

ORDINANCE NO. 20-____

**AN ORDINANCE OF THE TOWN OF MIAMI LAKES,
FLORIDA, AMENDING CHAPTER 35, ARTICLE III,
COMMUNICATION FACILITIES IN PUBLIC RIGHTS-OF-
WAY, DIVISION 3 PERMITTING AND PLACEMENT OF
COMMUNICATION FACILITIES IN THE PUBLIC
RIGHTS-OF-WAY; PROVIDING FOR SEVERABILITY;
PROVIDING FOR INCLUSION IN CODE; AND
PROVIDING FOR AN EFFECTIVE DATE. (DIEGUEZ)**

WHEREAS, the Town of Miami Lakes (the “Town”) Council during the February 2018 Council Meeting adopted Chapter 35, Article III, providing for regulation of communication structures on our rights-of-way; and

WHEREAS, Florida Statute 337.403 provides that local governments retain the right to negotiate placement and design standards for communication facilities; and

WHEREAS, the proposed Ordinance amending Chapter 35, Article III, Division 3 passed in first reading on August 18, 2020; and

WHEREAS, the proposed Ordinance amending Chapter 35, Article III, Division 3 was formally adopted on _____, 2020, into law.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

Section 1. Recitals. Each of the above stated recitals is true and correct and is incorporated herein by this reference.

Section 2. Amendment. Chapter 35, Article III, is hereby amended and restated as attached hereto as Exhibit “A.”

Section 3. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be

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invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town Code and that if necessary the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Article”, “Division” or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon its adoption on second reading.

The foregoing Ordinance was offered by Councilmember _____, who moved its adoption on first reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

FIRST READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on first reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Nelson Rodriguez	_____
Councilmember Carlos O. Alvarez	_____
Councilmember Luis Collazo	_____
Councilmember Joshua Dieguez	_____
Councilmember Jeffrey Rodriguez	_____
Councilmember Marilyn Ruano	_____

Passed on first reading this ____ day of _____, 2020.

[THIS SPACE INTENTIONALLY LEFT BLANK]

SECOND READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on second reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Nelson Rodriguez	_____
Councilmember Carlos O. Alvarez	_____
Councilmember Luis Collazo	_____
Councilmember Joshua Dieguez	_____
Councilmember Jeffrey Rodriguez	_____
Councilmember Marilyn Ruano	_____

Passed and adopted on second reading this ____ day of _____, 2020.

Manny Cid
Mayor

Attest:

Gina M. Inganzo
Town Clerk

Approved as to form and legal sufficiency:

Raul Gastesi, Jr.
Gastesi, Lopez and Mestre, PLLC
Town Attorney

EXHIBIT “A”

ARTICLE III. - COMMUNICATION FACILITIES IN PUBLIC RIGHTS-OF-WAY

DIVISION 3. - PERMITTING AND PLACEMENT OF COMMUNICATION FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

Sec. 35-52. - Placement or maintenance of communications facilities, in public rights-of-way, in general, excluding small wireless facilities.

- (a) *Compliance.* Registrants and users and/or occupants agree at all times to comply with and abide by all applicable provisions of Federal and State law and Town ordinances, codes and regulations in placing or maintaining communications facilities in public rights-of-way.
- (b) *Permit required.* A Registrant shall not commence to place or maintain a communications facility in a Town public right-of-way until all applicable permits, if required, have been issued, except in the case of routine maintenance or an emergency as provided for in this article. In such cases deemed an emergency situation by the public works director, the registrant shall apply for permits within 15 days of the incident or repair, whichever comes sooner. Registrants and users and/or occupants shall provide prompt notice to the Town of the placement or maintenance of a facility in public rights-of-way in the event of an emergency. The registrant acknowledges that as a condition of granting a permit(s), the Town may impose reasonable conditions governing the placement or maintenance of a communications facility in the Town's public rights-of-way related to the public, health, safety and welfare as permitted and set forth in F.S. § 337.401 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. Permits shall apply only to the areas of the Town's public rights-of-way specifically identified in the permit. The Town may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements. This subsection does not authorize a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.
- (c) *Required information.* As part of any permit application to place a new or to replace an existing communications facility in public rights-of-way or other roads or property within the Town, the applicant shall provide information concerning the communications facility that sets forth the following, as required by the Town Manager:
 - (1) An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003, identifying the location of the proposed facility, and including:

