



# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Jose Smith, City Attorney

CC: Jimmy L. Morales, City Manager

DATE: April 9, 2014

SUBJECT: **Telecommunications Ordinance**

---

### **RECOMMENDATION**

The City Attorney recommends that the Land Use and Development Committee further discuss the draft ordinance attached, which includes revisions since the Committee's discussion on March 19, 2014. Attached is a memorandum from Matt Leibowitz, Esq., which explains the revisions.

### **BACKGROUND**

Crown Castle has approached the City to obtain permits for a Distributed Antenna System (DAS) at 39 locations throughout the City, in public rights-of-way. The City understands that Crown Castle may submit additional locations throughout the City. This DAS system is intended to supplement existing wireless communications networks in the City by strengthening the signal between existing antenna towers providing cellular and digital communications signals to the modern digital network of smartphones, tablets and computers.

Crown Castle is the successor in interest to Sprint and Nextel, which already have telecommunications systems in the City, both at a fixed location, the City parking garage at 1550 Collins Avenue, and at 45 other locations in the City's rights-of-way, which Crown Castle acquired from Nextel. These former Nextel sites are still run by Nextel for use by the City, but are now owned by Crown Castle.

On January 15, 2014, the City Commission directed the drafting of an ordinance to address the issues raised by the Crown Castle proposal. This referral provides an opportunity for members of the City Commission to review a draft ordinance and provide policy guidance to the City Attorney's Office and Administration.

### **RELATIONSHIP TO LAND DEVELOPMENT REGULATIONS ("LDRs")**

It has been suggested that the LDRs be reviewed to consider changes corresponding to the amendments in this Ordinance. Two probable amendments are to clarify the jurisdiction of the Design Review and Historic Preservation Boards to specifically provide for jurisdiction over above ground telecommunications equipment in the public rights-of-way, as provided in the ordinance as drafted. Further amendments may involve additional criteria for the boards to review in evaluating applications brought before them. These amendments will require referrals to the Historic Preservation and Planning Boards, and possibly the Design Review Board as well. A review of the LDRs

and referrals to these boards can be done following this LUDC meeting

### **THE ORDINANCE**

1. Amends the intent and purpose, and requires compliance with Subpart B of the City Code, which is the Land Development Regulations ("LDRs"). .)
2. Amends or adds definitions for various roadways, collocation, communications facility, communications facility and service providers, pass-through provider, wireless communications facility, provider and service, among others;
3. Provides amended and new regulations for registering providers;
4. Amends the regulations and permit application process to require the issuance of permits and design and appropriateness review by the design review board and historic preservation board;
5. Creates standards and permitting requirements for communications facilities design (including a "stealth design"), location and collocation, including establishing a hierarchy for location and collocation to ensure the minimum number of new poles are added, and encouraging use of existing poles and collocation on existing and new poles;
6. Adds standards for site improvements, use of and restoration of sites and rights-of-way;
7. Adds distance separation between communications facilities and between such facilities and residential uses and contributing buildings in historic districts;
8. Provides for notice to affected property owners of proposed work, prior to permit issuance;
9. Provides for compensation to the City for the use of public rights-of-way for these purposes; and
10. Amends or adds such other sections and provisions as are appropriate to protect the public health, safety and welfare.

### **CONCLUSION**

The City Attorney recommends that the Land Use and Development Committee further review the ordinance and provide policy direction.

JS/GMH

F:\ATTO\HELG\Ordinances\Telecommunications\Memo to Land Use 4-9-14 REV.docx

## LEIBOWITZ & ASSOCIATES, P.A.

MATTHEW L. LEIBOWITZ  
JOSEPH A. BELISLE

SUITE 2460  
2 S. BISCAYNE BOULEVARD  
MIAMI, FLORIDA 33131

TELEPHONE (305) 530-1322  
TELECOPIER (305) 530-9417  
EMAIL: MLeibowitz@broadlaw.com

April 1, 2014

### Via Email

City of Miami Beach  
1700 Convention Center Drive – Fourth Floor  
Miami Beach, FL 33139  
ATTN: Jose Smith, City Attorney

**Re: Memo Explaining Revisions to Last Version of Revised Right-of-Way Ordinance**

Dear Mr. Smith:

I had previously expressed my view that a draft right-of-way ordinance could be revised to further the interests of the City and its residents, including but not limited to minimizing the number and size of communications facilities in the right of way.

