate the construction, installation, maintenance, repair, removal and replacement of facilities in the public right of way.~~
- (d) The Placement and Maintenance of Wireless Communications Facilities on private property or property owned, leased or controlled by the Village, other than the Village's Public Rights-of-way, is governed by Chapter 78, Art. IX, Division 5 of the Village's zoning code.

#### **Sec. 63-27. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment or Abandoned means 180 or more consecutive days with the absence of any active Communications Service Providers, including Wireless Service Providers, on a Communications Facility, including a Wireless Communications Facility. Abandoned Communications Facilities shall be removed or cured as required by this Article. This term shall not include 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. For example, cessation of all use of a cable within a conduit, where the conduit continues to be used as referenced above, shall not be "Abandonment" of a Communications Facility. Notwithstanding the foregoing example, if the Communications Facility is attached to an Existing Structure that has an independent function, such as a Utility Pole or the like, said Abandonment of the Communications Facility requires removal of the Communications Facility only and does not require the removal of the Existing Structure. The term shall also exclude the temporary cessation of the provision of Communications Services where the Provider intends to re-establish the provision of Communications Services in the future. For example, cable drops to homes that are deactivated based on competitive alternatives but are maintained for when the customer re-activates service shall not be "Abandonment" of a Communications Facility. The temporary cessation with intent to re-activate must be documented to the satisfaction of the Village.

ADA means the Americans with Disabilities Act, 42 U.S.C. Sec. 12101, et seq., as same may be amended from time to time and regulations promulgated thereunder.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing Wireless Service.

Applicable Codes means 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, or local codes or ordinances adopted to implement the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time. The term includes objective design standards that may require a new Utility Pole that replaces an existing Utility Pole to be of substantially similar design, material, and color of that may require

reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by ordinance that may require a Small Wireless Facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the Village upon a showing that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense. The waiver shall be granted or denied within 45 days after the date of the request.

Arterial Road means a roadway route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance, and constitutes the largest proportion of total travel. In addition, every United States numbered highway is an Arterial Roadway.

Authority Utility Pole means a Utility Pole owned by the Village and located in the Village's Public Right-of way. The term does not include a Village owned Utility Pole in a right-of-way located within a retirement community that:

- (a) Is deed restricted as housing for older persons as defined in Sec. 760.29(4)(b), Florida Statutes, as same may be amended from time to time; and
- (b) Has more than 5,000 residents; and
- (c) Has underground utilities for electric transmission or distribution.

Collector Road means a route providing service that is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. Such a route also collects and distributes traffic between local roads or arterial roads and serves as a linkage between land access and mobility needs.

Co-location or Co-locate means to install, mount, maintain, modify, operate, or replace one or more Communications Facilities on, under, within or adjacent to a pole or other vertical above grade support structure or Utility Pole. The term does not include the installation of a new Utility Pole, other pole, Wireless Support Structure or other above grade support structure in the Village's Public Rights-of-way. The term Co-location also includes the ground or platform installation of equipment enclosures,

cabinets, or buildings, and cables, brackets, and any other equipment associated with the location and operation of the Co-located Communications Facility.

*Communications Facility or Facilities* means any tangible thing located in a Village Public Right-of-way that may be used to deliver or provide Communications Services. The term includes Wireless Communications Facilities and Wireless Support Structures. The term also includes ancillary equipment regardless of whether or not such equipment is included in the calculation of equipment volume. Multiple cables, conduits, strands, or fibers located within same conduit shall be considered one Communications Facility. For purposes of this Article, the term Communications Facility shall not include Utility Poles, and shall not include aerial facilities located between Utility Poles with associated pole attachments which do not provide Communications services is a facility that may be used to provide communications services as defined in F.S. § 337.401(6)(a)2, as may be amended.

*Communications Facility Pole* means a pole-like structure either designed primarily as a Communications Facility or used as a Communications Facility. A Utility Pole is not transformed into a Communications Facility Pole by the Collocation or Attachment of a Wireless Communications Facility (See “Utility Pole” definition below).

*Communications Facility Provider* means a Person (other than a Communications Services Provider operating one or more Communications Facilities located within the Village) who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more Communications Service Providers all or a portion of the tangible personal property used in a Communications Facility. The term includes Wireless Infrastructure Providers. A Pass-Through Provider may be a Communications Facility Provider.

*Communications services* ~~means~~ ~~shall mean~~ the transmission of data or other information between or among points specified by or through any electronic or other medium as defined in F.S. § 202.11(2), as may be amended, conveyance or routing of voice, data, audio, video, or any other information or signals, including Video Services, 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, regardless of the protocol used for such transmission or conveyances in

accordance with Section 202.11, *Florida Statutes*, as same may be amended from time to time. The term includes Wireless Communications Services. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer's premises.
- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

*Communications Services Provider* ~~or provider~~ means shall mean any Person or entity that provides communications services including a municipality or county, providing Communications Services through the Placement or Maintenance of a Communications Facility in Village Public Rights-of-way.

*Communications Services Tax* means the local communications services tax authorized to be levied and collected by counties and municipalities upon chargers for Communications Services, pursuant to Section 202.20, *Florida Statutes*, as same may be amended from time to time.

*Distributed antenna system, or DAS*, is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. A DAS is a Communications Facility.

*Eligible Facilities Request* means a request to place a Wireless Communications Facility in the Village's Public Rights-of-way that, in accordance with the definitions



contained in FCC regulations codified at 47 C.F.R. § 1.40001, does not substantially change the physical dimensions of the Existing Structure and is requesting:

- (a) Collocation of new transmission equipment;
- (b) Removal of existing transmission equipment; or
- (c) Replacement of existing transmission equipment.

*Existing Structure* means a structure within the Village's Public Right-of-way that exists at the time an application for a permit to place a Communications Facility on the preexisting structure is filed with the Village. The term includes any structure that:

- (a) Can structurally support the attachment of a Communications Facility; or
- (b) Can be modified or repurposed to support the attachment of a Communications Facility; or
- (c) Can be removed and replaced with a structure of similar design and purpose as the original existing structure that supports the attachment of a Communications Facility; or
- (d) Other facilities in compliance with applicable codes and laws.

*Facility or Facilities* means any tangible thing located in any Village Public Right-of-way used to deliver Communications Services.

*FCC* means ~~shall mean~~ the Federal Communications Commission.

*Florida licensed professional engineer* means an engineer licensed by the state of Florida who is qualified to provide the information required by this ordinance, or, in the alternative, a full-time employee of an entity regulated by the FCC or the Florida Public Service Commission who is otherwise qualified to provide the information required by this ordinance.

*Information service* means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term does not include Video Service.

*Local Road* means a route providing service that is of relatively low average traffic volume, short average trip length or minimal through-traffic movements, and high land access for abutting property.

Micro Wireless Facility means a Small Wireless Facility that provides wireless service that is not larger in dimension than 24 inches in length, 15 inches in width, 12 inches in height, that has an exterior antenna, if any, no longer than 11 inches.

Order means:

- (a) The following Orders and Rules of the FCC issued in FCC Docket No. 94-102:
  - (i) Order adopted June 12, 1996, with an effective date of October 1, 1996, the amendments to s.20.03 and the creation of 47 CFR § 20.03 and the creation of 47 CFR § 2018, adopted by the FCC pursuant to such Order;
  - (ii) Memorandum and Order No. 97-402, adopted December 23, 1997;
  - (iii) Order No. FCC DA 98-2323, adopted November 13, 1998;
  - (iv) Order No. FCC 98-345, adopted December 31, 1998;
  - (v) Order No. FCC 14-153 adopted October 17, 2014.
- (b) Orders and Rules subsequently adopted by the FCC relating to the provision of 911 services, including but not limited to, Order No. FCC 05-116, adopted May 19, 2005.
- (c) Order No. FCC 18-133 adopted September 26, 2018.

Pass-through provider means any person who, upon registering with the Village, Places or Maintains a Communications Facility in the Village's Public Rights-of-way and that does not remit communications service taxes as imposed by the Village pursuant to Chapter 202, Florida Statutes, as same may be amended from time to time.

Permit means the Public Right-of-way permit that must be obtained before a Person may construct in the Village's Public Right-of-way. For purposes of the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Sec. 337.401(7), Florida Statutes, as same may be amended from time to time, "Permit" means the Public Right-of-way permit that must be obtained before a Person may Co-locate a Small Wireless Facility in the Village's Public Right-of-way.

Person means any natural person or corporate, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility, a successor or

assign of any of the foregoing, or any other legal entity ~~includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations,~~ and all other groups or combinations.

*Place or Maintain or Placement or Maintenance or Placing or Maintaining* means to erect, construct, install, extend, expand, remove, occupy, locate, relocate, repair, upkeep or significantly alter the configuration of a Communications Facility. A Person who owns or exercises physical control to maintain and repair is “Placing or Maintaining” the Facility. A Person providing service only through resale or only through use of a third Person’s Facility is not “Placing or Maintaining” the Communications Facility through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the Village’s Public Rights-of-way does not constitute “Placing or Maintaining” a Communication Facility in the Village’s Public Rights-of-way. Routine and emergency maintenance does not constitute “Placing or Maintaining” a Communications Facility in the Village’s Public Rights-of-way for purposes of this definition.

*Public Rights-of-way or Rights-of-way means ~~shall mean~~ a Public Right-of-way, public Utility easement, highway, street or alley owned by the Village, dedicated to the Village or to the public, or for which the Village holds a property interest and exercises rights of management or control. This term shall include the surface, the air space over the surface and the area below the surface of all public roads, streets, highways, alleys, boulevards, bridges, tunnels, public Utility easements, and all public grounds. This term shall not include any real or personal Village property except as described above and shall not include Village buildings, fixtures, poles, conduits, Facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-way.*

*Registrant ~~means shall mean~~ a Person ~~company~~ that has Registered with the Village in accordance with the provisions of this Article.*

*Registration and Register ~~shall means~~ the process described in section 63-28 herein below whereby a Communications Services Provider, Wireless Services Provider, Communications Facility Provider, Wireless Infrastructure Provider, or Pass-Through Provider ~~communications services provider~~ provides certain information to the Village.*

Repurposed Structure means an Existing Structure that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its primary existing purpose while also supporting the attachment of Communications Facilities, Wireless Communications Facilities or Wireless Infrastructure through Stealth Design or otherwise, that is approximately in the same location as the Existing Structure and in such a manner that does not result in a net increase in the number of structures located within the Village's Public Rights-of-way, does not interfere with pedestrian or vehicular access, and is compliant with the ADA and with Applicable Codes. Unless stated otherwise, all requirements imposed on Communications Facilities, Wireless Communications Facilities or Wireless Infrastructure shall also apply to Repurposed Structures. To "Repurpose and Existing Structure" shall mean the act of renovating, reconfiguring or replacing an Existing Structure as described above. The Communications Service Provider, Wireless Services Provider, Communications Facility Provider Wireless Infrastructure Provider or Pass-Through Provider attaching its Communications Facilities to the Repurposed Structure shall be responsible for Registration and Permitting requirements of this Article for such Communications Facility, Wireless Communications Facility or Infrastructure only, not for the Repurposed Structure itself. A provider who removes all Communications Facilities from a Repurposed Structure that has a primary use other than to support Communication Facilities, e.g. light pole, may be required replace the Repurposed Structure with a facility like that which existed prior to any repurposing at the discretion of the Village.

