



Agenda Item # R - 12

**Village of Royal Palm Beach  
Village Council  
Agenda Item Summary**

**AGENDA ITEM:**

**PUBLIC HEARING FOR SECOND READING AND ADOPTION OF ORDINANCE NO. 993, AMENDING CHAPTER 21.7, ARTICLE II. RIGHT-OF-WAY REGULATIONS, TO CONFORM THIS ARTICLE TO RECENT STATE LAW CHANGES REGARDING COMMUNICATIONS FACILITIES AND ESPECIALLY WIRELESS FACILITIES THAT MAY BE PLACED OR MAINTAINED IN THE VILLAGES RIGHTS OF WAY.**

**ISSUE:**

SB 1000 was signed into law on June 25, 2019, amending Section 337.401, F.S. requiring that rules or regulations imposed by municipalities relating to placement of communications facilities in its roads or rights-of-way must take into account the distinct engineering, construction, operation, maintenance, public works, and safety requirements of the provider's facilities.

The legislation requires registrants to provide only name, whether they are a pass-through provider, and any required proof of insurance. It prohibits municipalities from: 1) requiring registration renewal more frequently than every five (5) years; 2) requiring registrants to provide an inventory of communications facilities, maps, locations of facilities as a condition of registration, renewal or other purpose; 3) requiring providers to pay any fee, cost, or other charge for registration or renewal; or 4) adopt or enforce any ordinance, regulation, or requirement as to the placement or operation of communications facilities in a rights-of-way by a communications services provider authorized by state or local law to operate in a rights-of-way; regulate any communications services; or impose or collect any tax, fee, cost, charge or exaction for the provision of communications services over the communications services provider's communications facilities in rights-of-way. It allows municipalities to, as part of the permit application, identify at-grade communications facilities within fifty (50) feet of the proposed installation location for the placement of at-grade communications facilities. It further allows a municipality that, as of January 1, 2019, elected to require permit fees from any provider of communications services that uses or occupies municipal rights-of-way to continue to require and collect such fees or elect to forego such fees.

This legislation further restricts municipalities from requiring a permit for the maintenance, repair, replacement, extension or upgrade of existing aerial wireline communications facilities between existing wireline communications facility attachments on utility poles by

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a communications services provider. Municipalities may require a rights-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane or parking lane, unless the provider is performing service restoration to existing facilities. In addition, a municipality may not require any permit or other approval, fee, charge, or cost or other exaction for the maintenance, repair, replacement, extension, or upgrade of existing aerial lines or underground communications facilities located on private property outside of the public rights-of-way. A municipality may require a pass-through provider to provide an annual notarized statement identifying the total number of linear miles of pass-through facilities in the municipality's rights-of-way, but not more than once annually.

This legislation further restricts the Village from prohibiting, regulating, or charging for the installation, maintenance, modification, operation, or replacement of utility poles used for the collocation of small wireless facilities in the public rights-of-way. The Village may not: 1) require demonstration of legal or technical feasibility as a condition of permitting; 2) require compliance with regulations regarding placement of small wireless facilities or new utility poles; 3) require meetings before filing of applications; 4) require direct or indirect public notification or public meeting for the placement of communications facilities; 5) limit the size of configuration of a small wireless facility or its components; 6) prohibit the installation of a new utility pole; or 7) require any component of a small wireless facility to be placed underground. If the Village chooses to utilize administrative review of applications, the legislation requires written decision within forty-five (45) days after request for review, or waive claims regarding failure to exhaust administrative remedies. The Village can require construction bonds to secure restoration of the postconstruction rights-of-way to the preconstruction condition; however, they must be time limited to not more than eighteen (18) months after the construction to which the bond applies is complete. The Village may not require the communications services providers to indemnify it for liabilities not caused by the provider, including liabilities arising from the Village's negligence, gross negligence or willful misconduct. Finally, the Village may not institute a moratorium, zoning-in-progress or other mechanism that would prohibit or delay the filing, receiving, or processing of registrations, applications, or issuing of permits or other approvals for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles used to support the collocation of small wireless facilities.

Lastly, the legislation provides the type of objective design standards that may be adopted by the Village through ordinance, which include: 1) new or replacement poles must be of substantially similar design, material and color; 2) reasonable spacing requirements concerning location which does not exceed fifteen (15) feet from the associated support structure; and 3) reasonable location, context, camouflage, and concealment requirements for both small wireless facilities and new utility poles to support them.

Ordinance No. 993 proposes to revise Chapter 21.7 Streets, Sidewalks and Other Public Places in order to conform with the above state law preemptions.

**RECOMMENDED ACTION:**

Staff recommends Approval of Ordinance 993 on second reading.

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Initiator:	Village Manager	Agenda Date	Village Council
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**ORDINANCE NO. 993**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, AMENDING THE VILLAGE CODE OF ORDINANCES AT CHAPTER 21.7, ARTICLE II. RIGHT-OF-WAY REGULATIONS, TO CONFORM THIS ARTICLE TO RECENT STATE LAW CHANGES REGARDING COMMUNICATIONS FACILITIES AND ESPECIALLY WIRELESS FACILITIES THAT MAY BE PLACED OR MAINTAINED IN THE VILLAGES RIGHTS OF WAY; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 21.7. 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 Florida legislature in 2019 has revised state law applicable to placing and maintaining certain communications facilities, and especially wireless facilities, within local rights of way, creating additional preemptions and limitations on local government ability to regulate the use and appearance of its rights-of-way in favor of an increasingly unfettered ability of telecommunications service providers to erect their facilities in such rights-of-way as they see fit; and

**WHEREAS**, the Village Council of the Village of Royal Palm Beach, in order to comply with state law requirements, must revise its code to recognize these state level preemptions and limitations on its ability to regulate its own Village rights-of-way and must likewise accept the increasing power granted by the state to telecommunications service providers to place and maintain their facilities in Village rights-of-way as they see fit, with less regulation; and

**WHEREAS**, the Village Council of the Village of Royal Palm Beach believes this ordinance to sufficiently conform its code to the requirements of state law.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, THAT:**

**Section 1:** Chapter 21.7. Streets, Sidewalks and Other Public Places. of the Code of Ordinances of the Village of Royal Palm Beach is hereby amended at Article II. Right-of-Way Regulations. in order to revise this article to conform with updated state law preemptions and other revisions related to the placing and maintaining of communications facilities within Village

rights-of-way, and limiting Village's ability to permit same; providing that Chapter 21.7, Article II shall hereafter read as follows:

## CHAPTER 21.7. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

### ARTICLE II. - RIGHT-OF-WAY REGULATIONS

#### DIVISION 1. - IN GENERAL

##### Sec. 21.7-25 - Title.

This article shall be known as "The Village of Royal Palm Beach Communications Facilities in the Public Rights-of-way Ordinance."