The attached revised draft right-of-way ordinance represents my efforts in this regard. In this connection the revisions introduce the concept that access to the rights-of-way is a right only for communications services providers acting in their capacity as communications services providers and utilities. Persons proposing to conduct other business in the rights-of-way, such as tower companies who lease space for antennas and equipment, may be afforded access to the rights-of-way, but only at the discretion of the City.

To implement this concept, the revisions include the definition of a "communications facility provider," a person who essentially leases tangible personal property (i.e., antennas, etc.) used in a communications facility. Section 104-4 (a) is revised to provide that (i) persons who are not acting as communications services providers and (ii) business other than providing communications services can be excluded from the rights of way.

Section 104-4(b) now includes the explanation that tangible personal property placed in the rights-of-way does not lose its character as tangible personal property. This thought links back to the definition of communications services, which excludes the leasing of tangible personal property from that defined term. We are trying to clarify that persons in the rights-of-way leasing tangible personal property are not acting as communications services providers and do not have an absolute right to be in the rights-of-way.

City of Miami Beach  
Attn: Jose Smith  
April 1, 2014  
Page 2

Section 104-5, governing assignments and transfers of assets in the public rights-of-way, has been revised to clarify that the City can exclude persons who are not acting as communications service providers from its rights-of-way and asset sales and transfers cannot be used to undermine the City's power in this regard.

Section 104-6(c)(2) has been revised to meet objections that technical limitations may limit or prevent design of facilities capable of accommodating collocation. Applicants are free to address this matter in their permit requests.

Section 104-6(c)(8) has been revised to explain why an inventory is required of permit applicants.

New Section 104-6(c)(9) has been added to identify projects that are comprised of leased equipment or designed for communications facilities leasing.

Section 104-(6)(t)(2) has been expanded to specifically include power poles, light poles and telephone poles among the existing structures to be considered for supporting communications facilities in the rights-of-way.

Section 104-(6)(t)(7) has been clarified to draw a distinction between stealth design techniques used for new facilities and stealth design techniques used for facilities on existing structures.

New Section 104-(6)(t)(8) has been added to address stealth design techniques applicable to antennas.

Section 104-(6)(t)(9)(c) has been revised to address objections to rigid application of a 500 foot separation between wireless facilities located in the rights-of-way, and address concerns of potential future providers, and different technology.

Section 104-9(a) has been revised to clarify that violation of Florida criminal statutes protecting police or public safety communications may result in termination of a registration.

Section 104-20 has been modified to include communications facility providers, as well as pass-through providers, among persons paying fees to the City. The amount of those fees has been left blank pending further discussion.

City of Miami Beach  
Attn: Jose Smith  
April 1, 2014  
Page 3

Other minor edits are made to the draft ordinance to correct typos or to assist implementing the concepts discussed above.

Very truly yours,



Matthew L. Leibowitz

c: Gary M. Held, First Assistant City Attorney  
Joseph A. Belisle

ARTICLE I. COMMUNICATIONS RIGHTS-OF-WAY

Sec. 104-1. Title.

This article shall be known and may be cited as the "City of Miami Beach Communications Rights-of-Way Ordinance."

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-2. Intent and purpose.

It is the intent of the City to promote the public health, safety and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the City; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including, but not limited to, Fla. Stat. § 337.401, as it may be amended from time to time, the City's home-rule authority, and in accordance with the provisions of the Communications Act of 1934, as amended, and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by ~~all~~ communications services providers, communications facility providers and other pass-through providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City shall be governed by and shall comply with all applicable federal and state laws. Persons seeking to place or maintain communications facilities in the public rights-of-way shall comply with the provisions of this Article I. Persons seeking to place or maintain communications facilities on private property or property owned, leased or

controlled by the City, other than rights-of-way shall comply with the provisions of Subpart B, Land Development Regulations of the Code of the City of Miami Beach.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-3. 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 mean the common and ordinary meaning.

*Abandonment* shall mean the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

*Arterial roadway* shall mean any street or roadway that constitutes the highest degree of mobility at the highest speed, for long, uninterrupted travel, and constitutes the largest proportion of total travel as per the Federal Functional

Classification Map maintained by the State of Florida Department of Transportation District Six Office, as amended.