- a. A description of any facility to be installed;
 - b. The facility's dimensions in feet;
 - c. Site plan indicating where the facility will be located with electronic geodata; and
 - d. Ability to demonstrate compliance with the Florida Building Code, for wind load requirements; and
 - e. For new communication facility poles, wireless support structures, or any excavation work, a geotechnical report for the existing soil conditions, or a soil statement by a Florida licensed professional engineer, attesting to the soil conditions.
- (2) Plans and information, as required by this article, on the ability of the public rights-of-way to accommodate the proposed communications facility;
 - (3) If appropriate, given the communications facility, an estimate of the cost of restoration to the public rights-of-way;
 - (4) The timetable for construction of the project or each phase thereof, and the areas of the Town which will be affected;
 - (5) A full color photo-simulation showing the proposed new communication facility poles and wireless support structures installed in accordance with the application from the point of view of properties adjacent to the proposed site;
 - (6) A description of the type of communication facility and the manner in which the communication facility will be installed and/or modified (i.e. anticipated construction methods or techniques) to include:
 - a. A description of stealth design to be utilized. Additionally, each application for a permit to place a communications facility pole in the Town's public rights-of-way shall include photographs showing the location and condition of the surrounding neighborhood, and a description of the stealth design techniques proposed to minimize the visual impact of the communications facility pole or wireless support structure and graphic depictions accurately representing the visual impact of the communications facility pole or wireless support structure when viewed from the street and from adjacent properties.
 - b. Alternatively, a signed and sealed statement from a Florida state licensed professional engineer that stealth design cannot be utilized on any particular communication facility and providing documentation demonstrating to the satisfaction of the Town Public Works Director that the proposed communications 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.
 - c. Newly installed poles, towers and wireless communications facilities should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the pole, tower or wireless communications facility.

- d. Landscaping, in a manner and degree approved by the Town, shall be required to mitigate the visual impact of the wireless communications facility, its supporting structure and all equipment associated therewith. The registrant and permittee shall be responsible for maintaining and replacing or expanding if needed as determined by the Town, landscaping shielding views of the wireless communications facility, its supporting structure and equipment. The color of wireless communications facilities, their supporting structures and equipment shall be selected by the Town and maintained by the registrant and permittee.
- e. Unless waived by the Town, a new communications facility pole shall be designed to be substantially similar in design to other utility poles in the same block or vicinity of the public rights-of-way. Such design aspects to follow include material, base, pole diameter and style, location and style of attachments, color and finish, and cap, as applicable.
- (7) A temporary sidewalk closure plan, if appropriate given the communication facility proposed, to accommodate placement or maintenance of the communication facility.
- (8) A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate given the communication facility proposed, to accommodate installation and/or modification of the communication facility.
- (9) Restoration plan given the communication facility proposed, and an estimate of the cost of restoration of the Town's Public rights-of-way in the event the communication facility is abandoned.
- (10) A proposed timetable for placement or maintenance of the proposed communication facility or each phase of the placement or maintenance thereof, and the intended areas of the Town to be served by the communication facility.
- (11) Registrants shall not place or maintain signage on communication facilities in Town public rights-of-way, unless otherwise required by federal or State law; however, that existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law or this Code, as same may be amended from time to time.
- (12) 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 Town Public Works Director.
- (13) A communication 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 Town may require the installation of an LED street light on a new communications facility pole or wireless support structure or an existing structure functioning as a light pole.
- (14) Such additional information or studies requested by the Town that the Town finds reasonably necessary to review the permit application to ensure continued level of service delivery of its rights-of-way.