##### Sec. 21.7-26. - Intent and purpose.

It is the intent of the Village to promote the public health, safety and general welfare by providing regulations governing the Placement and maintenance of Communications facilities in the Public rights-of-way within the Village. 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 both Wireless ~~communications~~ providers and wireline ~~communications~~ 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 as including but not limited to, those defined in F.S. § 337.401, as same may be amended from time to time; and

(b) To regulate the Placement and maintenance of Communications facilities, including Wireless ~~communications~~ facilities in the Village's Public rights-of-way and minimize disruption to the Village's Public rights-of-way, pursuant to its governmental powers as set forth at F.S. ch. 166, as same may be amended from time to time, including the encouraging of Co-location and Re-purposing Existing facilities and structures; and

(c) To prescribe reasonable rules pursuant to F.S. § 337.401, 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 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 ~~both~~ Wireless ~~communications~~ providers and wireline ~~communications~~ 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.

##### Sec. 21.7-27. - Definitions.

For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number

include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to have their common and ordinary meaning.

**Abandonment or abandoned** means two hundred seventy (270) or more consecutive days with the absence of any active Communications service ~~provider~~ on a Communications facility. Abandoned Communications facilities and Wireless facilities shall be removed or cured as required by this article. This term shall not include cessation of all use of a Communications facility or Wireless facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the Communications facility or Wireless 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 or Wireless 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 or Wireless facility requires removal of the Communications facility or Wireless 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 or Wireless services where the provider intends to re-establish the provision of Communications services or Wireless 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 engineer.

**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, and includes the National Electric Safety Code and the 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual ~~or local codes or ordinances adopted to implement the Florida Advanced Wireless Infrastructure Deployment Act as set forth at F.S. § 337.401(7), 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 forty five (45) days after the date of the request.~~

**Arterial roadway** 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 F.S. § 760.29(4)(b), as same may be amended from time to time; and
- (b) Has more than five thousand (5,000) residents; and
- (c) Has underground utilities for electric transmission or distribution.

**Code** means the Village of Royal Palm Beach Code of Municipal Ordinances.

**Collector roadway** 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 (1) or more Wireless communications facilities on, under, within or adjacent to a Wireless support structure 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~~, or Wireless support structure or ~~other above grade support structure~~ in the 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 collocated 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 (1) 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 wireless services.~~

**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 (1) 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 (1) 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 the transmission, 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 of hereafter devised, regardless of the protocol used for such transmission or conveyances ~~in accordance with F.S. § 202.11, 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 a voice-over-internet-protocol services or is classified by the FCC Federal Communications Commission as enhanced or value-added. Notwithstanding the forgoing, the term does not include:

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

***Communications services provider*** means any Person, including a municipality or county, providing Communications services or Wireless services through the Placement or maintenance of a Communications facility or Wireless 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 F.S. § 202.20, 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 within a geographic areas 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 or Wireless 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 Wireless facility; or
- (b) Can be modified or repurposed to support the attachment of a Communications facility or Wireless 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 Wireless 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 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 article 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 article chapter.

**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 twenty-four (24) inches in length, fifteen (15) inches in width, twelve (12) inches in height, that has an exterior Antenna, if any, no longer than eleven (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 § 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.



(d) Future orders that may be adopted by the FCC.

**Pass-through provider** means any Person who Places or maintains a Communications facility in the Village's Public rights-of-way and who does not remit taxes imposed by the Village pursuant to F.S. ch. 202, as same may be amended from time to time (CST). ~~A utility as defined in 47 U.S.C. § 224 is not a pass-through provider.~~ However, "Pass-through provider" does not include a Person who does not remit CST but pursuant to F.S. § 202.16(2) sells Communications services for resale to a Person who sells Communications services at retail or who integrates Communications services sold at retail in the Village and who remits CST.

**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 F.S. § 337.401(7), 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 or Place a Utility pole 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 and all other groups or combinations.

**Place or maintain or placement or maintenance or placing or maintaining** means to erect, construct, install, place, extend, expand, remove, occupy, locate, relocate, Co-locate, 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 right-of-way** means public roads, streets, highways, alleys, boulevards, bridges, tunnels and public utility easements owned by the Village, dedicated to the Village or to the public, or for which the Village holds a property interest and/or exercises rights of management or control, including management or control derived from landscaping or other maintenance agreements whether called "joint participation agreements", "landscape maintenance memorandums of agreement", or any other name. 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 and public utility easements. "Public rights-of-way" 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 any Person who has or seeks to have its Communications facilities, including Wireless ~~communications~~ facilities and Wireless support structures located in any Village Public right-of-way, or in any way occupies or uses, or seeks to occupy or use, the Village's Public rights-of-way for purposes of providing Communications services, and who has, or seeks to Register with the Village in accordance with

the provisions of this article. A Registrant is a “provider of communications services” as that term is used in Sec. 337.401 F.S.

**Registration and register** mean the process described in whereby a Person providing Communications services provider, Communications facilities facility provider or Pass-through services or facilities 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 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 Applicable codes. Unless stated otherwise, all requirements imposed on Communications facilities shall also apply to Repurposed structures. To "repurpose an existing structure" shall mean the act of renovating, reconfiguring or replacing an existing structure as described above. The Person communications service provider, communications facility 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 only, not for the Repurposed structure itself. A Person 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 six (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 six (6) cubic feet in volume; and

(b) All other ~~wireless~~ equipment associated with the facility is cumulatively no more than twenty-eight (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.