*City* shall mean the City of Miami Beach, Florida.

*Collector roadway* shall mean any street or roadway that provides a mix of mobility and land access functions, linking major land uses to each other or to the arterial highway system as per the Federal Functional Classification Map maintained by the State of Florida Department of Transportation District Six Office, as amended.

*Collocation* shall mean the situation in which a second or subsequent communications services provider or a pass-through provider uses an existing structure to locate a second or subsequent antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antenna.

*Communications facility* shall mean a facility that may be used to provide communications services, as per Fla. Stat. § 337.401, as amended. Multiple cables, conduits, strands, or fibers located within the same conduit shall be considered one communications facility.

*Communications facility provider* shall mean a person engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more communications service providers all or a portion of the tangible personal property used in a communications facility, including but not limited to,

towers, poles, tower space, antennas, transmitters, and transmission line. To the extent that a communications services provider engages in a transaction as a lessor, sublessor or licensor of tangible personal property used or to be used in a communications facility, the communications services provider is acting as a communications facility provider, and not as a communications services provider, for purposes of that transaction.

*Communications services* shall mean 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 or hereafter devised, regardless of the protocol used for such transmission or conveyance, as per Fla. Stat. § 202.11, as amended. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer's premises.
- (c) The sale or rental of tangible personal property.

(d) The sale of advertising, including, but not limited to, directory advertising.

(e) Bad check charges.

(f) Late payment charges.

(g) Billing and collection services.

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

*Communications services provider* shall mean a person who is a “provider of communications services” as that term is used in Fla. Stat. § 337.401, as amended.

*Communications services tax* shall mean the local communications services tax authorized to be levied and collected by counties and municipalities upon charges for communications services, pursuant to Fla. Stat. § 202.20, as amended.

*Existing structure* shall mean a structure that exists at the time an application for permission to place antennas on the structure is filed with the City. The term includes any structure that can structurally support the attachment of antennas in compliance with applicable codes.

*FCC* shall mean the Federal Communications Commission.

*In public rights-of-way or in the public rights-of-way shall mean in, on, over, under or across the public rights-of-way.*

*Order, as used in the definition of “wireless provider,” shall mean:*

(a) The following orders and rules of the FCC issued in FCC Docket No. 94-102:

- (i) Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s.20.03 and the creation of s.20.18 of Title 47 Code of Federal Regulations adopted by the FCC pursuant to such order.
- (ii) Memorandum and Order No. FCC 97-402 adopted on December 23, 1998.
- (iii) Order No. FCC DA 98-2323 adopted on November 13, 1998.
- (iv) Order No. FCC 98-345 adopted December 31, 1998.

(b) Orders and rules subsequently adopted by the FCC relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

*Pass-through provider shall include any person who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to Fla. Stat. § 202 and who does not remit taxes imposed by that municipality or county pursuant to chapter 202 as per Fla. Stat. § 337.401, as amended. A “pass-through provider” does not provide communications services to retail customers in the City.*

*Person shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary,*

corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the City to the extent the City acts as a communications services provider.

~~*Pass-through provider* shall include any person who places or maintains a communications facility in the roads or rights of way of a municipality or county that levies a tax pursuant to Fla. Stat. § 202 and who does not remit taxes imposed by that municipality or county pursuant to chapter 202 as per Fla. Stat. § 337.401, as amended.~~

*Place or maintain or placement or maintenance or placing or maintaining* shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A person that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A person providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute "placing or maintaining" facilities in the public rights-of-way.

*Public rights-of-way* shall mean a public right-of-way, highway, street, bridge, tunnel or alley for which the City is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes

the surface, the air space over the surface and the area below the surface. "Public rights-of-way" shall not include private property- or easements over private property. "Public rights-of-way" shall not include any real or personal City property except as described above and shall not include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

*Registrant* shall mean a communications services provider—or, communications facility provider or other pass-through provider that has registered with the City in accordance with the provisions of Section 104-4 this article and holds an effective registration.

*Registration or register* shall mean the process described in this article whereby a communications services provider-or, communications facility provider or other pass-through provider provides certain information to the City.

*Stealth design* shall mean a method of camouflaging any tower, antenna or other telecommunications facility, including, but limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible.

*Tower* shall mean any structure designed primarily to support a communications services provider's antennas.