Small Wireless Facility means a Wireless Communications 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.

*Stealth Design* means a method of camouflaging any Communications Facility, Wireless Communications Facility, etc., including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth Design may include, but is not limited to, use of vegetation, a Repurposed Structure, or a Wrap.

*Utility* or *utilities* means ~~shall refer to~~ any electric transmission, telephone, telegraph, or other communications services lines or Wireless Communications Facilities, pole lines, poles; railways, ditches, sewers, water, heat or gas mains, pipelines, fences, gasoline tanks and pumps, or any other structures, pipes, lines or facilities that providers place in the Village's Public Rights-of-way and which are referred to in the Village's Code or state law as "utilities." as defined in F.S. § 337.401(1), as may be amended.

*Utility Pole* means a pole or similar structure that is used in whole or in part to provide Communications Services or for 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 the Village grants a waiver for such pole. A Utility Pole is not transformed into a Communications Facility pole by the Collocation or Attachment of a Wireless Communications Facility.

*Video service* means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

Village means ~~shall mean~~ Village of Tequesta, Florida.

Village Engineer means a Professional Engineer, licensed to practice in the State of Florida, employed by the Village and designated by the Village as the Village Engineer and is hereby vested with the authority to administer this Article. The term Village Engineer shall also include his or her designee.

Village Manager means the administrative head of the Village, as provided in the Village Charter. The term Village Manager also includes his or her designee.

Wireless Communications Facility means 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 also includes ancillary equipment regardless of whether or not such equipment is included in the calculation of equipment volume. The term does not include:

- (a) The structure or improvements on, under, within or adjacent to the structure on which the equipment is co-located; or
- (b) Wireline backhaul facilities; or
- (c) Coaxial or fiber-optic cable that is between Wireless Support Structures or Utility Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.

Distributed Antenna Systems are a type of Wireless Communications Facility.

Wireless Infrastructure Provider means a Person who has been certified to provide Communications Services in the State and builds or installs Wireless Communications Facilities or Wireless Support Structures, but who is not a Wireless Service Provider.

Wireless Services means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities. The term does not include dispatch service in a more localized, non-cellular configuration, data only service, one-way or stored-voice services on an interconnected basis; air-to-ground services; or public coast stations.

Wireless Services Provider means a Person who provides wireless services. A Wireless Service Provider is a type of Communications Services Provider.

Wireless Support Structure means 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, however, Utility Poles.

Wrap means an aesthetic covering depicting scenic imagery such as vegetation, which blends with the surrounding area. Imagery in a wrap may not contain any advertising.

## **Division 2. Registration.**

### **Sec. 63-28. Registration for Placing or Maintaining Communications Facilities, etc., or Utilities, in the Village's Public Rights-of-way.**

- (a) A Communications Services Provider, Wireless Services Provider, Communications Facility Provider, Wireless Infrastructure Provider, Pass-Through Provider or Utility provider that ~~desires to erect, construct, install, maintain, place, repair, extend, expand, remove, locate or relocate~~ Place or Maintain a permanent or temporary Communications Facility, Wireless Communications Facility or Utility in, on, under, over or across the Village's Public Rights-of-way ~~in the village~~ shall first Register with the Village in accordance with this Article.
- (b) Subject to the terms and conditions contained in this article, a Registrant may Place or Maintain ~~erect, construct, install, place, repair, maintain, expand, remove, locate or relocate~~ a permanent or temporary Communications Facility, Wireless Communications Facility or Utility in, on, over, under, or across the Village's Public Rights-of-way.

### **Sec. 63-29. Nature of registration.**

A registration shall not convey title, equitable or legal, in the Village's Public Rights-of-way. Registration under this Article governs the occupation of the Village's Public Rights-of-way only. Registration does not excuse a Communications Services Provider, Wireless Services Provider, Communications Facility Provider, Wireless Infrastructure Provider, Pass-Through Provider or Utility provider from obtaining appropriate access or pole attachment agreements

before locating its facilities in, on, over, under, or across the Village's Public Rights-of-way, or on the Village's or another Person's facilities. Registration does not excuse any provider from complying with all applicable Village Codes or ordinances, including this Article.

**Sec. 63-30. Registration; effectiveness of registration.**

(a) *Registration.* Any Communications Services Provider, Wireless Services Provider, Communications Facility Provider, Wireless Infrastructure Provider, Pass-Through Provider or other Utility Provider desiring to use the Village's Public Rights-of-way shall first Register with the Village. Registration ~~file a registration form with the village which~~ shall include the following information:

- (1) Name of the applicant; and
  - (2) Name, address and telephone number of the applicant's primary contact person in connection with the registration; and
  - (3) Evidence of the insurance coverage required under this Article and acknowledgment of the indemnity and other provisions of this Article; which acknowledgment shall ~~not~~ be considered an agreement to the provisions; and
  - (4) If the applicant is a corporation or a limited liability company, a certificate of authorization to conduct business in Florida as issued by the Department of State; and
  - (5) The number of the applicant's certificate or certificates of authorization, if any, to provide communications services or any other type of services issued by the Florida Public Services Commission, the Federal Communications Commission the Department of State, or other applicable governing boards or commissions. A Registrant proposing to Place or Maintain a Wireless Communications Facility operating on a spectrum licensed by the FCC shall supply the file number of the FCC license authorizing such wireless service.
- (b) *Review by Village.* The Village will review the information submitted by the Registrant applicant. If the Registrant applicant submits all information in accordance with subsection 63-30(a) above, the Registration shall be effective and the Village shall notify the Registrant applicant of the effectiveness of the Registration in writing. If the Village determines that the information has not been submitted in accordance with the above-



referenced subsection, the Village shall notify the Registrant ~~applicant~~ in writing of the non-effectiveness of the Registration. The Village shall so reply to the Registrant ~~an applicant~~ within 30 days after receipt of the Registration information from the Registrant ~~applicant~~. The Registrant shall have one (1) thirty (30) day period after receipt of such notice within which to cure the deficiency via re-submittal. The re-submittal shall be reviewed by the Village which shall notify the Registrant of the effectiveness of Registration in writing. If the Village determines again that the information has not been submitted in accordance with Village Code Section 63-30(a) herein, the Village shall notify the Registrant of the final non-effectiveness of the Registration. The Village shall so reply to a Registrant within thirty (30) days after receipt of the re-submittal. A Registrant has thirty (30) days after receipt of a final notice of non-effectiveness of Registration to appeal the decision as provided in Village Code Section 63-37. Final non-effectiveness of Registration shall not preclude a Registrant from filing subsequent applications for Registration under the provisions of this Article.

- (c) *Cancellation of Registration.* A Registrant may cancel a Registration upon written notice to the Village that it will no longer Place, Maintain or own any Communications Facility, Wireless Communications Facility or Utility in the Village's Public Rights-of-way ~~of the village~~ and will no longer need to obtain ~~pull~~ permits to perform work in the Village's Public Rights-of-way. A Registrant cannot cancel a Registration if the Registrant continues to Place, Maintain or own any Communications Facility, Wireless Communications Facility or Utility in the Village's Public Rights-of-way.
- (d) *No priority in Registration.* Registration does not establish any priority for the use of the Village's Public Rights-of-way; however an effective Registration is required prior to the issuance of a permit to work in the Village's Public Rights-of-way. The fact that a Communications Services Provider, Wireless Services Provider, Communications Facility Provider, Wireless Infrastructure Provider, Pass-Through Provider or Utility provider is registered shall not establish any right or priority for the use of the Village's Public Rights-of-way.
- (e) *Renewal and Update of Registration.* A Registrant shall renew its Registration with the Village by October 1 of each even numbered year in accordance with the Registration requirements in this Article. Additionally, within 30 days of any change in the

information required to be submitted pursuant to subsection 63-30(a) above, a Registrant shall provide updated information to the Village. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Registrations are expressly subject to any future amendment to or replacement of this Article and further subject to any additional Village ordinances, as well as any state or federal laws that may be enacted during the term of the Registration. If a Registrant fails to renew its Registration, the sole consequence shall be that the Village may restrict the Registrant ~~provider~~ from obtaining permits under subsection (f) below until the Registrant ~~communications services or Utility provider~~ has complied with the Registration requirements of this Article.

- (f) *Permits.* Unless otherwise exempt from permitting elsewhere in this Article or by applicable law, a Permit is hereby required of a Communications Services Provider, Wireless Services Provider, Communications Facility Provider, Wireless Infrastructure Provider, Pass-Through Provider or Utility provider that desires to Place or Maintain erect, construct, install, maintain, place, repair, extend, expand, remove, locate or relocate a permanent or temporary Communications Facility, Wireless Facility or Utility in any Village Public Right-of-way. An effective Registration shall be a condition of obtaining a Permit. An effective Registration does not mean that applicable permitting requirements shall not apply or that such requirements have been or will be deemed to have been satisfied. Permit fees, if any, shall be paid upon the submission of an application for same; the amount of such permit fee, if any, shall be set by resolution of the village council.

#### **Sec. 63-31. Transfer of registration.**

If a the Registrant transfers or assigns its assets located in the Village's Public Rights-of-way, the buyer registration incident to a sale or other transfer of the registrant's assets located within the village, the transferee or assignee shall be obligated to comply with the terms of this Article. Written notice of any such transfer or assignment shall be provided to the Village within forty-five (45) days of the effective date of the closing of the as of the effective date of such transfer or assignment. If the buyer or assignee is not a current Registrant, then the buyer or assignee must Register and may do so in such written notice by including the information

~~required under Village Code Section 63-30(a) herein, including any changed evidence of insurance coverage. In order for the transfer of registration to be effective, such written notice must include the identity of the transferee or assignee, and notice of any changes to the information provided under subsection 63-30(a), including any changed evidence of insurance coverage.~~

**Sec. 63-32. Existing Communications Facilities, Wireless Communications Facilities and Utilities in the Village's Public Rights-of-way.**

Communications Facilities, Wireless Communications Facilities or Utilities which have been constructed or placed in the Village's Public Rights-of-way prior to the effective date of this Article, or any applicable amendment thereto may remain in the Village's Public Rights-of-way so long as the responsible ~~provided~~ the provider complies with the Registration provisions of this Article. Providers with existing Communications Facilities, Wireless Communications Facilities or Utilities have one hundred eighty (180) days from the effective date of this Article to comply with the terms of this Article, or be found in violation thereof.