**State** means the State of Florida.

**Stealth design** means a method of camouflaging any Communications facility, including a Wireless facility, 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.

**Surrounding neighborhood** means the area within a three hundred (300) foot radius of a communications facility site or proposed communications facility site.

**Utility** means any person who places or maintains an electric transmission, voice, telegraph, data, or other ~~communications services lines or wireless facilities; pole lines, poles, ditches, sewers, water, heat or gas~~

mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in the Village's Code or state law as "utilities."

**Utility pole** means a pole or similar structure that is used in whole or in part to provide Communications services or for electric distribution, lighting, traffic control, signage or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure fifteen (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 a Communications service as defined at F.S. § 202.11 (24) as same may be amended from time to time.

**Village** ~~shall~~ means Village of Royal Palm Beach, Florida.

**Village council** means the Village Council of the Village of Royal Palm Beach, Florida; the governing body of the Village.

**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 under article IV, section 1 of the Village Charter. The term Village manager also includes his or her designee.

**~~Wireless communications facility or WCF~~** 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 Small wireless facilities 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 WCF.~~

**Wireless infrastructure provider** means a Person who has been certified under Chapter 364, F.S. to provide telecommunications service ~~in the state~~ or under Chapter 610 F.S. to provide cable or Video services in this State, or that Person's affiliate, and who builds or installs wireless communication transmission equipment, 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 service 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, a~~ Utility poles, pedestal, or other support structure for ground-based equipment not mounted on a Utility pole and less than five (5) feet in height.

**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. 21.7-28. - Registration for placing or maintaining communications facilities in the village's public rights-of-way.**

(a) A Communications services provider, communications facility provider, Wireless infrastructure provider, Wireless services provider, or Pass-through provider or other Person that desires to ~~may~~ Place or maintain a permanent or temporary Communications facility in, on, under, over or across the Village's Public rights-of-way shall first register with the Village in accordance with this article.

(b) Subject to the terms and conditions, including permitting requirements contained in this article, a Registrant may Place or maintain a permanent or temporary Communications facility in, on, over, under, or across the Village's Public rights-of-way.

### **Sec. 21.7-29. - 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 under this article is a condition precedent to obtaining any permit and Placing or maintaining a permanent or temporary Communications facility in, on, under, over or across the Village's Public rights-of-way. Registration does not excuse a Person or provider communications services provider, communications facility provider, wireless infrastructure provider or pass-through 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 Person or provider from complying with all applicable Village codes, including this article.

### **Sec. 21.7-30. - Registration; effectiveness of registration.**

(a) Registration. Any Communications services provider, communications facility provider, Wireless infrastructure provider, Wireless services provider, or Pass-through provider or other Person or provider desiring to use the Village's Public rights-of-way shall first Register with the Village through the Village engineer. Registrations shall include the following information:

(1) Name of the Registrant applicant; and

(2) Name, address and telephone number of the Registrant's applicant's primary contact person in connection with the Registration; and

(3) Reserved.

(4) Evidence of the insurance coverage required under this article and acknowledgment of the indemnity and other provisions of this article; ~~which acknowledgment shall be considered an agreement to the provisions;~~ and

(5) ~~Reserved~~ 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

(6) The number of the Registrant's applicant's certificate or certificates of authorization, if any, to provide Communications services issued by the State public services commission, the Federal Communications Commission 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 services.~~

(b) Reserved.

(c) Review by the Village. The Village engineer will review the information submitted by the Registrant applicant. If the Registrant applicant submits all information in accordance with Village Code section 21.7-30(a) herein, the Registration shall be effective and the Village engineer shall notify the Registrant applicant of the effectiveness of the Registration in writing. If the Village engineer determines that the information has not been submitted in accordance with the above referenced subsection, the Village engineer shall notify the Registrant applicant in writing of the non-effectiveness of the Registration. The Village engineer shall so reply to a Registrant an applicant within thirty (30) days after receipt of the Registration information from the Registrant applicant. The Registrant applicant shall have one (1) thirty-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 engineer who shall notify the Registrant applicant of the effectiveness of Registration in writing. If the Village engineer determines again that the information has not been submitted in accordance with Village Code section 21.7-30(a) herein, the Village shall notify the Registrant applicant of the final non-effectiveness of the Registration. The Village shall so reply to a an Registrant applicant within thirty (30) days after receipt of re-submittal. ~~An Registrant applicant~~ 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 21.7-37. Final non-effectiveness of Registration shall not preclude ~~an Registrant applicant~~ from filing subsequent applications for Registration under the provisions of this article.

(d) Cancellation of registration. A Registrant may cancel a Registration upon written notice to the Village engineer that it will no longer Place, maintain or own any Communications facilities, including Wireless communications facilities and Wireless support structures in the Village's Public rights-of-way and will no longer need to obtain 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 facilities, including Wireless communications facilities and Wireless support structures in the Village's Public rights-of-way.

(e) 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 Place or maintain facilities ~~work~~ in the Village's Public rights-of-way. The fact that a Communications services provider, communications facility provider, Wireless infrastructure provider, Wireless services provider, or Pass-through provider or other Person or provider is Registered shall not establish any right or priority for the use of the Village's Public rights-of-way.

(f) Renewal and update of registration. A Registrant shall renew its registration with the Village by October 1 ~~every five (5) years of each even numbered year~~ in accordance with the Registration requirements in this article. Additionally, within ~~ninety (90) thirty (30)~~ days of any change in the information required to be submitted pursuant to Village Code section 21.7-30(a) herein, 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 (g) below until the ~~communications services provider, communications facility provider, wireless infrastructure provider or pass-through provider~~ Registrant has complied with the ~~registration renewal~~ requirements of this article.

(g) Permits. Unless otherwise exempt from permitting elsewhere in this article or by applicable law, a permit is hereby required of a Registrant ~~communications services provider, communications facility provider, wireless infrastructure provider or pass-through provider~~ that desires to Place or maintain a permanent or temporary Communications facility in any Village Public right-of-way. An effective Registration shall be a condition precedent to 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.