*Wireless communications facility* shall mean equipment used to provide wireless service, as the phrase, wireless communications facility, is further

defined and limited in Fla. Stat. § 365.172, as amended. A wireless communications facility is a type of communications facility.

*Wireless provider* shall mean a person who provides wireless service and is either (a) subject to the provisions of the order or (b) elects to provide wireless 911 service or E911 service in Florida. A wireless provider is a type of communications services provider.

*Wireless service* shall mean “commercial mobile radio service” as provided under §§ 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312, as per Fla. Stat. §365.172, as amended. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include communications services providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-4. Registration for placing or maintaining communications facilities in public rights-of-way.

(a) A communications services provider, communications facility provider or other pass-through provider that desires to place or maintain a communications facility in public rights-of-way in the City shall first register with the City in accordance with this article. This City of Miami Beach Communications Rights-of-Way Ordinance provides no right of access to the public rights-of-way for (i) persons other than communications service providers, acting as such, or (ii) businesses other than providing communications services. Other uses of the public rights-of-way reasonably related to the provision of communications services may be allowed in the reasonable discretion of the City. Subject to the terms and conditions prescribed in this article, a registrant may place or maintain a communications facility in public rights-of-way.

(b) A registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Tangible personal property placed in the public rights-of-way pursuant to this article shall retain its character as tangible personal property and shall not be regarded as real property, fixtures or mixed property.

Registration under this article governs only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a registrant from obtaining appropriate access or pole attachment agreements before locating its facilities on the City's or another person's facilities.

Registration does not excuse a registrant from complying with all applicable City ordinances, codes or regulations, including this article-

(c) Each communications services provider—or, communications facility provider or other pass-through provider that desires to place or maintain a communications facility, including without limitation a collocation, in public rights-of-way in the City shall file a single registration with the City which shall include the following information:

- (1) Name of the applicant;
- (2) Name, address and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;
- (3) For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;
- (4) Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article, which acknowledgment shall not be deemed an agreement; and
- (5) The number of the applicant's certificate of authorization or license to provide communications services issued by the Florida Public Service Commission or the Federal Communications Commission. An applicant proposing to place or maintain a wireless communications facility operating on spectrum licensed by the FCC shall supply the file number of the FCC license authorizing such wireless service.

(d) Registration application fees: no registration application fees shall be imposed for registration under this article.

(e) The City shall review the information submitted by the applicant. Such review shall be by the City manager or his or her designee. If the applicant submits information in accordance with subsection (c) above, the registration shall be effective and the City shall notify the applicant of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with subsection (c) above, the City shall notify the applicant of the noneffectiveness of registration, and reasons for the noneffectiveness, in writing. The City shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Noneffectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has 30 days after receipt of a notice of noneffectiveness of registration to appeal the decision as provided in section 104-8 hereof.

(f) A registrant may cancel a registration upon written notice to the City stating that it will no longer place or maintain any communications facilities, including without limitation collocations, in public rights-of-way within the City and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.

(g) Registration does not in and of itself establish a right to place or maintain or priority for the placement or maintenance of a communications facility in public

rights-of-way within the City but shall establish for the registrant a right to apply for a permit, if permitting is required by the City. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional City ordinances, as well as any state or federal laws that may be enacted from time to time.

(h) Registrant shall renew its registration with the City, annually, by the anniversary of the date of initial registration. Each renewal shall include an inventory of the communications facilities applicant installed in the City during the last term of the registration and an inventory of the communications facilities applicant abandoned in the City during the last term of the registration. Within 30 days of any change in the information required to be submitted pursuant to subsection (c) hereof, except, as of October 1, 2001, subsection (c)(3), a registrant shall provide updated information to the City. Failure to renew a registration may result in the City restricting the issuance of additional permits until the ~~communications services provider~~ lapsed registrant has complied with the registration requirements of this article.

(i) In accordance with applicable City ordinances, codes or regulations, a permit is required of a registrant that desires to place or maintain a communications facility, including without limitation a collocation, in public rights-of-way. An effective registration shall be a condition precedent to obtaining a permit. Notwithstanding an effective registration, all permitting requirements of the City shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-5. Notice of transfer, sale or assignment of assets in public rights-of-way.