- (d) *Public accessibility, safety, and sufficiency of spacing.* The Town shall have the power afforded by Florida Law to regulate Facilities to ensure that they meet Town requirements for public accessibility, safety and sufficiency of spacing, to ensure compliance with State of Florida and local laws and ordinances. In determining whether to permit and reasonably limit, or impose conditions or prohibit a communications facility to be placed or located within the Town's public rights-of-way, the Town Public Works Director shall consider the following standards and minimum requirements in his review and consideration of a permit application and imposition of reasonable permit conditions:
- (1) Sufficiency of space to accommodate present and pending applications for use of the Town'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 Town's public rights-of-way; and
 - (2) Sufficiency of space to accommodate the Town's need for projected public improvements. The sufficiency of space to accommodate Town plans for public improvements or projects adopted as part of its community investment capital improvements plan that the Town determines in the best interest of the public; and
 - (3) The impact on traffic and traffic safety; and
 - (4) Impact on existing facilities. The impact upon existing facilities in the Town's public rights-of-way; and
 - (5) Distance separation from edge of pavement. No new communication facility shall be constructed, operated or maintained in the Town's public rights-of-way in violation of the State of Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, (commonly known as the "Florida Green Book") and for the Minimum Width of Clear Zones. In accordance with the Florida Green Book, the Public Works Director shall have the authority to reduce the minimum offset where that offset cannot be reasonably obtained and other alternatives are deemed impractical; and
 - (6) Distance separation from sidewalk. No newly installed communication facility shall be placed or maintained in the Town's public rights-of-way within one foot of a sidewalk that is five feet or less in width. Co-location on an existing structures is exempt from this requirement; and
 - (7) Installation at outermost boundary of Town's public rights-of-way. Where a superior site design results from placement of a communication facility at or near the outermost boundary of the Town's public right-of-way, the farthest distance practicable from the centerline thereof and edge of pavement is encouraged. To the extent that the location of the sidewalk within the Town's public right-of-way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this article, then the Town Public Works Director 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 achieve such superior site design or otherwise meet other requirement of this article.

- (e) *Undergrounding of facility.* A registrant or other user shall endeavor, to the greatest extent possible, to place all communications facilities underground. The Town may require the use of trenchless technology (i.e., directional bore method) for the installation of communications facilities in the public rights-of-way as well as joint trenching or the collocation of communications facilities in existing conduit. The registrant or user shall be solely liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its communications facility within the public rights-of-way. The appropriate Town official may issue such rules and regulations concerning the placement or maintenance of a communication facility in public rights-of-way as may be consistent with this article and other applicable Federal and State laws or regulations.
- (f) *Notification of adjacent property owners.* Prior to the commencement of any work by the applicant pertaining to the placement and maintenance of communications within the public rights-of-way or other roads or property within the Town, the Town Manager or designee may require the applicant to issue notice of the work to property owners who adjoin such affected area (the "notification area"). The notification area may be expanded at the Town's discretion and notice shall be effected in a manner deemed appropriate by the Town Manager or designee.
- (g) *Repair of damages.* A person placing or maintaining communication facilities in the public rights-of-way or other roads or property within the Town shall, at its own expense, restore the public rights-of-way, or any other adjacent property that has been damaged by work on the project, to at least its original condition before such work was initiated, subject to the Town's satisfaction upon inspection. Restoration shall include, among other things, the removal of all markings placed by users on the right-of-way, unless they are required to remain pursuant to State law. A registrant or user shall warrant restoration of the public rights-of-way or other roads or property within the Town for a period of 12 months after completion of such restoration. If the registrant or user fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant or user, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration against the registrant or user in accordance with Florida Law and require reimbursement within 30 days after the submission of the bill by the Town to the registrant or user.
- (h) *Removal or relocation.* Removal or relocation at the direction of the Town of a person's communication facility in the public rights-of-way shall be governed by Florida Law.
- (i) *Property right not created.* A permit from the Town constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (j) *Underground safety act.* In connection with excavation in the public rights-of-way, a registrant and user shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. § 556.
- (k) *Maintenance.* A registrant and user shall place or maintain a communications facility in public rights-of-way in compliance with all applicable standards as established by all local,

State or Federal law and in conformance with applicable codes and the Town Code. A registrant and user shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas.