**Sec. 21.7-31. - Transfer of registration.**

If a Registrant sells or assigns its assets located in the Village's Public rights-of-way, the buyer or assignee shall be obligated to comply with the terms of this article. Written notice of any such sale or assignment shall be provided to the Village engineer within forty-five (45) days of the effective date of the closing of the sale or assignment. If the buyer or assignee is a current Registrant, the buyer or assignee is not required to re-Register. 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 21.7-30(a) herein, including any changed evidence of insurance coverage.

**Sec. 21.7-32. - Existing communications facilities and wireless facilities in the village's public rights-of-way.**

Communications facilities or Wireless facilities which have been 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 ~~communications services provider, communications facility provider, wireless infrastructure provider or pass-through~~ Person or provider complies with the Registration provisions of this article. Providers with existing communications facilities, including wireless communications facilities and including Wireless support structures have one hundred

twenty (120) days from the effective date of this article, or any applicable amendment thereto to comply with the terms of this article, or be found in violation thereof. Notwithstanding the foregoing, any Communications Facilities maintained in the rights-of-way as of the date of this Ordinance placed pursuant to a valid permit issued by the Village shall not be required to comply, other than the registration requirements stated herein, with any terms of this Article.

**Sec. 21.7-33. - 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; or

(2) The Registrant's Placement or maintenance of ~~a communications facility, including wireless communications facilities and~~ including 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 from the Village; or

(3) The Registrant violates F.S. § 843.025, as same may be amended from time to time; or

(4) The Registrant violates F.S. § 843.165, as same may be amended from time to time; or

(5) The Registrant abandons all of its Communications ~~facilities, including wireless communications facilities and~~ Including Wireless support structures in the Village's Public rights-of-way without complying with the Abandonment provisions of this article; or

(6) 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 to them 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 former

Registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the former 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 ~~installation~~ of the Communications facilities, including ~~wireless communications facilities and Wireless support structures~~.

(d) ~~A 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. 21.7-34. - Permit requirements and conditions.**

(a) Permit required; conditions.

(1) A Registrant shall not commence to Place or maintain a Communications facility in a Village Public right-of-way ~~or to perform work involving excavation, closure of a sidewalk, closure of a vehicular lane or closure of a parking lane,~~ until all applicable permits, if required ~~any~~, have been issued by the Village, except in the case of an emergency as provided for in Village Code section 21.7-34(s) herein; ~~or unless the Registrant is performing service restoration to an existing Communications facility and the work is done in compliance with the 2017 Edition of the Florida Department of Transportation Utility Accommodation Manual. In such instances; however, the Registrant shall obtain an after-the-fact permit for work which would otherwise require a permit; 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 F.S. § 337.401(7) as same may be amended from time to time.~~

(2) ~~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 in the Village's Public rights-of-way related to the public, health, safety and welfare as permitted and set forth in F.S. § 337.401 and as regulated by the Florida Advanced Wireless Infrastructure Deployment Act as set forth at F.S. § 337.401(7) 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.~~

(3) ~~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 to be Placed or located within the Village's Public rights-of-way, or deny the permit application, the Village engineer 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)(16) and (b)(17) 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 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 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; 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 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; 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 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; and

(5) Distance separation from edge of pavement. No new communications facility pole or wireless support structure shall be constructed, operated or maintained in the village's public rights-of-way in violation of the state 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 engineer shall have the authority to reduce any offset where that offset cannot be reasonably obtained and other alternatives are deemed impractical. Additionally, the village engineer shall have the authority to decide reductions in the clear zone in accordance with the above referenced manual, 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; and

(6) Distance separation from sidewalk. No newly installed communications facility pole or wireless support structure 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 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 on an existing structures is exempt from this requirement; and

(7) Installation at outermost boundary of village's public rights-of-way. The placement of a new communications facility pole, wireless support structure or other support structure 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 right-of-way precludes compliance with other requirements of this article, then the village engineer or registrant may propose and the registrant may include in the permit application a proposed re-routing of the sidewalk at its own expense, in order to meet other requirement of this article. Compliance with this subsection 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.

~~(4)~~ ~~(8) Compliance with codes.~~ All work regulated by this article ~~chapter~~ shall comply with Applicable codes including as well as the 2017 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, ~~as same may be amended from time to time~~. In addition, such work shall comply with F.S. ch. 333, as applicable, and federal regulations pertaining to airport airspace protections.

(b) Permit applications. Permit applications to Place a Communications facility in the Village's Public rights-of-way shall contain the following information; ~~however, except that~~ 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 (16) herein below, and permit applications for the Co-location of Small wireless facilities only are governed by the requirements of subsection (17) herein below:

(1) Site plan. A site plan that shows 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 engineer. 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 C~~ommunications 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 above ground facilities are ~~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) Reserved.

(3) 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 21.7-35(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 engineer 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.

(4) 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.

(5) 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 facility, to accommodate installation and/or modification of the ~~communications~~ facility.

(6) 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 adjacent Village Public rights-of-way, if available (such information shall be provided without certification as to correctness, to the extent obtained from other Persons).

(7) 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.

(8) 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.

(9) ~~Reserved Small wireless facility co-location permit application consolidation. Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at F.S. § 337.401(7), 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 thirty (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.~~

(10) Certification as to removal of Abandoned facilities or equipment and ~~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.~~

(11) 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 facilities ~~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 (such information may be produced without certification as to correctness to the extent obtained from other Persons ~~registrants with facilities in the village's public rights-of-way~~). Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at F.S. § 337.401(7), as same may be amended from time to time, this requirement shall not apply to applications for permits for the Placing and maintaining of Utility poles or the Co-location of Small wireless facilities.

(12) Identification of all above-grade structures within the Village's Public rights-of-way within a three hundred fifty-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-foot radius of the proposed new ~~communications~~ facility (such information may be produced without certification as to correctness to the extent obtained from other Persons ~~registrants with facilities in the village's public rights-of-way~~). Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at F.S. § 337.401(7), as same may be amended from time to time, this

requirement shall not apply to applications for permits for the Placing and maintaining of Utility poles or the Co-location of Small wireless facilities.