A registrant shall not transfer, sell or assign all or any portion of its assets located in public rights-of-way except to a person holding a valid registration issued pursuant to Section 104-4, hereof. Written notice of any such proposed transfer, sale or assignment, along with assignee/transferee's signed and sworn certification of its compliance with the requirements of this Article, shall be provided by such registrant to the City at least five (5) days prior to the effective date of the transfer, sale or assignment. If permit applications are pending in the name of the transferor/assignor, the transferee/assignee shall notify the City manager that the transferee/assignee is the new applicant. Violation of the requirements of this Section 104-5 will subject the registrant to a fine of up to \$\_\_\_ for each day the registrant fails to comply; provided however, ~~failure to comply does not void any assignment or transfer~~City does not claim the right to approve or deny registrants' asset transfers or assignments to communications services providers, acting as such, and the failure to comply with the City's registration requirements does not void any such asset transfer or assignment. The city reserves the right to exclude persons other than communications services providers from its rights of way and transfers/assignments of a communications facility to persons other than a communications services provider, acting in the capacity of communications services provider, require City approval to insure continued use of the public rights-of-way.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-6. Placement or maintenance of a communications facility in public rights-of-way.

(a) A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing or maintaining a communications facility in public rights-of-way, including, but not limited to, articles II and III of chapter 98, and article V of chapter 110 of this Code.

(b) Registrant shall not commence to place or maintain a communications facility, including without limitation a collocation, in public rights-of-way until all applicable permits, if any, have been issued by the City or other appropriate authority; provided, however, in the case of an emergency, a registrant may restore its damaged facilities in the right-of-way to their pre-emergency condition or replace its destroyed facilities in the rights-of-way with facilities of the same size, character and quality, all without first applying for a permit. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the repair or replacement of a communications facility in public rights-of-way in the event of an emergency, 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 the public rights-of-way in connection with the emergency. Registrant acknowledges that as a condition of granting permits, the City may impose reasonable rules or regulations governing the placement or maintenance of a communications facility

in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The City may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits.

(c) As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, including without limitation a collocation, the registrant shall provide the following:

(1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of facilities that will be located in public rights-of-way;

(2) With respect to proposals to locate or replace a tower in the right-of-way, an engineering showing demonstrating ~~the ability of the communications facility to accommodate at least three~~either (i) how the proposed communications facility can accommodate multiple collocations or (ii) why the City's interest in safe, aesthetic, efficient and effective management of the public rights-of-way is better served by the proposed communications facility than by a communications facility that could accommodate multiple collocations;

(3) A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);

(4) A maintenance of traffic plan for any disruption of the public rights-of-way;

(5) Information on the ability of the public rights-of-way to accommodate the proposed facility, including information that identifies all above-ground facilities currently existing in the areas to which the permit application applies, and extending one half mile beyond such areas within the City, if available (such information shall be provided without certification as to correctness, to the extent obtained from other registrants with facilities in the public rights-of-way);

(6) If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;

(7) The timetable for construction of the project or each phase thereof, and the areas of the City which will be affected;

(8) For purposes of assessing impact on right of way resources, effects on neighboring properties and potential for collocations, an inventory of all light poles, power poles and communications facilities ~~registrant (and registrant's predecessors in interest) have placed in or are presently authorized to place~~ be placed in the areas to which the permit application applies, and extending one half mile beyond such areas within the City; and

~~(9)~~ Whether all or any portion of the proposed facilities will be rented, hired, leased, sublet or licensed from or to any third party and, if so, the identity of that third party; and

(10) Such additional information as the City 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.

(d) To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way and may consider, among other things and without limitation, the sufficiency of space to accommodate all of the present, projected and possible requests to place and maintain facilities in that area of the public rights-of-way, the sufficiency of space to accommodate City plans for public improvements or projects that the City determines are in the public interest, the impact on traffic and traffic safety, and the impact upon existing facilities in the rights-of-way. The City manager or the manager's designee may impose additional reasonable regulations and conditions to ensure the public health, safety and welfare, and peaceful enjoyment of City residents and businesses.

(e) All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible. To the extent not prohibited by federal and state law, the City shall require any registrant that does not have communications facilities in the City as of the date of adoption of this article to place any new

cables, wires, fiber optics, splice boxes and similar communications facilities underground, unless such communications facilities can be co-located on existing poles. The City manager may promulgate reasonable rules and regulations concerning the placement or maintenance of a communications facility in public rights-of-way consistent with this article and other applicable law.