- (l) *Coordination or work.* In the interest of the public's health, safety and welfare, upon request of the Town, a registrant or user shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject public rights-of-way or other roads or property within the Town. The Town may require a registrant or user to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the public rights-of-way or other roads or property within the Town. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules.
- (m) *Existing facilities.* A registrant or user shall not place or maintain its communications facilities so as to interfere, displace, damage or destroy any communication facilities, including, but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities lawfully occupying the public rights-of-way or other roads or property within the Town. The registrant or user shall report to the Town any damage to existing facilities and notify the facility owner.
- (n) *Conditions of rights-of-way.* The Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the facilities, and any performance of work or costs incurred by the registrant or user or provision of services shall be at registrant's or user's sole risk. Nothing in this article shall affect the Town's authority to add, vacate or abandon public rights-of-way and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for facilities.
- (o) *Inspections.* The Town shall have the right to make such visual inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article. In the event the Town determines that a violation exists with respect to a registrant's or user's placement or maintenance of communications facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the Town will provide the registrant or user no less than three days' written notice setting forth the violation and requesting correction. During the inspection, Town staff, employees or contractors shall not attempt to open, tamper, manipulate any equipment attached. Nothing herein shall limit the authority of the Town Manager, building official or their designee from taking appropriate action to address an imminent and immediate health or safety hazard.
- (p) *Emergency.* In an emergency, as determined by the Town Manager, Building Official, Public Works Director, or their designee, where the installation, use or maintenance of any communications facility poses an imminent and immediate health or safety hazard to pedestrians or vehicles, the Town shall, where feasible, give telephonic notice to the owner of the communications facility of the nature of the emergency and afford the owner the opportunity to remove or otherwise relocate the communication facility. Where telephonic notice is not feasible or where the owner fails to address the emergency hazard, the Town

Manager, building official or their designee may summarily and temporarily remove or relocate such communication facility, but only to the extent necessary to avoid the health or safety hazard at issue. Immediately following removal or relocation of any communication facility under these emergency procedures, the Town shall provide the owner of the facility with written notice of the action by certified mail, return receipt requested. If the Town removes such facility, the owner of such communication facility shall have 30 days after receipt of such written notice by the Town to claim the communication facility, or the Town may dispose of such communication facility.

(Ord. No. 18-221, § 3, 2-6-2018)

Sec. 35-53. - Review of communication facility poles, utility poles, small wireless facilities in the rights-of-way.

(a) *Purpose and scope.*

- (1) The purpose of this section is to provide appropriate local regulations in the review, permitting, and issuance of wireless facilities pursuant to F.S. § 337.401(7), entitled the "Advanced Wireless Infrastructure Deployment Act." Notwithstanding any other provision to the contrary, the provisions identified herein and as referenced elsewhere in this article, shall provide for the full scope of regulatory authority, as authorized by the Florida Statutes, in the regulation of, small wireless facilities within the jurisdiction of the Town.
- (2) The approval of the installation, placement, maintenance, or operation of a wireless facility pursuant to this subsection 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 right-of-way.
- (3) This subsection does not affect provisions relating to pass-through providers in this article and at F.S. § 337.401(6).
- (4) This subsection does not authorize a person to collocate small wireless facilities or micro wireless facilities on an authority utility pole, place small wireless facilities, or erect a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association.
- (5) This subsection does not apply to the installation, placement, maintenance, or replacement or routine maintenance of micro wireless facilities or replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size.

(b) *Electronic mail.* All correspondence with the applicant, including but not limited to, plan review comments, requests for additional information, and permit/registration status, whether for submittal of registration or for building permit, shall be by electronic mail.

(c) *Process, review and issuance of permits.* The Town shall accept applications for permits and shall process and issue permits subject to the following requirements:

- (1) The Town may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.
- (2) An applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the applicant's compliance with applicable codes for the placement of wireless facilities in the locations identified the application.
- (3) The Town may not require the placement of wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.
- (4) The Town may not limit the placement of wireless facilities by minimum separation distances. However, within 14 days after the date of filing the application, an authority may request that the proposed location of a wireless facility be moved to another location in the right-of-way and placed on an alternative authority utility pole or support structure or may place a new utility pole. The authority and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the authority of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application. If an agreement is not reached, the applicant must notify the authority of such nonagreement and the authority must grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.
- (5) The Town shall limit the height of a wireless facility to ten feet above the utility pole or structure upon which the wireless facility is to be collocated. Unless waived by the Town, the height for a new utility pole is limited to the tallest existing utility pole as of July 1, 2017, located in the same right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the wireless facility. If there is no utility pole within 500 feet, the authority shall limit the height of the utility pole to 50 feet.
- (6) Except as provided in subsections (c)(4) and (5), the installation of a utility pole in the public rights-of-way designed to support a wireless facility shall be subject to the Town's rules or regulations governing the placement of utility poles in the public rights-of-way and shall be subject to the application review timeframes in this subsection.
- (7) Within 14 days after receiving an application, the Town must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the Town must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.
- (8) An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if the Town fails to approve or deny the application within 60 days after receipt of the application. If the Town does not use the 30-day negotiation period