(13) Affidavits.

(i) An application for a permit to install new ~~communications~~ facilities (as opposed to Co-locations or applications to use an Existing structure, or wireline pole attachment installations made in the communication space of Utility poles or other poles) 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 facilities 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-foot radius of the proposed new ~~communications~~ 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.

(14) 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 21.7-38 herein as though such indemnification provisions are set forth verbatim in the permit application.

(15) Additional information as reasonably required for review of permit application. Such additional information as the Village engineer finds reasonably necessary with respect to the Placement or maintenance of the ~~communications~~ 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 engineer 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 ~~(ii)~~ 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.

(16) 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.

(17) 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 F.S. § 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 ADA Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- (iv) Materially fails to comply with the 2017 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
- (v) Fails to comply with Applicable codes.
- (vi) Fails to comply with objective design standards for wireless providers as stated in Sec. 21.7-35(h).

(18) Small wireless facility Co-location permit application consolidation. Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at F.S. § 337.401(7), 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 thirty (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.

(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 Place or maintain Communications facilities where the Village has required all public utility lines in the Village's Public rights-of-way to be placed underground in the area included in the permit application. ~~overhead distribution utilities are being placed underground pursuant to a Village program to underground such overhead distribution facilities~~ In regard to such Public rights-of-way, the Village may prohibit the Placement and maintenance of new Utility poles for Small wireless facilities if:

(1) the Village has, at least 90 days prior to receipt of the permit application, required all public utility lines to be placed underground; and

(2) There remain structures above ground that are reasonably available to Wireless providers for the Co-location of Small wireless facilities and may be replaced by a Wireless provider to accommodate the Co-location of Small wireless facilities; and

(3) the Wireless provider may install a new Utility pole in the designated area of the Village's Public right-of-way that otherwise complies with this subsection, and it is not reasonably able to provide Wireless services by Co-locating on a remaining Utility pole of other structure in the Village's Public right-of-way.

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

(1) All new communications facilities ~~poles and wireless support structures~~ 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 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.~~

(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 of other facilities. A Registrant shall not Place or maintain its Communications 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.

(g) Temporary raising and lowering of Communications 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 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 F.S. §§ 337.403 or 337.404.

(h) Restoration of Village Public rights-of-way. After the completion of any work involving a Communications facility 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 F.S. § 337.402 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 distributions facilities to underground distributions facilities.

(1) Removal or relocation at the direction of the Village of a Registrant's Communications facility in a Village Public right-of-way shall be governed by the provisions of F.S. § 337.403 and 337.404 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 distribution facilities are converted to underground distribution facilities, any Registrant having Communications facilities located ~~in Village Public rights-of-way on a communications facility pole or utility pole~~ shall arrange for the conversion to underground facilities or relocation on the same terms and conditions as the other utility distribution facilities that are being converted to underground distribution facilities. ~~Providers of Small wireless facilities are included in this requirement, unless specifically waived in writing in advance by the Village. Wireless facilities installed before the Village approved the conversion of overhead utility facilities underground shall be allowed to remain subject to any applicable pole attachment agreement with the pole owner or wireless providers may replace the associated pole within 50 feet of the prior location in accordance with objective design standards for wireless providers as stated in Sec. 21.7-35.~~

(j) Maintenance in accordance with industry standards and applicable law. A Registrant shall maintain its Communications facilities in good condition, order and repair in a manner consistent with accepted industry practice and applicable law.

(1) ~~All Owners of Communications facilities located in Village Public rights-of-way shall be Placed and maintained install and maintain communications facilities and other appurtenant equipment in compliance with the requirements of Applicable codes, an in such a manner that will not interfere with the use of other property or other facilities within the Village's Public rights-of-way.~~

(2) All Communications facilities and other appurtenant equipment shall, at all times, be kept and maintained in good condition, order and repair 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. All such conditions shall be remedied within ten (10) working days from receipt of notice thereof from the Village.

(3) All Communications facilities and other appurtenant equipment shall, at all times, be kept and maintained in good condition 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.

(k) Maintenance of graffiti plan. Each Communications facility 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 adjacent property surrounding neighborhood at grade. All graffiti shall be removed within ten (10) working days from receipt of notice thereof by the Village; and~~

~~(2) It is 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. The Village's policies strongly favor strengthening utility infrastructure and in particular as it relates to flooding and hurricane related events,

and Registrants ~~applicants~~ are encouraged to implement an infrastructure hardening plan for any Communications facilities Placed or maintained 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 F.S. ch. 556 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. 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.

(p) Right of inspection. The Village shall have the right to make such visual inspections of Communications facilities Wireless facilities and Wireless support structures 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 ~~applicant~~ shall furnish to the Village, at no cost to the Village, one ~~(1)~~ 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 engineer may approve or require.

(2) The "as-built" plans shall be in an ~~electronic~~ format specified by the Village engineer 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 F.S. ch. 556 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 F.S. § 202.195 as same may be amended from time to time, provided the Registrant so notifies the Village which information is confidential in accordance with State 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 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 shall be subject to the standards and time frames set out in F.S. § 365.172 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. All timeframes associated with applications pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at F.S. § 337.401(7), as same may be amended from time to time, are likewise recognized by the Village. Applications for permits pursuant to F.S. § 337.401(7) 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 thirty (30) days after the notice of denial is sent to the applicant. The Village call approve or deny the revised application within thirty (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 Co-location of a Small wireless facility or 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 section 21.7-35(l) and (n).

(s) Routine maintenance and emergency notices and permits. In the case of routine maintenance (including service restoration work on existing facilities "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, or extensions of existing facilities for providing Communications services to customers, 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 section unless the provider is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual. 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 facility 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 or parking lane, unless the provider is performing service restoration on an existing facility and the work is done in compliance with the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual, in which case the provider shall be required to provide the Village notice of such work within 30 days of its completion and shall be required to obtain an after-the-fact permit if a permit would have originally been required.

(t) Issuance of permit in violation of code or construction in violation of code.