**Sec. 63-33 - Involuntary termination of Registration.**

(a) Termination events. The Village Manager may terminate a Registration if:

- (1) A federal or state authority suspends, denies, revokes a registrant's certification or license required to provide Communications Services;
- (2) The Registrant's Placement or Maintenance of a Communications Facility, including Wireless Communications Facilities and Wireless Support Structures in the Village's Public Rights-of-way presents an extraordinary danger to the general public or other users of the Village's Public Rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;
- (3) The Registrant violates Section 843.025, Florida Statutes as same may be amended from time to time;
- (4) The Registrant violates Section 843.165, Florida Statutes as same may be amended from time to time;
- (5) The Registrant Abandons all of its Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures in the Village's

Public Rights-of-way without complying with the Abandonment provisions of this Article;

(6) The Registrant commits substantive and material repetitive violations of any of the provisions of this Article.

(b) *Notice of intent to terminate.* Prior to termination, the Registrant shall be notified by the Village Manager, with a written notice setting forth all matters pertinent to the proposed termination action, including the applicable subsections (a)(1) through (a)(6) above, and the reason(s) therefore, and describing the proposed action of the Village with respect thereto. The Registrant shall have fifteen (15) days after receipt of such notice to address or eliminate the reason or to present a plan, satisfactory to the Village Manager to accomplish the same. If the plan is rejected by the Village Manager, the Village Manager shall provide written notice within seven (7) days of such rejection, including a final determination as to termination of the Registration and the terms and conditions relative thereto. The Village Manager's decision shall be deemed to be final agency action and the exhaustion of all local administrative remedies. Any Person aggrieved by any decision of the Village Manager regarding termination of a Registration shall be entitled to pursue any remedy available at law or in equity.

(c) *Post-Termination Action.* In the event of termination, the former Registrant shall (1) in accordance with the provisions of this Article and as may otherwise be provided under state law notify the Village of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures in the Village's Public Rights-of-way; or (2) provide the Village with an acceptable plan for disposition of its Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures in the Village's Public Rights-of-way. If a Registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in this Article, the Village may exercise any remedies or rights it has at law or in equity, including, but not limited to requiring the Registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the registrant and Village Manager, to remove some or all of the Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures from the Village's

Public Rights-of-way and take such steps as are necessary to render return the Village's Public Rights-of-way to their original condition before the initial Placement of the Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures.

(d) Terminated Registrant shall render safe Communications Facilities remaining in the Village's Public Rights-of-way. In any event, a terminated Registrant shall take such steps as are necessary to render safe every portion of the Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures remaining in the Village's Public Rights-of-way.

(e) When removal not authorized. In the event of termination of a Registration, this section does not authorize the Village to cause the removal of facilities used to provide another service for which the registrant or another Person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required, for provision of such service, and is registered with the Village, if required.

### **DIVISION 3. Permitting.**

#### **Sec. 63-34 - Permit requirements and conditions.**

(a) Permit Required. A Registrant shall not commence to Place or Maintain a Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility in a Village Public Right-of-way until all applicable permits, if any, have been issued by the Village, except in the case of an emergency as provided for in Village Code Section 63-34(s) herein, or as otherwise exempt from Permitting requirements as specified in this Article, and as mandated by the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Sec. 337.401(7), Florida Statutes, as same may be amended from time to time. The Registrant acknowledges that as a condition of granting such Permits, the Village may impose reasonable conditions governing the Placement or Maintenance of a Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility in the Village's Public Rights-of-way related to the public, health, safety and welfare as permitted and set forth in Section 337.401, Florida Statutes as same may be amended from time to time; however, no such imposed conditions shall prohibit or

otherwise adversely impact the provision of Communications Services or Wireless Services. Permits shall apply only to the areas of the Village's Public Rights-of-way specifically identified in the permit. In determining whether to permit and reasonably limit, or impose conditions or prohibit a Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility to be placed or located within the Village's Public Rights-of-way, or deny the Permit application, the Village shall consider the following standards and minimum requirements when reviewing and processing a Permit application and when imposing reasonable Permit conditions (Permits for Wireless Infrastructure Providers to Place or Maintain Utility Poles in the Village's Public Rights-of-way to support the Co-location of Small Wireless Facilities, and Permits to Co-locate Small Wireless Facilities shall be governed by subsections (b)(14), (15) and (16) below):

- (1) Sufficiency of space to accommodate present and pending applications for use of the Village's Public Rights-of-way. The sufficiency of space to accommodate all of the present and pending applications to Place Communications Facilities, Wireless Communications Facilities, Wireless Support Structures, Utilities, or other Facilities and pending or planned applications to Place and Maintain Facilities in that area of the Village's Public Rights-of-way, which may require that meters, other ground equipment and similar and associated Facilities be located on or directly adjacent to the pole or support structure upon which an Antenna is located; and
- (2) Sufficiency of space to accommodate the Village's need for public improvements. The sufficiency of space to accommodate Village plans for public improvements or projects adopted as part of its capital improvements plan that the Village determines in the best interest of the public, which may require that meters, other ground equipment and similar and associated facilities be located on or directly adjacent to the pole or support structure upon which an Antenna is located; and
- (3) Impact on traffic and public safety. The impact on traffic and traffic safety, including but not limited to the safe operation of traffic control equipment, pedestrian traffic and general public safety concerns, as well as compliance with applicable ADA requirements; and

- (4) Impact on existing facilities. The impact upon existing Facilities in the Village's Public Rights-of-way, which may require that meters, other ground equipment and similar and associated Facilities be located on or directly adjacent to the pole or support structure upon which an Antenna is located; and
- (5) Distance separation from edge of pavement. No new Communications Facilities, Wireless Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall be Placed or Maintained in the Village's Public Rights-of-way in violation of the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, as same may be amended from time to time. In accordance with said manual, the Village shall have the authority to reduce any offset where that offset cannot be reasonably obtained, and other alternatives are deemed impractical. Additionally, the Village shall have the authority to decide reductions in the clear zone in accordance with the above referenced manual, which may require that meters, other ground equipment and similar and associated Facilities be located on or directly adjacent to the pole or support structure upon which an Antenna is located; and
- (6) Distance separation from sidewalk. No new Communications Facilities, Wireless Communications Facilities, Wireless Support Structures, utilities, or other Facilities shall be Placed or Maintained in the Village's Public Rights-of-way within one (1) foot of a sidewalk that is five (5) feet or less in width, which may require that meters, other ground equipment and similar and associated Facilities be located on or directly adjacent to the pole or support structure upon which an Antenna is located; and
- (7) Installation at outermost boundary of Village's Public Rights-of-way. The Placement of new Communications Facilities, Wireless Communications Facilities, Wireless Support Structures, utilities, or other Facilities is encouraged to be at or near the outermost boundary of the Village's Public Right-of-way, and at the farthest distance practicable from the centerline thereof and edge of pavement. To the extent that the location of the sidewalk within the Village's Public Rights-of-way precludes compliance with other requirements of this

Article, then the Village or the Registrant may propose, and the registrant may include in the Permit application, a re-routing of the sidewalk at the registrant's own expense, in order to meet other requirement of this Article. Compliance with this subsection may require that meters, other ground equipment and similar and associated Facilities be located on or directly adjacent to the pole or support structure upon which an Antenna is located.

(8) *Compliance with other codes.* All work regulated by this Article shall comply with the Florida Department of Transportation Utility Accommodation Manual, as same may be amended from time to time. In addition, such work shall comply with Chapter 333, *Florida Statutes*, as applicable, and federal regulations pertaining to airport airspace protections.

(b) *Permit Applications.* Permit applications to Place or Maintain a Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility in the Village's Public Rights-of-way shall contain the following information; however, Permit applications for Wireless Infrastructure Providers to Place or Maintain Utility Poles in the Village's Public Rights-of-way to support the Co-location of Small Wireless Facilities are governed by the requirements of subsection (14) herein below, and Permit applications for the Co-location of Small Wireless Facilities only are governed by the requirements of subsections (15) and (16) herein below:

(1) *Site plan.* A site plan that show the location of the proposed Facilities in the Village's Public Rights-of-way, in a hard copy format or electronic format specified by the Village. For above ground Facilities, the site plan shall be signed and sealed by a Florida licensed professional engineer. The site plan shall also include:

- (i) a description of the Facilities to be installed, where the Facilities are to be located, and the size, dimensions and height of the proposed Facilities that will be located in the Village's Public Rights-of-way; and.
- (ii) for new Communications Facility Poles or Wireless Support Structures, the number of Co-locations the new poles or structures can support in terms of capacity; and



(iii) a statement signed and sealed by a Florida licensed professional engineer attesting that the new Communications Facility Pole or Wireless Support Structure is designed to meet Florida Building Code Chapter 16 “Structural Design Requirements” specifically with respect to wind loading criteria for high velocity hurricane zones.

(2) *Description of installation or construction.*

(i) A description of the manner in which the Facility will be installed and/or modified (i.e. anticipated construction methods or techniques).

(ii) A description of Stealth Design to be utilized, *see* Village Code Section 63-35(b).

(iii) Alternatively, a signed and sealed statement from a Florida licensed professional engineer that Stealth Design cannot be utilized on any particular Facility and providing documentation demonstrating to the satisfaction of the Village that the proposed Facility cannot employ Stealth Design and the proposed exterior location and configuration of equipment proposed are the minimum equipment necessary to achieve the needed function.

(3) *Temporary sidewalk closure plan.* A temporary sidewalk closure plan, if appropriate, signed and sealed by a Florida licensed professional engineer, given the Facility proposed, to accommodate Placement or Maintenance of the Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility.

(4) *Temporary modification of traffic (MOT) plan.* A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate, signed and sealed by a Florida licensed professional engineer, given the Facility proposed, to accommodate installation and/or modification of the Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility.

(5) *Capacity of abutting Village Public Rights-of-way to accommodate the cumulative impact of the proposed Facility and other Facilities within the Village’s Public Rights-of-way.* Information that the proposed Facility will not materially interfere with other existing and proposed Facilities, including below

grade, at-grade and above grade Facilities, in the Village Public Rights-of-way, if available (such information shall be provided without certification as to correctness, to the extent obtained from other Persons).