provided in subsection (c)(4), the parties may mutually agree to extend the 60-day application review period. The Town shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application shall remain effective for one year unless extended by the authority.

- (9) The Town must notify the applicant of approval or denial by electronic mail. The Town shall approve a complete application unless it does not meet the Town's applicable codes. If the application is denied, the Town shall specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the Town denies the application. The applicant may cure the deficiencies identified by the Town and resubmit the application within 30 days after notice of the denial is sent to the applicant. The Town shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.
 - (10) An applicant seeking to collocate wireless facilities within the Town may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 wireless facilities. If the application includes multiple wireless facilities, the Town may separately address wireless facility collocations for which incomplete information has been received or which are denied.
 - (11) The Town may deny a proposed collocation of a wireless facility in the public rights-of-way if the proposed collocation:
 - a. Materially interferes with the safe operation of traffic control equipment.
 - b. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
 - c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
 - d. Materially fails to comply with the latest edition of the Florida Department of Transportation Utility Accommodation Manual.
 - f. Fails to comply with applicable codes.
 - (12) The Town may reserve space on Town utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a wireless facility. If replacement of the Town utility pole is necessary to accommodate the collocation of the wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.
 - (13) A structure granted a permit and installed pursuant to this subsection shall comply with F.S. Ch. 333, and federal regulations pertaining to airport airspace protections.
- (d) The Town shall not require approval or require fees or other charges for:
- (1) Routine maintenance;

- (2) Replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size; or
- (3) Installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the rights-of-way and who is remitting taxes under [F.S.] Ch. 202.

Notwithstanding this paragraph, an authority may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

(e) Collocation of wireless facilities on utility poles is subject to the following requirements:

- (1) The Town shall not enter into an exclusive arrangement with any person for the right to attach equipment to authority utility poles.
- (2) The rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.
- (3) The rate to collocate wireless facilities on a Town utility pole shall be \$150.00 per pole annually.
- (4) Agreements between the Town and wireless providers that are in effect on July 1, 2017, and that relate to the collocation of wireless facilities in the right-of-way, including the collocation of wireless facilities on authority utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this subsection for wireless facilities and utility poles that are the subject of an application submitted after the rates, fees, and terms become effective.
- (5) A person owning or controlling an authority utility pole shall offer rates, fees, and other terms that comply with this subsection. By the later of January 1, 2018, or 3 months after receiving a request to collocate its first wireless facility on a utility pole owned or controlled by an authority, the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of wireless facilities on the authority utility pole which comply with this subsection.
 - a. The rates, fees, and terms must be nondiscriminatory and competitively neutral and must comply with this subsection.
 - b. For a Town 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 for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
 - c. For a Town utility pole that does not support an aerial facility used to provide communications services or electric service, the authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement,

must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the Town may require the applicant seeking to collocate a wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the 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 Town 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 right-of-way. The replaced or altered utility pole shall remain the property of the authority.

- d. The Town shall 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 preexisting damage or prior noncompliance. Fees for make-ready work, including any 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.
- (f) A wireless providers shall, in relation to a wireless support structure in the public rights-of-way, comply with nondiscriminatory undergrounding requirements, as may be applicable, of the Town. Any such requirements may be waived by the Town Manager.
- (g) A wireless infrastructure provider may apply to the Town to place utility poles in the public rights-of-way to support the collocation of wireless facilities. The application must include an attestation that wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within nine months after the date the application is approved. The Town shall accept and process the application in accordance with Section 35-52(c)6, and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way.

(Ord. No. 18-221, § 3, 2-6-2018)