(1) The issuance of a permit for a communications facility shall not be construed as a right to Placement or maintain a maintenance of the communications facility that fails to meet the requirements of this article.

(2) The issuance of a permit for a communications facility 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 this article Village Code chapter 21.7 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 engineer from thereafter requiring the correction of errors when in violation of Village Code chapter 21.7.

(v) No permit fees for work under this chapter. Pursuant to F.S. § 337.401(3)(c)(1)(b) 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 under this chapter in the Village Public rights-of-way. Pass-through providers shall be subject to the fees set forth at Village Code section 21.7-46.

~~(w) Small wireless facility co-location permit application consolidation. Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at F.S. § 337.401(7), 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 thirty (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. 21.7-35. - Standards for design compatibility with surrounding neighborhoods; prevention of pole proliferation and saturation of village public rights-of-way.**

(a) In general. Above-ground Communications facilities, including Wireless communications facilities, shall be designed in such a manner that the facilities are compatible with the surrounding neighborhood and minimize any negative visual impact on the surrounding neighborhood. In order to achieve compatibility

with the surrounding neighborhood and to minimize the negative visual impact on the surrounding neighborhood, the following regulations shall apply, unless waived pursuant to this section.

(b) ~~Stealth design. Stealth design for above-ground communications facilities, and in particular, new communications facility poles and wireless support structures,~~ shall be utilized wherever possible in order to minimize the visual impact of Communications facilities ~~on, and preserve compatibility with, surrounding neighborhoods and in order to eliminate the need to locate any ground or elevated equipment on the exterior of a Communications facility or existing structure.~~ Stealth design is not required with respect to Co-location of Small wireless facilities or 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 facilities ~~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 F.S. § 337.401(7), as same may be amended from time to time.

(2) New Wireless support structures for Small wireless facilities 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) Replication of trees or other natural objects is prohibited.

(9) Reserved.

(10) Category II. Design and wind load calculations shall be provided per ASCE 7—10 (170 MPH). Calculations should be accompanied by Miami-Dade County Notice of Acceptance (NOA)/Product Approvals.

(c) No signage. Registrants shall not Place or maintain signage on Communications 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 not requiring FAA painting or marking, shall have an exterior, hard durable finish which enhances compatibility with adjacent uses, as approved by the Village engineer.

(e) Lighting. A Communications facility 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 an LED street light on a new ~~communications facility~~ Utility 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, a~~ A Communications facility, including any attached Antennas, ~~but excluding Small wireless facilities which are regulated in part (5) below~~, shall not exceed the following height:

(1) Arterial roadways, collector roadways and local roadways. The top of the uppermost Antenna array, Co-located or attached equipment on a new Communications facility pole ~~not part of a Small wireless facility or a new wireless support structure~~ shall not exceed the height of the closest light pole on that same roadway.

(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 [subsection] (f)(1) above.

(3) For each Co-location or Repurposed structure ~~not part of a Small wireless facility~~, 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 ~~part subsection (f)(1)~~ part subsection (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 Utility pole or Wireless support 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 five hundred (500) feet of the proposed location for the new Utility pole or Wireless support structure; or fifty (50) feet if there is no existing Utility pole in the same right-of-way within five hundred (500) feet of the proposed location for the new Utility pole or Wireless support structure.

(g) Design standards for facilities other than Utility poles and Wireless support structures used to support Small wireless facilities ~~Equipment and antenna volume.~~

(1) ~~Subject to height limits, and antenna volume limits, e~~ Equipment volume. 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 or located in the village's public right-of-way~~, not including 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 above grade support structures~~, shall not exceed seventeen (17) cubic feet.

(2) Antenna volume. ~~Subject to height limits and equipment volume limits, e~~ 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.

(~~3~~ h) Prohibition against placement on certain roadways where Village has plans for sidewalks; preference for Arterial or Collector roadways. No new Communications facility pole, ~~wireless support structure or other new support structure~~ shall be Placed or maintained in the swale area on the side of a Collector roadway or Local roadway where the Village has plans to install a sidewalk of five (5) feet in width or more, nor shall such new Communications facility pole, ~~wireless support structure 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 facility poles, ~~wireless support structures or other new support structures~~ shall generally be placed in Arterial or Collector roadways whenever possible. Placement of new Communications facility poles, ~~wireless support structures or other new support structures~~ in rights-of-way other than Arterial or Collector roadways shall be justified by the applicant to the satisfaction of the Village engineer 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.

(~~4~~ i) Minimum distance separation from edge of pavement. No new Communications facility pole, ~~utility pole, wireless support structure or other new support structure~~ 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 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 engineer shall have the authority to reduce any offset where that offset cannot be reasonably obtained and other alternatives are deemed impractical. Additionally, the Village engineer 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.

(~~5~~ j) Minimum distance separation from existing sidewalk. No new Communications facility pole, ~~wireless support structure or other new support structure~~ 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.

(~~6~~ k) Installation at outermost boundary of Village Public rights-of-way. The Placement of a new Communications facility pole, ~~utility pole, wireless support structure or other new support structure~~ 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 of the Public right-of-way and edge of pavement. To the extent that the location of the sidewalk within the Village's Public right-of-way precludes compliance with other requirements of this article ~~chapter~~, then the Village engineer or Registrant may propose and the Registrant may include in the permit application a proposed re-routing of the sidewalk at its own expense, in order to meet other requirements of this article ~~chapter~~. 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.

~~(Z l) Distance separation between Communications facility poles and wireless support structures in Village public rights-of-way. Communications facility poles and wireless 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 F.S. § 337.401(7), 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 fourteen (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 F.S. § 337.401(7), as same may be amended from time to time.~~

~~(g m) Sight distance. No new Communications facility 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, Chapter 3, Section C.9.b, Sight Distance.~~

~~(n) 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 roadways, 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 roadways shall explain why the applicant is unable to locate such facilities in or adjacent to an arterial or collector roadway and shall demonstrate to the satisfaction of the village engineer the need to locate the facilities in the areas proposed in the application. 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 to the extent such authority has been delegated to the Village as stated above. Pursuant to the Advanced Wireless Infrastructure Deployment Act set forth at F.S. § 337.401(7), 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 fourteen (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 F.S. § 337.401(7), as same may be amended from time to time.~~

(9 e) Prohibition against placement in residential front yard. No new Communications facility pole ~~or wireless support structure~~ shall be placed within a Village Public right-of-way that abuts any front yard of a residential property.