- (6) Restoration plan and cost of restoration of the Village's Public Right-of-way. Given the Facility proposed, a restoration plan and an estimate of the cost of restoration of the Village's Public Rights-of-way.
- (7) Timetable for construction or installation and intended areas of service. The timetable for Placement or Maintenance of the proposed Facility or each phase of the Placement or Maintenance thereof, and the intended areas of the Village to be served by the Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility.
- (8) Certification as to removal of Abandoned Facilities. The applicant shall certify that any and all of its Abandoned Facilities within the Village's Public Rights-of-way has or have been removed, indicating the prior location of such Abandoned Facilities.
- (9) Information regarding distance separation. In order to assess the impacts on the Village's Public Rights-of-way resources and the potential for Co-locations or use of Repurposed Structures, identification of all Communications Facility Poles and Wireless Support Structures in the Village's Public Rights-of-way within a three hundred fifty (350) foot radius of the proposed new Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility (such information may be produced without certification as to correctness to the extent obtained from other registrants with Facilities in the Village's Public Rights-of-way). Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time, this requirement shall not apply to applications for Permits for the Co-location of Small Wireless Facilities.
- (10) Identification of all above-grade structures within the Village's Public Rights-of-way within a three hundred fifty (350) foot radius. In order to assess the impacts on the Village's Public Rights-of-way resources, the impact on properties within the Permit area, and the potential for Co-locations or use of Existing Structures,

identification of all above-grade structures in the Village's Public Right-of-way within a three hundred fifty (350) foot radius of the proposed new Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility (such information may be produced without certification as to correctness to the extent obtained from other Registrants with Facilities in the Village's Public Rights-of-way).

(11) Affidavits.

- (i) An application for a Permit to install a new Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility shall include an affidavit from a Florida licensed professional engineer setting forth all the facts relied upon in the applicant's attempt to both Co-locate or Attach the proposed new Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility on an Existing Structure within the Village's Public Rights-of-way, as well as on property outside the Village's Public Rights-of-way within a three hundred fifty (350) foot radius of the proposed new Facility.
- (ii) An application for Co-location shall include an affidavit from the owner of the Facility or Existing Structure being Co-located upon that the applicant has been granted permission to attach to the Facility or Existing Structure being Co-located upon.

(12) Registrant agrees to indemnification. A statement shall be included within the application for a Permit that by execution of the application and by applying for the Permit, the Registrant agrees to be bound to the Village with respect to the indemnification provisions set forth in Village Code Section 63-39 herein as though such indemnification provisions are set forth verbatim in the Permit application.

(13) Additional information as reasonably required for review of Permit application. Such additional information as the Village finds reasonably necessary with respect to the Placement or Maintenance of the Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility that is the subject of the permit application to review such Permit

application, which information may include, but is not necessarily limited to evidence satisfactory to the Village that the proposed Facility will not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive or other dangerous chemicals, and a written statement from a qualified radio frequency engineer that the construction and placement of the proposed Facility complies with FCC rules and regulations governing Communications Services including but not limited to the emergency alert system when applicable, emissions standards, and non-interference with public safety communications.

- (14) *Permits to Place or Maintain Wireless Infrastructure only.* A Wireless Infrastructure Provider may apply for a Permit to Place or Maintain Utility Poles in the Village's Public Rights-of-way to support the Co-location of Small Wireless Facilities. The Permit application must include attestation that Small Wireless Facilities will be Co-located on the Utility Pole or Wireless Support Structure and will be used by a Wireless Services Provider to provide Wireless Service within nine (9) months after the date the Permit application is approved by the Village. All such applications shall be processed according to applicable timeframes and Applicable Codes.
- (15) *Small Wireless Facility Co-location Permit application consolidation.* Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time, an applicant seeking to Co-locate Small Wireless Facilities within the Village may, at the applicant's discretion, file a consolidated application for a single permit for the Co-location of up to 30 Small Wireless Facilities. Within any such consolidated application, the Village may separately address Co-locations for which incomplete information has been provided, or which are denied.
- (16) *Permits to Co-locate Small Wireless Facilities only.* Notwithstanding the foregoing Permit application requirements contained in this subsection, pursuant to the "Advanced Wireless Infrastructure Deployment Act" as codified at *Florida Statutes* Sec. 337.401(7) and as specified in Sec. 337.401(7)(c), Permit applications to Co-locate Small Wireless Facilities are only required to contain

information sufficient to demonstrate that the requested Co-location complies with Applicable Codes in the locations specified in the application. The Village may deny an application to Co-locate Small Wireless Facilities only if the proposed Co-location:

- (i) Materially interferes with the safe operation of traffic control equipment.
- (ii) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
- (iii) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- (iv) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- (v) Fails to comply with Applicable Codes.

(c) Permit does not create a property right; program areas where overhead utilities are being placed underground. A Permit from the Village constitutes authorization to undertake only certain activities in the Village's Public Rights-of-way in accordance with this Article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Village's Public Rights-of-way, nor does it create a property right to maintain a Communications Facility, Wireless Communications Facility, Wireless Support Structure, Utility, or other Facility where overhead Facilities are being placed underground pursuant to a Village program to underground such overhead Facilities.

(d) Avoidance of unreasonable interference with Village Public Rights-of-way.

- (1) All new Communications Facilities, Wireless Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall be Placed or Maintained so as not to unreasonably interfere with the use of the Village's Public Rights-of-way by the public, which may require that meters, other ground equipment and similar and associated Facilities be located on or directly adjacent to the pole or support structure upon which an Antenna is located.
- (2) Trenchless technology and joint trenching. The use of trenchless technology (i.e. directional bore method) for the installation of Facilities in the Village's Public

Rights-of-way as well as joint trenching for the Placement of Facilities in existing conduit is strongly encouraged and should be employed wherever feasible.

- (e) Avoidance of interference, displacement, damage or destruction, or destruction of other facilities. A Registrant shall not Place or Maintain its Communications Facilities, Wireless Support Structures, Utilities, or other Facilities so as to interfere with, displace, damage or destroy any Facilities, including but not limited to sewers, gas or water mains, storm drains, storm drainage lines, pipes, cables or conduits of the Village or any other Person's Facilities lawfully occupying the Village's Public Rights-of-way.
- (f) Coordination with other work in Village Public Rights-of-way. Upon request of the Village, and as notified by the Village of other work, construction, installation or repairs referenced below, a Registrant may be required to coordinate Placement or Maintenance activities under a Permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Village Public Right-of-way, and the Registrant may be required to reasonably alter its Placement or Maintenance schedule as necessary so as to minimize disruptions and disturbance in the Village's Public Rights-of-way and minimize any interference with the existing Communications Facilities, Wireless Support Structures, Utilities, or other Facilities.
- (g) Temporary raising and lowering of Facilities as accommodation. Subject to applicable law, a Registrant shall, on the request of any Person holding a Permit issued by the Village, temporarily support, protect, raise or lower its Communications Facilities, Wireless Support Structures, Utilities, or other Facilities to permit the work authorized by the Permit within the Village's Public Rights-of-way. The expense of such temporary support, protection, raising or lowering of Facilities shall be paid by the Person requesting the same, and the Registrant shall have the authority to require such payment in advance. The Registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation. If the Village requests the temporary support, protection, raising or lowering of a Facility for a public purpose, the Village shall not be charged for the temporary support, protection, raising or lowering of the Facility unless as otherwise provided by Section 337.403 or Section 337.404, *Florida Statutes*.

- (h) Restoration of Village Public Rights-of-way. After the completion of any work involving Communications Facilities, Wireless Support Structures, Utilities, or other Facilities in a Village Public Right-of-way or each phase thereof, a Registrant shall, at its own expense, restore the Village Public Right-of-way to its existing condition prior to such work. If the Registrant fails to make such restoration within thirty (30) days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such Placement or Maintenance work, the Village may perform restoration and charge the costs of the restoration against the Registrant in accordance with Section 337.402, *Florida Statutes* as same may be amended from time to time. For twelve (12) months following the original completion of the work, the Registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Article at its own expense.
- (i) Removal or relocation governed by State law; conversion of overhead Facilities to underground Facilities.
- (1) Removal or relocation at the direction of the Village of a Registrant's Communications Facilities, Wireless Support Structures, Utilities, or other Facilities in a Village Public Right-of-way shall be governed by the provisions of Sections 337.403 and 337.404, *Florida Statutes* as same may be amended from time to time. Relocation or removal may be required at the Registrant's sole expense for, among other reasons, conflicts with Village drainage or transportation facilities.
- (2) Subject to applicable provisions of law, whenever existing overhead Utility Facilities are converted to underground Facilities, any Registrant having Communications Facilities located on a Communications Facility Pole, Wireless Support Structure, Utility Pole or other Facility shall arrange for the conversion to underground facilities or relocation on the same terms and conditions as the other Utility Facilities that are being converted to underground Facilities.
- (j) Maintenance in accordance with industry standards and applicable law. A Registrant shall maintain its Communications Facilities, Wireless Support Structures, Utilities, or other Facilities in good condition, order and repair in a manner consistent with accepted

industry practice and applicable law so that the same shall not endanger the life or property of any person or other Facilities in the Village's Public Rights-of-way.

(k) Maintenance of graffiti plan. Communications Facilities, Wireless Support Structures, Utilities, or other Facilities within the Village's Public Rights-of-way, including any appurtenant features incorporated therewith under this Article shall be maintained so that:

(1) They are free of Graffiti visible from the Village's Public Rights-of-way or surrounding properties at grade. All Graffiti shall be removed within ten (10) working days from receipt of notice thereof by the Village; and

(2) They are reasonably free of dirt and grease, rust and corrosion in visible metal areas, chipped, faded, peeling and cracked paint that is visible from the Village's Public Right-of-way at grade. All such conditions shall be remedied within ten (10) working days from receipt of notice thereof from the Village.

(l) Safety practices; encourage strengthening Utility infrastructure and infrastructure hardening plan. All safety practices required by applicable law or accepted industry practices and standards shall be used during the Placement or Maintenance of Communications Facilities, Wireless Support Structures, Utilities, or other Facilities. The Village's policies strongly favor strengthening Utility infrastructure and in particular as it relates to flooding and hurricane related events, and registrants are encouraged to implement an infrastructure hardening plan for any Communications Facilities, Wireless Support Structures, Utilities, or other Facilities within the Village's Public Rights-of-way.

(m) Underground Facility damage prevention and safety act. In connection with excavation in the Village's Public Rights-of-way, a Registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556, Florida Statutes as same may be amended from time to time.

(n) Use of due caution. Registrants shall use and exercise due caution, care and skill in performing work in the Village's Public Rights-of-way and shall take all reasonable steps to safeguard work site areas, including, but not limited to those safeguards set forth in Chapter 33 of the Florida Building Code.

(o) No warranties or representations regarding fitness, suitability or availability of Village Public Rights-of-way. The Village makes no warranties or representations regarding the



fitness, suitability, or availability of the Village's Public Rights-of-way for the Registrant's Communications Facilities, Wireless Support Structures, Utilities, or other Facilities. Any performance of work, costs incurred or services provided by the Registrant shall be at the Registrant's sole risk. Nothing in this Article shall affect the Village's authority to add, vacate or abandon its Public Rights-of-way, and the Village makes no warranties or representations regarding the availability of any added, vacated or abandoned Public Rights-of-way for Communications Facilities, Wireless Support Structures, Utilities, or other Facilities.