(f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities.

(g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the registrant in accordance with Fla. Stat. § 337.402, as it may be amended. For 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.

(h) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of Fla. Stat. §§ 337.403 and 337.404, as they may be amended from time to time. Subject to the aforementioned Fla. Stat. §§ 337.403 and 337.404

and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground facilities pursuant to Article V of Chapter 110 of this Code, any registrant having communications facilities on poles that are to be removed shall arrange for the conversion to underground facilities on the same terms and conditions as the other utilities that are being converted to underground facilities.

(i) A permit from the City 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) A registrant shall maintain its communications facilities in public rights-of-way in a manner consistent with accepted industry practice and applicable law.

(k) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the underground facility damage prevention and safety act set forth in Fla. Stat. § 556, as it may be amended from time to time.

(l) Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas.

(m) Upon request of the City, and as notified by the City of the 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 public rights-of-

way, and registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.

(n) 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, pipes, cables or conduits of the City or any other person's facilities lawfully occupying the public rights-of-way of the City.

(o) The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk. Nothing in this article shall affect the City's authority to add, vacate, modify, abandon or otherwise dispose of public rights-of-way, and the City makes no warranties or representations regarding the availability of any added, vacated, modified or abandoned public rights-of-way for communications facilities.

(p) The City shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article.

(q) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall

promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the City, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the City. Upon completion of any communications facilities, the communications services provider shall furnish to the City, at no cost to the City, one complete set of sealed "as built" plans, or in the case of any underground communications facilities, a sealed survey showing the exact location of such communications facilities, including their depth; or in either case, such other documentation describing the location (including height or depth, as the case may be), of communications facilities as the City manager, or his or her designee, may approve. 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 Fla. Stat. § 556, as amended from time to time. The fact that such plans or survey is on file with the City 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 public rights-of-way. Any proprietary confidential business information obtained from a registrant in connection with a permit application or a permit shall be held confidential by the City to the extent provided in Fla. Stat. § 202.195, as amended from time to time.

(r) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done,

any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant, and the City also reserves the right to reserve any portion of the public rights-of-way for its own present or future use. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the City and within said limits as same may from time to time be altered.

(s) A registrant shall promptly, at the request of any person holding a permit issued by the City, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation.

(t) The following additional requirements apply when a registrant seeks authority to locate a wireless communications facility in the public rights-of-way:

(1) Registrants seeking to locate wireless communications facilities within the City are encouraged to locate on private property or government owned property outside of the rights-of-way. An application for a permit to locate wireless communications facilities within the rights-of-way shall explain why the applicant is unable to locate the proposed facilities on private property or government owned property.

(2) Registrants seeking to place, construct or modify a wireless communications facility in the right-of-way shall:

a. collocate wireless communications facilities with the wireless communications facilities of other wireless providers, as set out in Fla. Stat. § 365.172, as amended, or

b. construct their wireless communications facilities on existing structures within the right-of-way, including without limitation existing power poles, light poles and telephone poles. An application for a permit to construct a new antenna support structure for a wireless communications facility to be located within the right-of-way should explain why the applicant is both (i) unable to collocate the wireless communications facility with the wireless facilities of other wireless providers and (ii) unable to construct the wireless communications facility on existing structures within the right-of-way.

(3) Registrants seeking to construct wireless communications facilities within the rights-of-way shall locate their wireless communication facilities in the rights-of-way of arterial or collector roadways, whenever possible. An application for a permit to place wireless communication facilities in rights-of-way other than those of arterial or collector roadways shall explain why the applicant is unable to locate the wireless communications facilities in the rights-of-way of an arterial or collector roadway and shall include an engineering analysis from the applicant demonstrating to the

satisfaction of the City engineer the need to locate the wireless communication facilities in the areas proposed in the application.

(4) Whenever wireless communications facilities must be placed in a right-of-way with residential uses on one or both sides, neither towers, poles, equipment, antennas or other structures shall be placed directly in front of a residential structure. If a right- of-way has residential structures on only one side, the wireless communications facilities shall be located on the opposite side of the right-of-way, whenever possible. All wireless communications facilities shall be located such that views from residential structures are not impaired. Newly installed poles and towers for wireless communications facilities should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the pole or tower.