(10 p) Limitation on placement in residential corner yards. A new Communications facility pole ~~or wireless support structure~~ 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.

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

(h) Design standards for Wireless providers.

(1) A new Utility pole that replaces an existing Utility pole must be of substantially similar design, material, and color as the existing Utility pole.

(2) A new Utility pole used to support a new Small wireless facility that does not replace an existing Utility pole must be of substantially similar design, material, and color as the predominant Utility pole type at the location of the new Utility pole, and shall comply with the Stealth requirements set forth above in part (b) of this section as well as the location restrictions set forth above in parts (g)(9), (10) and (11).

(3) Ground mounted components of a Small wireless facility may be Placed no more than 15 feet from the associated Utility pole or Wireless support structure.

(4) All Small wireless facilities shall comply with the Stealth requirements set forth above in part (b) of this section.

(i)County, State or federal delegation of authority to Village. 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 to the extent such authority has been delegated to the Village as stated above.

(i r) 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 F.S. § 337.401(7), 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 one hundred fifty dollars (\$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 article 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 No later than~~ three (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 article chapter as well as F.S. § 337.401(7), 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 sixty (60) days after receipt of a complete application. Make ready work, including any pole replacement, must be completed within sixty (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.



(j s) 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 F.S. § 337.401(7), 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 item 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 ~~25-308(r)~~, and the Village engineer shall consider same, as applicable to any particular waiver request, in determining whether to grant a waiver, other than for Small wireless facilities which are governed by part (7 &) herein below:

(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 Village's 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 surrounding neighborhood;

(vi) Adjacent and nearby topography, tree coverage and foliage of the surrounding neighborhood;

(vii) Design of the proposed facilities with particular reference to achieving compatibility with the surrounding neighborhood and elimination of adverse visual impacts of such facilities on the surrounding neighborhood;

(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 surrounding neighborhood 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 Registrant ~~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 surrounding neighborhood; 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 request applicant for the waiver demonstrates that the item for which the waiver is being sought would unreasonably discriminate against the applicant in favor of another communications service 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 Registrant 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 Registrant's applicant's burden, and the Village engineer's authority, is the same as set forth in part (6.7) herein above. Small wireless facility waivers shall be granted or denied by the Village engineer within forty-five (45) days after the date of the request.

(k) Exceptions. The requirements of this article chapter shall not apply as follows:

(1) Nothing contained in this article chapter 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 chapter 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 chapter shall be construed to authorize any Person to Co-locate or attach Small wireless facilities ~~including~~ 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 F.S. § 760.29(4)(b), as same may be amended from time to time; and
- (ii) Has more than five thousand (5,000) residents; and
- (iii) Has underground utilities for electric transmission or distribution.

(4) Nothing contained in this article chapter shall be construed to authorize any Person to Co-locate or attach Small wireless facilities ~~including~~ 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.

#### **DIVISION 4. - ADMINISTRATION AND ENFORCEMENT**

##### **Sec. 21.7-36. - Suspension of permits.**

Subject to appeal as provided in this article, the Village engineer 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 (1) or more of the following reasons which shall be considered to be "a substantial breach":

(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) ~~Reserved. Violation of provisions in this article requiring payment of registration or permit fees to the village; or~~

(d) Failure to relocate or remove facilities as may be lawfully required by the Village in connection with the subject permit.

If the Village engineer determines that the permittee has committed a substantial breach of a term or condition of the permit, the Village engineer 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 engineer, at his discretion, to place additional or revised conditions on the permit.

If the Village engineer'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 engineer 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. 21.7-37. - Appeals.**

(a) Final, written decisions of the Village engineer suspending or revoking a permit, denying a waiver, 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 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 federal and state laws.

(b) Reserved.

(c) The Village manager's decision shall be deemed to be final agency action and the exhaustion of all local administrative remedies.

(d) Any Person aggrieved by any decision of the Village manager regarding termination of a Registration or regarding the appeal from a decision of the Village engineer shall be entitled pursue any remedy available to them at law or in equity.

**Sec. 21.7-38. - Insurance and indemnification.**

(a) Indemnification. Registrants, by Registering with the Village pursuant to this article, 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 right-of-way or any property Registrant is entitled or authorized to use as a result of the Registration. 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 third parties or of the Village, its respective agents, servants, employees or officers, nor shall the liability limits set forth in F.S. § 768.28 as same may be amended from time to time, including limits on attorney's fees, be waived. These indemnification requirements shall survive and be in full force and effect after the termination or cancellation of any Registration.

(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. All insurance shall be from responsible companies duly authorized to do business in Florida and having an A.M. Best A-VII or better rating. All liability policies shall provide that the Village is an additional insured as to the activities under this article. All insurance under this article shall be in the amounts set forth below:

(1) Workers' compensation insurance within state 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 (\$3,000,000.00) 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) Cancellation of policies of insurance. At least sixty (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 certified registered mail to the Village engineer.

(c) Self-insurance. The insurance requirements set forth hereinabove may be satisfied by proof of self-insurance satisfactory to the Village manager.

(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 within the timeframe contained in the notice shall be subject to an enforcement hearing and potential penalties, including termination of the applicable registration registrant.