(p) *Right of Inspection.* The Village shall have the right to make such inspections of Communications Facilities, Wireless Support Structures, Utilities, or other Facilities Placed or Maintained in its Public Rights-of-way as it finds necessary and upon reasonable notice to ensure compliance with this Article.

(1) Upon completion of work authorized by any Permit, in the event that field work resulted in changes from the Permit plans, the Registrant shall furnish to the Village, at no cost to the Village, one complete set of sealed "as-built" plans, or in the case of any underground Utility Facilities, a sealed survey showing the exact location of such Facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be) of Facilities as the Village may approve.

(2) The "as-built" plans shall be in an electronic format specified by the Village and shall be provided to the Village at no cost to the Village.

(3) This requirement shall be in addition to, and not in lieu of, any filings the Registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Chapter 556 *Florida Statutes* as same may be amended from time to time.

(4) The fact that such "as-built" plans or survey is on file with the Village shall in no way abrogate the duty of any Person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the Village's Public Rights-of-way.

(5) Any proprietary confidential business information obtained from a Registrant in connection with a Permit application shall be held confidential by the Village to

the extent required by Section 202.195, *Florida Statutes* as same may be amended from time to time, provided the Registrant so notifies the Village which information is confidential in accordance with Florida's Public Records Laws.

- (q) *Florida Building Code; high velocity hurricane zone.* In addition to the requirements of this Article, all permitted Facilities shall comply with the applicable provisions of the Florida Building Code. Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall be considered to be structures under Building Risk Category IV, Structures, Chapter 16 Section 1620 – 1621, High Velocity Hurricane Zone Area. Signed and sealed design and wind load calculation shall be provided by a Florida licensed professional engineer and a Permit under the Florida Building Code shall be required.
- (r) *Permit processing procedures and timeframes; "Shot Clock".* The Village's action on proposals to Place or Maintain Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall be subject to the standards and time frames set out in Section 365.172, *Florida Statutes* as same may be amended from time to time; and 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same may be amended from time to time. All federal and State "shot clock" timeframe guidelines that apply to any particular permit are hereby recognized by the Village. Applications for Permits pursuant to Section 337.401(7), *Florida Statutes* shall be handled as follows: The Village shall notify applicants for Permits via e-mail of all determinations regarding the completeness of an application and of all approvals or denials of same. The Village shall determine, within fourteen (14) days after the date of filing an application for the Co-location of a Small Wireless Facility or for the Placement of a new Utility Pole intended to support a Small Wireless Facility, whether the application is complete. If an application is deemed incomplete, the Village shall notify the applicant by electronic mail and specifically identify the missing information. An application shall be deemed complete if the Village fails to notify the applicant otherwise within fourteen (14) days after the date of filing the application. Denials shall specify the basis for the denial, including specific code provisions upon which the denial is based. Denials shall be sent via e-mail on the same day that the denial determination is made. The applicants may cure the deficiencies identified by the Village and resubmit the application within 30 days after the notice of

denial is sent to the applicant. The Village shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Subsequent review shall be limited to the deficiencies cited in the denial. Within sixty (60) days after the date of filing a complete application for the collocation of a Small Wireless Facility or within ninety (90) days after the date of filing a complete application for the placement of a new Utility Pole intended to support a Small Wireless Facility, the Village shall approve or deny the application. Negotiation regarding alternative locations shall extend the approval timeframe as set forth in Sec. 63-35(k) and (m).

(s) *Routine Maintenance and emergency notices and permits.* In the case of routine maintenance (including “out-of-service” repairs) that would otherwise not require a Permit, as well as the replacement of existing Wireless Facilities with Wireless Facilities that are substantially similar or of the same or smaller size that would otherwise not require a Permit, a Registrant shall provide at least three (3) business days’ advance written notice to the Village identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. In the event any such work will interfere or impact the Village’s drainage, transportation facilities, including sidewalks, any required lane closure, sidewalk closure or drainage Permits will be required prior to the commencing of any work governed by this Article. In the case of an emergency, a Registrant may restore its damaged Facilities in the Village’s Public Rights-of-way to their pre-emergency condition or replace its destroyed Facilities in the Village’s Public Rights-of-way with Facilities of the same size, character and quality, all without first applying for or receiving a Permit.

(1) 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.

(2) A Registrant shall provide prompt notice to the Village of the emergency repair or replacement of a Communications Facilities, Wireless Support Structures, Utilities, or other Facilities in the Village’s Public Right-of-way, and shall be required to obtain an after-the-fact Permit if a Permit would have originally been required to perform the work undertaken in connection with the emergency.

- (3) Permits are required for any work that involves excavation of a sidewalk or closure of a vehicular lane.
- (t) Issuance of Permit in violation of code or construction in violation of code.
- (1) The issuance of a Permit for Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall not be construed as a right to Placement or Maintenance of Communications Facilities, Wireless Support Structures, Utilities, or other Facilities that fail to meet the requirements of this Article.
- (2) The issuance of a Permit for Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall not be deemed or construed to be a Permit for or approval of any violation of any of the provisions of this Article. A Permit presuming to give authority to violate or cancel the provisions of Village Code Chapter 63 shall be void and invalid except insofar as the work or use which it authorizes is lawful.
- (u) Permit errors. The issuance of a Permit shall not prevent the Village from thereafter requiring the correction of errors when in violation of Village Code Chapter 63.
- (v) No Permit fees for work under this Article. Pursuant to Section 337.401(3) (c) (1) (b), Florida Statutes as same may be amended from time to time, and other applicable provisions of law, and notwithstanding any other provisions of Village Code, the Village hereby elects not to charge permit fees to any Registrant for Permits to do work in the Village Public Rights-of-way under this Article. Pass-Through Providers shall be subject to the fees set forth at Village Code Section 63-45.
- (w) Small Wireless Facility Co-location Permit application consolidation. Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), Florida Statutes, as same may be amended from time to time, an applicant seeking to Co-locate Small Wireless Facilities within the Village may, at the applicant's discretion, file a consolidated application for a single Permit for the Co-location of up to 30 Small Wireless Facilities. Within any such consolidated application, the Village may separately address Co-locations for which incomplete information has been provided, or which are denied.

**Sec. 63-35. Standards for compatibility with adjacent properties; prevention of pole proliferation and saturation of Village Public Rights-of-way.**

(a) In General. Communications Facilities, Wireless Support Structures, Utilities, and other Facilities shall be designed in such a manner that the Facilities are compatible with adjacent properties and minimize any negative visual impact on the adjacent properties. In order to achieve compatibility with adjacent properties and to minimize the negative visual impact on adjacent properties, the following regulations shall apply, unless waived pursuant to this Section.

(b) Stealth Design. Stealth Design for Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall be utilized wherever possible in order to minimize the visual impact of such Facilities on adjacent properties and in order to eliminate the need to locate any ground or elevated equipment on the exterior of a Facility or Existing Structure. Stealth Design is not required with respect to wireline pole attachment installations made in the communication space of Utility Poles. Stealth Design features may include, but are not limited to, the following:

- (1) For new Communications Facility Poles and new Wireless Support Structures, as well as Existing Structures in the Village's Public Rights-of-way, top mounted antennas within enclosures that do not extend more than ten (10) feet above the supporting structure, or side mounted antennas within enclosures that extend no more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment. Nothing contained in this subsection is intended to restrict the Placing and Maintaining of Small Wireless Facilities pursuant to the Florida Advanced Wireless Infrastructure Deployment Act, as integrated into this Article and as set forth at Sec. 337.401(7), Florida Statutes, as same may be amended from time to time.
- (2) New support structures shall incorporate features of similar, existing Facilities in the same Right-of-way. For example, where the Right-of-way contains existing Utility Poles, any new Utility Pole or Wireless Support Structure shall incorporate a design with similar features, colors, textures, etc.

- (3) The use of foliage and vegetation based on conditions of the specific area where the Facility is to be located. Trees, if appropriate, shall be determined and approved by the Village under separate Permit.
  - (4) Equipment wraps.
  - (5) Flag poles.
  - (6) Street light fixtures.
  - (7) Other Stealth Design proposed by an applicant and approved by the Village based on unique circumstances applicable to the Facility or the location or both.
  - (8) Artificial replication of trees or other natural objects is prohibited.
- (c) No Signage. Registrants shall not place or maintain signage on Communications Facilities, Wireless Support Structures, Utilities, or other Facilities Placed or Maintained in Village Public Rights-of-way, unless otherwise required by federal or State law, provided, however, that Existing Structures that lawfully supported signage before being Repurposed may continue to support signage as otherwise permitted by law or Village Code, as same may be amended from time to time.
- (d) Exterior finish. Communications Facilities, Wireless Support Structures, Utilities, or other Facilities not requiring FAA painting or marking, shall have an exterior, hard durable finish which enhances compatibility with adjacent uses, as approved by the Village.
- (e) Lighting. Communications Facilities, Wireless Support Structures, Utilities, or other Facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, State, or local rule, regulation, the FAA or law; provided, however, the Village may require the installation of a street light on a new Communications Facility Pole or Wireless Support Structure or an Existing Structure functioning as a light pole.
- (f) Height restrictions. Subject to the equipment volume and Antenna volume limitations included in this section, Communications Facilities, Wireless Support Structures, Utilities, or other Facilities, including any attached Antennas, shall not exceed the following height:
  - (1) Arterial Roads, Collector Roads and Local Roads. The top of the uppermost Antenna array, or Co-located or attached equipment, on a new Communications

Facility Pole or a new Wireless Support Structure shall not exceed the height of the closest light pole on that same Road.

- (2) Top mounted Antennas not part of a Small Wireless Facility may extend an additional four (4) feet in height in excess of the Height Limitations set forth in (f) (1) above.
- (3) For each Co-location or Repurposed Structure, top mounted Antennas not part of a Small Wireless Facility may extend an additional six (6) feet in height in excess of the height limitations set forth in (f) (1) above.
- (4) All Antennas shall be no less than eight (8) feet above Grade.
- (5) The maximum height of any Small Wireless Facility shall be ten (10) feet above the pole or structure upon which the Facility is Placed, Maintained or Co-located. Unless waived by the Village, the maximum height for any new Utility Pole or Wireless Support Structure shall not exceed the tallest existing Utility Pole as of July 1, 2017 in the same Right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location for the new Utility Pole or Wireless Support Structure; or 50 feet if there is no existing Utility Pole in the same Right-of-way within 500 feet of the proposed location for the new Utility Pole or Wireless Support Structure.