(5) Registrants are required to locate wireless communications facilities within rights-of-way in a manner that minimizes their impact in the City, including without limitation Miami Beach Historic Districts. Whenever a registrant applies for a permit to locate a wireless communications facility in a right-of-way within a Miami Beach Historic District, a copy of the permit application shall be simultaneously served on the City of Miami Beach Historic Preservation staff. All other applications for permits to locate a wireless communications facility within the City shall be simultaneously served on the Design Review staff. Registrant must obtain the approval of the Design Review Board or the Historic Preservation

Board (depending on the proposed facility's location and each board's respective jurisdiction) for the design and location of the wireless communications facility, in accordance with their respective design review or appropriateness criteria. The City reserves the right to condition the grant of any permit to locate a wireless communications facility within the right-of-way upon the registrant taking such reasonable measures, consistent with the City authority's ~~jurisdiction~~jurisdiction, as the City may determine are necessary to mitigate the impact of the wireless communications facility on a Miami Beach Historic District or other nearby facilities and uses.

(6) Stealth design shall be utilized ~~wherever~~wherever possible in order to minimize the visual impact of wireless communications facilities. Each application for a permit to place a wireless communications facility in the right-of-way shall include:

- a. photographs clearly showing the nature and location of the site where each wireless communications facility is proposed to be located, ~~and~~
- b. photographs showing the location and condition of properties adjacent to the site of each proposed wireless communications facility. ~~The application shall identify, and~~
- c. a description of the stealth design techniques proposed to minimize the visual impact of the wireless communications facility and shall include graphic depictions accurately representing the

visual impact of the wireless communications facilities when viewed from the street and from adjacent properties.

(7) Stealth design of communications facilities to be located on new structures in the rights-of-way shall eliminate the need to locate any ground or elevated equipment (other than antennas) on the exterior of a tower. Stealth design of communications facilities to be located on existing structures other than towers shall minimize the need to locate any ground equipment or elevated equipment (other than antennas) on the exterior of the structure. The use of foliage and vegetation around any approved ground equipment may be required by the City based on conditions of the specific area where the ground equipment is to be located and in accordance with Subpart B, Land Development Regulations, Chapter 126, Landscaping.

~~(8) The following additional requirement~~ (8) Stealth design of communications facilities to be located on structures in the rights-of-way shall (a) top mount antennas within enclosures that do not extend the diameter of the supporting structure at the level of antenna attachment and (b) shall side mount antennas within enclosures that do not extend more than two feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment. Under no circumstances shall antennas be mounted less than eight feet above ground level. For purposes of calculating (a) and (b), above, the dimensions of the supporting structure do not include any platform, rack, mount or other

hardware used to attach an antenna or antenna enclosure to the supporting structure.

(9) The following additional requirements shall apply to wireless communications facilities located in the rights-of-way:

a. Each proposal to locate equipment at ground level on or adjacent to the exterior of a pole or tower and each proposal to locate elevated equipment (other than antennas) on or adjacent to the exterior of a tower or pole shall include an engineering showing demonstrating to the satisfaction of the City engineer that the facility cannot employ stealth design and that the proposed exterior location and configuration of equipment proposes the minimum equipment necessary to achieve needed function. In order to avoid the clustering of multiple items of approved ground equipment or elevated equipment in a single area, only one equipment box may be located in any single location.

b. Where a registrant demonstrates that stealth design cannot be employed, the individual approved exterior equipment boxes shall not exceed two feet wide, by two feet deep, by three feet high in size.

c. Wireless communications facilities in the rights-of-way must be spaced a minimum of five hundred linear feet of right-of-way apart from each other. This subsection may be waived upon a factual showing, supported by sworn testimony or matters subject

to official notice, demonstrating to the satisfaction of the City that locating a specific wireless communications facility less than 500 feet from other wireless communications facilities better serves the City's interests in safe, aesthetic, efficient and effective management of the public rights-of-way than application of the 500 foot limitation.

d. The size and height of wireless communication facility towers and poles in the rights-of-way shall be no greater than the maximum size and height of any other utility or light poles located in the same portion of the right-of-way within the City; provided however that registrants proposing wireless communications facilities with antennas to be located on existing poles may increase the height of the existing pole up to 6 (six) feet, if necessary, to avoid adversely affecting existing pole attachments; and provided further that the overall height above ground of any wireless communications facility shall not exceed forty (40) feet.

e. Wireless communications facilities installed on poles or towers that are not light poles shall not be lit unless lighting is required to comply with FAA requirements.

f. Registrants shall not place advertising on wireless communications facilities installed in the rights-of-way.