**Sec. 21.7-39. - 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 engineer may require a performance bond by a surety duly authorized to do business in the State and having an A.M. Best A-VII rating or better. The bond, if required, shall be in the amount of one hundred twenty-five (125) percent of the restoration cost estimate of the Village's Public rights-of-way, as certified by a professional engineer licensed in the State, 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 of Royal Palm Beach, 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. 21.7-40. – Reserved Security fund.**

~~At the time of registration under this article, the registrant shall be required to file with the village, for village approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of ten thousand dollars (\$10,000.00), having as a surety a company qualified to do business in the state having an A.M. Best A-VII rating or better, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of: (a) transfer, sale, assignment or removal of all of the registrant's communications facilities in the village's public rights-of-way; or (b) twelve (12) months after the termination or cancellation of any registration. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon the registrant by the provisions of this article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to Village Code section 21.7-39 herein, there shall be recoverable,~~

~~jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the village as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in the village's public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The village may, in its sole and absolute discretion it believes that doing so will serve the public welfare, accept a corporate guarantee of the registrant or its parent company.~~

**Sec. 21.7-41. - Abandonment of a communications facility.**

(a) Upon Abandonment of a Communications facility, including ~~wireless communications facilities and~~ Wireless support structures Placed or maintained by a Registrant in a Village Public right-of-way, the Registrant shall notify the Village engineer within thirty (30) days.

(b) The Village may direct the Registrant by written notice to remove all or any portion of such Abandoned facility at the Registrant's sole expense if the Village determines that the Abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility: (a) compromises safety at any time for any Village Public right-of-way user or during construction or maintenance in the Village's Public rights-of-way; (b) prevents a third Person from Placing and maintaining ~~locating~~ facilities in the area of the Village's Public rights-of-way where the Abandoned facility is located when other alternative locations are not reasonably available; or (c) creates a maintenance condition that is disruptive to the Village's Public rights-of-way's use. In the event of (b), the Village may require the third person to coordinate with the Registrant that owns the existing facility for joint removal and placement, where agreed to by the Registrant.

(c) In the event that the Village does not direct the removal of the Abandoned facility, the Registrant, by its notice of Abandonment to the Village, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the Village or another Person at such third Person's ~~party's~~ cost.

(d) If the Registrant fails to remove all or any portion of an Abandoned facility as directed by the Village within a reasonable time period as may be required by the Village under the circumstances, the Village may perform such removal and charge the cost of the removal to ~~against~~ the Registrant.

(e) In the event the Abandoned facility is affixed to a Utility pole by way of a pole attachment agreement, then the obligation to remove the Abandoned facility shall be that of the utility at its sole cost and expense.

**Sec. 21.7-42. - 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 State public records law.

**Sec. 21.7-43. - 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. 21.7-44. - Reservation of rights and remedies.**

(a) The provisions of this ~~article chapter~~ shall be applicable to all Communications facilities, including ~~wireless communications facilities and~~ Wireless support structures placed in the Village's Public rights-of-way on or after the effective date of this ordinance and shall apply to all existing Communications facilities, including ~~wireless communications facilities and~~ Wireless support structures placed in the Village's Public rights-of-way prior to the effective date of ~~the this ordinance~~ from which this article derives, 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 ~~article chapter~~.

(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, Wireless services provider or Pass-through provider under any existing franchise, license or other agreements with a Communications service provider, ~~communications facility provider,~~ wireless infrastructure provider, Wireless services provider or Pass-through provider.

(c) Nothing in this article shall affect the remedies the Village or ~~the~~ a Registrant has available under applicable law.

**Sec. 21.7-45. - 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 a Registrant's Communications facilities 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, including ~~wireless communications facilities and~~ Wireless support structures as authorized herein constitute any representation, guarantee or warranty of any kind by, or create any liability upon the

Village or any official, agent or employee thereof. Additionally, the Village shall not be responsible for any relocation costs, except as may be required by applicable law, incurred by any Registrant due to the Village's or any other Person's work in the Village's Public rights-of-way.

**Sec. 21.7-46. - Pass-through provider fees and charges.**

(a) Pass-through providers shall pay to the Village on an annual basis an amount set by resolution of the Village council, pursuant to state law, per linear mile or portion thereof of Communications facilities Placed and/or maintained in the Village's Public rights-of-way.

(b) The amounts charged pursuant to this section shall be based on the linear miles of Village Public rights-of-way where Communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers. Each Pass-through provider shall provide the Village with an annual notarized statement, no later than March 1 of each year, identifying the total number of linear miles of pass-through facilities it has placed in the Village's Public rights-of-way.

(c) Any annual amount charged shall be reduced for a prorated portion of any twelve-month period during which the Pass-through provider remits taxes imposed by the Village pursuant to F.S. ch. 202 as same may be amended from time to time.

(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 section are not made within ninety (90) days after the due date, the Village engineer may withhold the issuance of any permits to the Pass-through provider ~~registrant~~ until the amount past due is paid in full.

(f) Upon request from the Village (including the required affidavit regarding authorization of the requesting Village official to review tax information related to revenue and mileage calculations for Pass-through providers), which request shall not be made more than once annually, a Pass-through provider shall provide reasonable access to maps of pass-through facilities from which the calculation of linear miles of pass-through facilities in the Village's Public rights-of-way can be determined.

**Sec. 21.7-47. - Historic preservation district regulations.**

Nothing contained in this article ~~chapter~~ shall be construed as a limit on the Village's authority to otherwise enforce historic preservation zoning regulations consistent with the authority granted to the Village under 47 U.S.C. s. 332(c)(7), the requirements for facility modification under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as same may be amended from time to time. The city Village may enforce local codes, administrative rules, or regulations adopted by ordinance in effect April 1, 2017, or such codes, rules or regulations publicly declared by the city Village prior to April 1, 2017 of its intent to adopt, which are applicable to historic areas designated by the State or city Village.



**Sec. 21.7-48. - Penalties for violation.**

Any violation of any of the provisions of this article may be enforced as provided for in F.S. ch. 162 as same may be amended from time to time. 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 state 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, and/or denying permits or development orders for other projects or use of the Village's public right-of-way by the Person or provider. The Village's remedies herein shall be cumulative.

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

**Section 2:** Each and every other Section and Sub-section of Chapter 21.7. Streets, Sidewalks and Other Public Places. shall remain in full force and effect as previously enacted.

**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.

**FIRST READING** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**SECOND AND FINAL READING** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**VILLAGE OF ROYAL PALM BEACH**

\_\_\_\_\_  
MAYOR FRED PINTO

ATTEST:

(Seal)

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DIANE DISANTO, VILLAGE CLERK