(g) *Equipment and Antenna volume.*

- (1) Subject to height limits, and Antenna volume limits, equipment that may be associated with Communications Facilities (other than Small Wireless Facilities which are regulated above) attached to an Existing Structure or a new Communications Facility Pole or a new Wireless Support Structure located in the Village's Public Right-of-way, and Utility Poles or other above grade support structures, shall not exceed seventeen (17) cubic feet.
- (2) *Antenna volume.* Subject to height limits and equipment volume limits, each Antenna that may be associated with the installation of a Communications Facility (other than Small Wireless Facilities which are regulated above) shall not exceed more than six (6) cubic feet in volume. Each Antenna that is exposed and

not concealed within a concealment enclosure, shall fit within an imaginary enclosure that does not exceed six (6) cubic feet.

- (h) *Prohibition against Placement on roads where Village has plans for sidewalks; preference for Arterial or Collector roads.* No new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures shall be Placed or Maintained in the swale area on the side of a road or where the Village has plans to install a sidewalk of five (5) feet in width or more, nor shall such new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structure be located in such a manner that would preclude a five (5) foot clear pathway for the planned sidewalk. Otherwise, new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures shall generally be Placed and Maintained in Arterial or Collector roads whenever possible. Placement of new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures in Village Rights-of-way other than Arterial or Collector roads shall be justified by the applicant to the satisfaction of the Village prior to the issuance of any Permit. Compliance with this requirement may require that Facilities such as meters and other ground equipment be located on or directly adjacent to the pole or support structure upon which the Antenna is located.
- (i) *Minimum distance separation from edge of pavement.* No new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures shall be Placed or Maintained in the Village's Public Rights-of-way in violation of minimum distance separation from edge of pavement in accordance the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, as same may be amended from time to time. In accordance with said manual, the Village shall have the authority to reduce any offset where that offset cannot be reasonably obtained, and other alternatives are deemed impractical. Additionally, the Village shall have the authority to decide reductions in the clear zone in accordance with the above referenced manual. Compliance with this requirement may require that Facilities such as meters and other ground equipment be located on or directly adjacent to the pole or support structure upon which the Antenna is located.



- (j) Minimum distance separation from existing sidewalk. No new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures shall be Placed or Maintained in the Village's Public Rights-of-way within one (1) foot of an existing sidewalk that is five (5) feet or less in width, which may require that facilities such as meters and other ground equipment be located on or directly adjacent to the pole or support structure upon which the Antenna is located. Co-location and use of Existing, Repurposed Structures are exempt from this requirement. The placement of new Utility Poles for purposes of the installation of a Small Wireless Facility are strongly encouraged to comply with this distance separation. Compliance with this requirement may require that Facilities such as meters and other ground equipment be located on or directly adjacent to the pole or support structure upon which the Antenna is located.
- (k) Distance separation between Communications Facility Poles and Wireless Support Structures and other new support structures in Village Public Rights-of-way. Communications Facility Poles, Wireless Support Structures and other new support structures in the Village's Public Rights-of-way must be spaced a minimum of three hundred fifty (350) linear feet apart from each other, along the line of general vehicular travel, except that no distance requirement shall apply to Co-locations, Repurposed or Existing Structures. Compliance with this requirement may require that facilities such as meters and other ground equipment be located on or directly adjacent to the pole or support structure upon which the Antenna is located. Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time, distance separation between the Co-location of Small Wireless Facilities shall not be applied. However, within 14 days of the date of the filing of a permit application for placement of Small Wireless Facilities, the Village may request relocation of a proposed Small Wireless Facility and/or placement of the Small Wireless Facility on an alternative pole or support structure. In the event that such a request is made, the Village and the applicant shall negotiate pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time.

- (l) *Sight Distance.* No new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures shall be constructed or installed within a triangular shaped area of land, known as a “clear site triangle” as defined in the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.
- (m) *Emphasis on Arterial or Collector Roadways.* Registrants seeking to Place or Maintain a Communications Facility Pole or a Wireless Support Structure in the Village’s Public Rights-of-way shall locate their Facilities in Arterial or Collector Roads, whenever possible. See subparagraph (h) above for certain restrictions. An application for a Permit to place a Communications Facility Pole or a Wireless Support Structure in a Village Public Right-of-way other than Arterial or Collector Roads shall explain why the applicant is unable to locate such Facilities in or adjacent to an Arterial or Collector Road and shall demonstrate to the satisfaction of the Village Engineer the need to locate the Facilities in the areas proposed in the application. Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time, this requirement shall not be applied to applications for the Co-location of Small Wireless Facilities. However, within 14 days of the date of the filing of a Permit application for Placement of Small Wireless Facilities, the Village may request relocation of a proposed Small Wireless Facility and/or Placement of the Small Wireless Facility on an alternative pole or support structure. In the event that such a request is made, the Village and the applicant shall negotiate pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time. Upon delegation to the Village of the regulatory authorities in this Article by the County, State or U.S. Department of Transportation or all of the foregoing entities, then the Village may enforce such regulations in this Article within the corporate boundaries of the Village on such county, State or federal roads to the extent such authority has been delegated to the Village as stated above.
- (n) *Prohibition against Placement in residential front yard.* No new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support

structures shall be placed within a Village Public Right-of-way that abuts any front yard of a residential property.

(o) Limitation on Placement in residential corner yards. New Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures within the Village's Public Rights-of-way abutting a corner yard of a corner lot of a residential property shall not be placed any closer than ten (10) feet from the side property line of the lot abutting and adjacent to the corner lot.

(p) Not significantly impair view from principal structures within residential areas. All new Communications Facilities, Wireless Support Structures, Utilities, or other Facilities or other new support structures shall be located such that views from principal structures within residential areas are not significantly impaired. Where possible, newly installed Facility poles or support structures should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the Facility or support structures within residential areas. The requirements of this subparagraph shall not apply to Existing Structures, when there is a one-to-one use or Repurposing of an Existing Structure.

(q) Regulations specific to Authority Utility Poles. The following regulations apply to Authority Utility Poles pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at Sec. 337.401(7), Florida Statutes, as same may be amended from time to time:

(1) Co-location of a Small Wireless Facility on an Authority Utility Pole does not provide the basis for the imposition of an ad valorem tax on the Authority Utility Pole.

(2) The Village may reserve space on Authority Utility Poles for future public safety uses. However, such a reservation may not preclude the Co-location of a Small Wireless Facility. If replacement of the Authority Utility Pole is necessary to accommodate the Co-location of the Small Wireless Facility and the public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.

(3) Co-location of Small Wireless Facilities on Authority Utility Poles are subject to the following:

- (i) The Village may not enter into an exclusive arrangement with any Person for the right to attach equipment to Authority Utility Poles.
  - (ii) The rates and fees for Co-locations on Authority Utility Poles must be non-discriminatory, regardless of the services provided by the Co-locating Person.
  - (iii) The rate to Co-locate Small Wireless Facilities on Authority Utility Poles shall not exceed \$150.00 per pole annually.
  - (iv) Any existing agreements between the Village and a Wireless Service Provider relating to Co-location of Small Wireless Facilities in Village Public Rights-of-way that are in effect on July 1, 2017 shall remain in effect subject to applicable termination provisions, except that the wireless provider may accept the rates, fees and terms established in this Chapter for Small Wireless Facilities and Utility Poles, that are the subject of an application submitted after same become effective.
  - (v) By the latter of January 1, 2018, or 3 months after receiving a request to Co-locate its first Small Wireless Facility on an Authority Utility Pole, the Village shall make available rates, fees, and terms for the Co-location of Small Wireless Facilities on Authority Utility Poles that comply with this Chapter as well as Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time.
- (4) Make ready work.
- (i) For an Authority Utility Pole that supports an aerial facility used to provide Communications Services or electric service, the parties shall comply with the process for make ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the Person owning or controlling the pole to support the requested Co-location must include pole replacement if necessary.
  - (ii) For an Authority Utility Pole that does not support an aerial facility used to provide Communications Services or electric service, the Village shall provide a good faith estimate for any make ready work necessary to enable the pole to support the requested Co-location, including necessary pole replacement, within 60 days after receipt of a complete application. Make ready work,

including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the Village may require the applicant seeking to Co-locate a Small Wireless Facility to provide a make ready estimate at the applicant's expense for the work necessary to support the Small Wireless Facility, including pole replacement, and perform the make ready work. If pole replacement is required, the scope of the make ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The Village may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make ready work subject to usual construction restoration standards for work in the Village's Public Right-of-way. The replaced or altered Utility Pole shall remain the property of the Village.

(iii) The Village may not require more make ready work than is required to meet Applicable Codes or industry standards. Fees for make ready work may not include costs related to pre-existing damage or prior non-compliance. Fees for make ready work, including pole replacement, may not exceed actual costs or the amount charged to Communications Services Providers other than Wireless Services Providers for similar work and may not include any consultant fee or expense.

(r) *Waiver of application of the requirements of this section by Village Engineer.*

(1) Nothing in this section shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of Village Public Rights-of-way by Communications Service Providers, Communications Facility Providers, Wireless Infrastructure Providers or Pass-Through Providers, in violation of federal or State law. Nor shall anything in this section be construed as being in violation of the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Section 337.401(7), *Florida Statutes*, as same may be amended from time to time.

(2) A request for a waiver shall be filed with the Village Engineer contemporaneously with the Permit application.

- (3) The request for waiver shall include each section and subsection of this Article for which a waiver is sought. A request for a waiver shall include all information described in this subsection and any other reasonable information the Village may reasonably require to process the waiver request.
- (4) The following provisions shall govern the granting or denying of a request for a waiver under the requirements of this Section, and the Village Engineer shall consider same, as applicable to any particular waiver request, in determining whether to grant a waiver:
- (i) A detailed explanation, with supporting engineering or other data, as to why a waiver is required in order to allow the Registrant/applicant to have nondiscriminatory and competitively neutral use of the Village's Public Rights-of-way;
  - (ii) Availability of other Co-location opportunities within the Public Rights-of-way;
  - (iii) Size and height of the proposed Facilities;
  - (iv) Location and separation distances of the proposed Facilities;
  - (v) Nature and characteristics of the adjacent properties;
  - (vi) Adjacent and nearby topography, tree coverage and foliage of the adjacent properties;
  - (vii) Design of the proposed Facilities with particular reference to achieving compatibility with the adjacent properties and elimination of adverse visual impacts of such Facilities on the adjacent properties;
  - (viii) Any other factors the Village Engineer determines to be relevant.
- (5) In granting any waiver, the Village Engineer may impose conditions to the extent he or she concludes such conditions are necessary to minimize any adverse effects of the proposed Facility on the adjacent properties or to protect the health, safety and welfare of the Village and its residents.
- (6) The Village Engineer shall have authority to grant a waiver if the applicant proves by a preponderance of the evidence that each of the below criteria have been met in the application for a waiver, other than for Small Wireless Facilities which are governed by part (7) herein below:

- (i) There are special conditions and circumstance affecting the proposed site which prevent compliance with the subsections for which a waiver is being sought; and
  - (ii) The proposed waiver, if granted, results in a superior site plan; and
  - (iii) The proposed waiver, if granted, will not be incompatible with the adjacent properties; and
  - (iv) The proposed waiver, if granted, is ADA compliant; and
  - (v) The proposed waiver, if granted, complies with FCC regulations; and
  - (vi) The proposed waiver, if granted, preserves to the Village optimum flexibility in its management of its Public Rights-of-way; and
  - (vii) The applicant for the waiver demonstrates that the item for which the waiver is being sought would unreasonably discriminate for or against any Provider.
- (7) Small Wireless Facilities may be granted a waiver from Applicable Code requirements, as well as location, color, stealth, and concealment requirements set forth in this Section, to the extent that the applicant demonstrates that such requirements are not reasonably compatible for the particular location of the subject Small Wireless Facility, or to the extent that the applicant demonstrates that such requirements impose excessive expense. The applicant's burden, and the Village Engineer's authority, is the same as set forth in part (6) herein above. Small Wireless Facility waivers shall be granted or denied by the Village Engineer within 45 days after the date of the request.

(s) *Limitations.*

- (1) Nothing contained in this Article shall be construed to authorize a Person to Co-locate or attach Wireless Facilities, including any Antenna or other Facility, on a privately-owned Utility Pole, a Utility Pole owned by an electric cooperative or a Village electric Utility, a privately-owned Wireless Support Structure, or other private property without the consent of the property owner.
- (2) The approval for the Placing or Maintenance of a Facility pursuant to this Article does not authorize the provision of any voice, data, or video communications services.

(t) *Exceptions.* The requirements of this Article shall not apply as follows:

- (1) Nothing contained in this Article shall be construed to authorize a Person to Co-locate 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 Village electric Utility, a privately owned Wireless Support Structure, or other private property without the consent of the property owner.
- (2) The approval of the installation, placement, maintenance or operation of a Small Wireless Facility pursuant to this Article does not authorize the provision of any voice, data, or video communications services, or the installation, placement, maintenance or operation of any Communications Facilities other than Small Wireless Facilities in the Village's Public right-of way.
- (3) Nothing contained in this Article shall be construed to authorize any Person to Co-locate or attach Small Wireless Facilities or Micro Wireless Facilities (except for Micro Wireless Facilities on existing and permitted aerial communications facilities) on a Utility Pole, unless otherwise permitted by federal law, or to erect a Wireless Support Structure in a right-of-way located within a retirement community that:
- (i) Is deed restricted as housing for older persons as defined in Sec. 760.29(4)(b), *Florida Statutes*, as same may be amended from time to time; and
  - (ii) Has more than 5,000 residents; and
  - (iii) Has underground utilities for electric transmission or distribution.
- (4) Nothing contained in this Article shall be construed to authorize any Person to Co-locate or attach Small Wireless Facilities or Micro Wireless Facilities (except for Micro Wireless Facilities on existing and permitted aerial communications facilities) on an Authority Utility Pole, or to erect a Wireless Support Structure, in any location subject to covenants, conditions, restrictions, articles of incorporation, and by-laws of a homeowners' association.

**Sec. 63-36. Florida Advanced Wireless Infrastructure Deployment Act.**

The Co-location of Small Wireless Facilities and Micro Wireless Facilities are subject to the requirements of the Florida Advanced Wireless Infrastructure Deployment Act as set forth at



Sec. 337.401(7), Florida Statutes, as same may be amended from time to time. To the extent that the provisions of this Article conflict with the provisions of the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Sec. 337.401(7), Florida Statutes, as same may be amended from time to time, the provisions of the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Sec. 337.401(7), Florida Statutes, as same may be amended from time to time shall prevail.

#### **DIVISION 4. Administration and Enforcement.**

##### **Sec. 63-37 33. Suspension of permits.**

Subject to appeal as provided in this Article ~~section 63-34 below~~, the Village may suspend or revoke a permit, with no refund of fees paid thereunder, if any, for Placement or Maintenance work in the Village's Public Rights-of-way for one or more of the following reasons:

- (a) Violation of Permit conditions, including conditions set forth in this Article or other applicable Village codes or regulations governing use of the Village's Public Rights-of-way; or
- (b) Misrepresentation or fraud by the registrant in a Registration or permit application submitted to the Village; or
- (c) Violation of provisions in this Article requiring payment of Registration or Permit fees, if applicable, to the Village; or
- (d) Failure to relocate or remove Communications Facilities, Wireless Communications Facilities or utilities as may be lawfully required by the Village in connection with the subject permit.

If the Village determines that the permittee has committed a substantial breach of a term or condition of the Permit, the Village shall make a written demand upon the permittee to remedy such violation(s) within a reasonable time given circumstances, but in no event within less than thirty (30) days. The demand shall state that the continued violation(s) may be cause for revocation of the permit. Further, a substantial breach as stated above will allow the Village, at its discretion, to place additional or revised conditions on the Permit.

If the Village's demand is not complied with, the Permit may be revoked. If a Permit is revoked, the permittee shall reimburse the Village for the Village's reasonable costs, including

restoration costs and the cost of collection and reasonable attorneys' fees incurred in connection with such revocation.

The Village may cause an immediate stop work order and may undertake abatement activity with no liability to the Village, the cost of which shall be paid by the permittee, where the permittee's work poses a serious threat to the health, safety or welfare of the public until such time as such serious threat has been abated.

#### **Sec. 63-~~38~~ 34. Appeals.**

Final, written decisions of the Village manager suspending a permit, denying an application for a Registration or denying an application for renewal of a Registration are subject to appeal. An appeal must be filed with the Village Manager within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth herein shall be waived. The Village Manager council shall consider ~~the appeal at the next regularly scheduled meeting and shall consider~~ the appeal and shall consider whether the appellant ~~applicant~~ meets the requirements for a Registration or Permit based upon the provisions of this Article and the applicable state and federal laws. The Village Manager's decision shall be deemed to be final agency action and the exhaustion of all local administrative remedies. Any Person aggrieved by any decision of the Village Manager shall be entitled pursue any remedy available to them at law or in equity.

#### **Sec. 63-~~35~~. Construction in the rights-of-way.**

- ~~(a) *Permits to construct.* The registrant may construct the communications facilities or utilities in the public right-of-way specifically identified in permits obtained in accordance with applicable provisions of this article or other applicable village codes and regulations. The permission to use and construct in the public rights-of-way is only for those areas specifically identified in the permit.~~
- ~~(b) *Compliance with village codes and regulations.* Registrant agrees to comply with all applicable village codes and regulations in constructing any communications facilities or utilities in the public right-of-way, including, but not limited to, engineering regulations, permit requirements, contractor licensing requirements, fire codes and zoning codes; and~~

~~shall not disturb the village's existing stormwater system as defined further at division 3 of article IV of chapter 74, utilities of the Village Code of Ordinances.~~

- ~~(c) *Registrant must obtain applicable permits.* Except in the case of an emergency, registrant shall not commence any construction in the public rightsof way until all applicable permits have been issued by the village or other appropriate authority. The term emergency shall mean an out of service condition or other condition that may affect the public's health, safety and welfare. Registrant shall provide reasonable advance notice to the village of its intent to commence construction in the rightsof way in the event of an emergency. Registrant acknowledges that as a condition of granting such permits, the village may impose conditions on the permits as necessary and reasonable for the construction in the public rightsof way.~~
- ~~(d) *Construction standards.* Registrant shall construct, maintain, install, remove and/or repair the communications facility or Utility in the public rightsof way in compliance with all applicable construction standards as established by all local, state or federal law and in conformance with the village's codes and regulations. Registrant shall use and exercise due caution, care, skill and expertise in performing work in the public rightsof way and shall take all reasonable steps to safeguard work site areas. *Installation and construction schedule; inspections.* In the interest of the public's health, safety and welfare, registrant shall cooperate with the village and the village's management actions in coordinating the use of the public rightsof way. Upon request of the village, a registrant shall coordinate work under a permit with any other construction, installation or repairs that may be occurring or scheduled to occur in the subject public rightsof way and alter its construction schedule as necessary so as to minimize disruptions and disturbance in the public rightsof way.~~
- ~~(e) *Maintenance.* A registrant shall maintain its communications facilities or utilities in the public rightsof way in a safe condition.~~
- ~~(f) *Notice to village.* Prior to any excavation in the public rightsof way for construction, installation, repair or maintenance, the registrant must call prior to construction activity to locate any underground equipment in accordance with F.S. ch. 556, as it may be amended. A registrant must be a member of Sunshine State One Call of Florida, Inc. (1-~~

~~800-432-4770) or any successor alert and warning system to protect and locate its underground equipment.~~

- ~~(g) *Removal of registrant's communications or utilities in the right-of-way.* To the extent authorized by F.S. § 337.403, village may require registrant to remove or relocate, and registrant shall, at village's direction, remove or relocate any communications facilities or utilities in the public rights-of-way when the village manager determines that such removal or relocation is necessary to protect or preserve the public health, safety and welfare, or to protect the proper operation of village's traffic signals or traffic control devices or other village facilities. Village shall provide 90 days' written notice to registrant before the lines must be relocated or removed. If registrant fails to commence and complete this removal work by the dates requested by the village in its written notice, or within 30 days following the expiration or termination of this registration, then the village shall have the right to perform this removal work and charge registrant for the costs incurred by the village in performing this work. Upon payment by registrant of the costs to the village, the village shall promptly return to registrant equipment removed by village pursuant to this provision.~~
- ~~(h) *Restoration of rights-of-way.* Upon the completion of each installation, construction, repair, maintenance, or removal in the rights-of-way, a registrant shall restore the public rights-of-way to a safe condition and to the village's standard specifications for rights-of-way, at registrant's expense. Registrant shall, at its own expense, repair or replace any other property disturbed or damaged on account of its activities in the public rights-of-way.~~
- ~~(i) *Interference with other uses in the public rights-of-way.* A registrant shall use reasonable efforts not to disturb or otherwise disrupt the operation or maintenance of any other communications facilities, utilities, or uses in the public rights-of-way, including, but not limited to, sewers, storm drains, gas or water mains, or other underground cables or conduits.~~
- ~~(j) *No warranties or representations by village.* The village makes no warranties or representations regarding the fitness or suitability of village's property for the installation of registrant's communications facilities or utilities and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk.~~

~~(k) *Maps.* Within 30 days of a request by the village, the registrant shall provide the village with copies of maps on disk, in a format specified by the village manager, provided such format is maintained by the registrant. Any such maintained geographic data, media and information will be provided at no cost to village. In no event shall any proprietary confidential information be required to be disclosed pursuant to this section, except that the location of communications facilities, or utilities previously placed in the public right-of-way shall not be deemed proprietary confidential information.~~

~~(l) *Relocation of facilities and reservation of the village's rights.*~~

~~(1) The village reserves the right to lay, and permit to be laid, sewer, gas, water, electric, storm drainage, telecommunications, and other pipelines or cables or conduit, and to do and to permit to be done any underground installation or improvement that may be deemed necessary or proper by the village in, across, along, over or under any public rights-of-way occupied by the registrant, and to change any curb or sidewalk or the grade of any street. The village, its contractors and subcontractors shall be required to call Sunshine State One Call of Florida, Inc. (1-800-432-4770), or successor alert and warning system, prior to excavation, in accordance with F.S. ch. 556, as it may be amended, in order to avoid damages to registrant's communications facilities or utilities.~~

~~(2) The village expressly reserves the right to change, or cause to be changed through exercise of its police powers, the grading, installation, relocation, or width of the village streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places within the present limits of the village and within said limits as same may from time to time be altered, and the registrant shall relocate, at its own expense where allowed by F.S. § 337.403, as it may be amended, its poles, wires, cables, anchors, manholes, conduits, appurtenances, or other communications facilities or utilities in order to accommodate the installation, relocation, widening or changing of the grade of any public streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places, including if necessary relocating such poles, wires, cables, anchors, manholes, conduits or other facilities or appurtenances to a sufficient distance from the edge of the pavement to permit a reasonable work area for machinery and individuals~~

~~engaged in installing, relocating, widening, or changing the grade of any such streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places. Upon notice in writing from the village that changes in the public rights of way are required pursuant to the village's police power in such a manner as will necessitate the relocation of its facilities in the public rights of way, the registrant shall relocate its communications facilities or utilities at no expense to the village, where allowed by F.S. § 337.403, as it may be amended, so as to permit the construction of such improvements when ordered. Should the registrant fail to comply with such notice, the communications facilities or utilities may be relocated by the village and the cost thereof recovered from the registrant, where allowed by F.S. § 337.403, as it may be amended.~~

~~(3) *Arterial rights of way.* Communications facilities shall be located in arterial rights of way whenever possible. Placement of communications facilities in rights of way other than arterial rights of way shall be justified by an engineering analysis from the applicant to the satisfaction of the village engineer prior to the issuance of any permit. Whenever communications facilities or wireless communications facilities must be placed in a right of way with residential uses on one or both sides, neither poles, equipment, antennas or other structures shall be placed directly in front of a residential structure. If a right of way has residential structures on only one side, the communications facilities or wireless communications facilities shall be located on the opposite side of the right of way. All communications facilities and wireless communications facilities shall be located such that views from residential structures are not significantly impaired. Newly installed poles should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the pole.~~

~~(4) *Public hearings.* Prior to the issuance of any permit pertaining to the placement and maintenance of communication facilities or wireless communications facilities within the public rights of way, the registrant shall issue notice of the work to property owners who adjoin such rights of way (the "notification area"), as well as the date, time and place of a public hearing to be held by the registrant for the purpose of receiving public comments regarding the application. The~~

~~notification area may be expanded at the village's discretion and notice shall be effected in a manner deemed appropriate by the village manager or designee. Following the public hearing, and prior to the issuance of any permit, the registrant shall meet with village staff to review comments received at the public hearing, and attempt to resolve all negative comments or issues raised.~~

**Sec. 63-~~39~~ 36. Insurance and indemnification.**

- (a) *Indemnification.* Registrants, by Registering with the Village pursuant to this Article, shall agree to protect, defend, reimburse, indemnify and hold the Village, its agents, employees and elected officers and each of them free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault, of anyone acting under registrant's direction or control, or on registrant's behalf in any matter related to registrant's use of the Village's Public Rights-of-way or any property Registrant is entitled or authorized to use as a result of the Registration, Permit or other authorization. Registrant's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the Village, its respective agents, servants, employees or officers, ~~nor shall the liability limits set forth in F.S. § 768.28, be waived.~~ Nothing contained in this section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) as consent by the Village to be sued; or (3) as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, as it may be amended.
- (b) *Insurance.* A Registrant shall maintain in full force and effect general liability insurance acceptable to the Village, which specifically covers all exposures incident to the intent and responsibilities under this Article in no less than the amounts set forth below:

- (1) Workers' compensation insurance within Florida statutory limits and employers' liability insurance with minimum limits of one hundred thousand dollars (\$100,000.00) each accident.
  - (2) Comprehensive general liability insurance with minimum limits of three million dollars (\$3,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket liability insurance and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
  - (3) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by the provider, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the applicable State law, including residual liability insurance with minimum limits of two million dollars (\$2,000,000.00) as the combined single limit for each occurrence for bodily injury and property damage.
  - (4) Named insureds. All certificates of insurance shall name the Village of Tequesta as an additional insured.
  - (5) Cancellation of policies of insurance. At least 30 ~~60~~ days prior written notice shall be given to the village by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the Village.
- (c) Self-insurance. The insurance requirements set forth hereinabove may be satisfied by proof of self-insurance satisfactory to the Village.
- (d) Failure to maintain required coverage shall be deemed a Violation of this Article Failure to maintain all the required insurance coverage shall be deemed a violation of this Article subject to a notice of violation and a reasonable opportunity to cure. Failure to cure the violation with in the timeframe contained in the notice shall be subject to an enforcement hearing and potential penalties, including termination of Registrations or Permits.

**Sec. 63-40. Performance Bond.**



- (a) Prior to issuing a Permit under this Article where the work under the Permit will require restoration of the Village's Public Rights-of-way, the Village may require a performance bond by a surety duly authorized to do business in the State of Florida and having an A.M. Best A-VII rating or better. The bond, if required, shall be in the amount of 125 % of the restoration cost estimate of the Village's Public Rights-of-way, as certified by a professional engineer licensed in the State of Florida, to secure proper performance under the requirements of any Permits and the restoration of the Village's Public Rights-of-way. Twelve (12) months after the completion of the restoration of the Village's Public Rights-of-way in accordance with the bond, the Registrant may eliminate the bond, if required. However, the Village Engineer may subsequently require a new bond for any subsequent work by the same Registrant in the Village's Public Rights-of-way. The performance bond, if required, shall provide that: "For twelve (12) months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the Village, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (b) The rights reserved by the Village with respect to any performance bond established pursuant to this Section are in addition to all other rights and remedies the Village may have under this Article, or at law or in equity, and no action, proceeding or exercise of a right with respect to the performance bond will affect any other right the Village may have.

**Sec. 63-41. Reservation of rights and remedies.**

- (a) The provisions of this Article shall be applicable to all Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures, and Utilities placed in the Village's Public Rights-of-way on or after the effective date of the ordinance from which this Article is derived or amended and shall apply to all existing Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures, and Utilities placed in the Village's Public Rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by federal and State law, except that any provision of this Article regarding the size, composition, or location of Communications Facilities, including Wireless Communications Facilities and Wireless

Support Structures shall not apply to Communications Facilities, including Wireless Communications Facilities and Wireless Support Structures lawfully Placed within any Village Public Right-of-way prior to the effective date of this Ordinance.

- (b) The adoption of this Article is not intended to affect any rights or defenses of the Village or a Communications Service Provider, Communications Facility Provider, Wireless Infrastructure Provider or Pass-Through Provider under any existing franchise, license or other agreements with a Communications Service Provider, Communications Facility Provider, Wireless Infrastructure Provider or Pass-Through Provider.
- (c) Nothing in this Article shall affect the remedies the Village or the Registrant has available under applicable law.

#### **Sec. 63-42. Reports and records.**

- (a) A Registrant shall provide the following documents to the Village as received or filed.
  - (1) Upon reasonable request, any pleadings, petitions, notices and documents, which may directly impact the obligations under this Article and which are reasonable necessary for the Village to protect its interests under this Article.
  - (2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
- (b) Nothing in this section shall affect the remedies a Registrant has available under applicable law.
- (c) The Village shall keep any documentation, books and records of the Registrant confidential to the extent required or permitted under Florida Public Records Law.

#### **Sec. 63-43. Force Majeure.**

In the event a Registrant's performance of or compliance with any of the provisions of this Article is prevented by a 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 expeditiously cure or correct any such inability to perform or comply. For the purposes of this Section, cause or events not within a Registrant's control shall include, but not be limited to, 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 Registrant's control, and thus not falling within this Section, shall include, without limitation Registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors or agents.

**Sec. 63-44. No liability or warranty.**

Nothing contained in this Article shall be construed to make or hold the Village responsible or liable for any damage to Persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the Registrant's Communications Facilities, Wireless Communications Facilities or utilities; or by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any Permit or the approval or disapproval of any Placement or Maintenance of the Registrant's Communications Facilities, Wireless Communications Facilities or utilities as authorized herein constitute any representation, guarantee or warranty of any kind by, nor create any liability upon, the Village or any official, agent or employee thereof.

**Sec. 63-45. Pass-through provider fees and charges.**

- (a) Pass-through providers shall pay to the Village on an annual basis an amount equal to Five Hundred Dollars (\$500.00) per linear mile or portion thereof of Communications Facilities or Wireless Communications Facilities Placed or Maintained in the Village's Public Rights-of-way. For purposes of this Article, the Village's Public Rights-of-way do not include Rights-of-way that extend in or through the Village but are state, county or another authority's Rights-of-way.
- (b) The amounts charged pursuant to this Article shall be based on the linear miles of Village Public Rights-of-way where Communications Facilities or Wireless Communications Facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.
- (c) Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the Pass-through provider remits taxes imposed by the Village pursuant to Chapter 202, F.S.

- (d) Annual payments shall be due and payable on March 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 Village 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 Village may have for additional sums due and payable. All fee payments shall be subject to audit by the Village, 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 Village, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.
- (e) If the payments required by this Article are not made within ninety (90) days after the due date, the Village may withhold the issuance of any Permits to the Pass-through provider until the amount past due is paid in full.

**Sec. ~~63-46~~ 37. Penalties for violation.**

Any violation of any of the provisions of this Article Ordinance may be enforced as provided for in Chapter 162, Florida Statutes F.S. ch. 162. Each day or fraction thereof the violation continues shall be considered as a separate offense. In addition, the Village can pursue any and/or all other lawful actions, including filing a complaint with Florida Public Service Commission or Federal Communications Commission advising of violations of Village ordinances, filing an injunction in circuit court to enforce the terms of the Article, Registration or permit, or to enjoin the use of the Village's Public Rights-of-way, pursuing action before the code enforcement special magistrate to impose daily fines, denying permits or development orders for other projects or use of the Village's Public Rights-of-way by the Registrant provider, and/or by any other means allowed by law. These remedies shall be cumulative.

**Secs. ~~63-47~~ 38—63-50. Reserved.**

**Section 2:** Each and every other Section and Subsection of Chapter 63. Right-of-Way Regulations. shall remain in full force and effect as previously adopted.

**Section 3:** All ordinances or parts of ordinances in conflict be and the same are hereby repealed.

**Section 4:** Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

**Section 5:** Specific authority is hereby granted to codify this Ordinance.

**Section 6:** This Ordinance shall take effect immediately upon passage.