(910) The City's action on proposals to place, construct or modify wireless communications facilities shall be subject to the standards and time frames set out in Fla. Stat. § 365.172, as amended.

(u) The obligations imposed by the requirements of subsections 104-6 (t)(1) through 104-6 (t)(89), above, upon registrants proposing to place or maintain wireless communications facilities in the public rights-of-way shall also apply to registrants proposing to place or maintain any other type of communications facility in public-rights-of-ways, if that other type of communications facility involves placement of over-the-air radio transmission or reception equipment in the public-rights-of-way.

(v) Prior to the issuance of any permit pertaining to the placement and maintenance of communications facilities within the public rights-of-way, the City may require the registrant to issue notice of the work to property owners who adjoin such rights-of-way (the "notification area"), and based on the scope of the proposed work, the number of affected property owners and the potential severity of the impact to such property owners, may further require the registrant to hold a public information meeting for purposes of answering questions and taking comments from affected property owners. The notification area may be expanded at the City's discretion and notice shall be effected in a manner deemed appropriate by the City. Should a public information meeting be required, the registrant shall meet with City staff as soon as practical to review

comments received at the public information meeting, and attempt to resolve all negative comments or issues raised.

(w) Pursuant to Fla. Stat. § 337.401(c)(1)(b) and other applicable provisions of law, and notwithstanding any other provisions of this Code, the City hereby elects not to charge permit fees to any registrant for permits to do work in the public rights-of-way.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-7. Suspension of permits.

The City may suspend a permit for work in the public rights-of-way for one or more of the following reasons:

- (1) Violation of permit conditions, including conditions set forth in the permit, this article or other applicable City ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way;
- (2) Misrepresentation or fraud by registrant in a registration or permit application to the City; ~~or~~
- (3) Failure to properly renew or ineffectiveness of registration; or
- (4) Failure to relocate or remove facilities as may be lawfully required by the City.

The City manager shall provide notice and an opportunity to cure any violation of (1) through (4) above, each of which shall be reasonable under the circumstances.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-8. Appeals.

Any person aggrieved by any action or decision of the City manager, or his or her designee, with regard to any aspect of registration under this article may appeal to the special master appointed pursuant to article II of chapter 30 of this Code by filing with the special master, within 30 days after receipt a written decision of the City manager, or his or her designee, a notice of appeal, which shall set forth concisely the action or decision appealed from and the reasons or grounds for the appeal. No requests for extension of time for filing an appeal will be permitted. The only appeal that shall be considered are those appeals that allege that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article. The special master shall set such appeal for hearing on the very next available date following such notice of appeal and cause notice thereof to be given to the appellant and the City manager, or his or her designee shall present the case on behalf of the City. The special master shall hear and consider all facts material to the appeal and render a decision within 20 calendar days of the date of the hearing. The special master may affirm, reverse or modify the action or decision appealed from; provided, that the special master shall not take any action which conflicts with or nullifies any of the provisions of this article. Any person aggrieved by any decision of the special master on an appeal shall be entitled to apply to the circuit court for a review thereof by petition for writ of certiorari in accordance with the applicable court rules.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-9. Involuntary termination of registration.

(a) The City may terminate a registration if:

(1) A federal or state authority suspends, denies, revokes or otherwise fails to grant a registrant any certification or license required to provide communications services;

(2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; ~~or~~

~~(3) The registrant violates Fla. Stat. §843.025, as amended;~~

~~(4) The registrant violates Fla. Stat. §843.165, as amended; or~~

(5) The abandonment by the registrant of all of its communications facilities in public rights-of-way and noncompliance with section 104-16 hereof.

(b) Prior to termination, the registrant shall be notified by the City manager, or his or her designee, with a written notice setting forth all matters pertinent to the proposed termination action, including which of (1) through ~~(3)~~(5) above is applicable as the reason therefore, and describing the proposed action of the City with respect thereto. The registrant shall have 60 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City manager to accomplish the same. If the plan is rejected, the City manager shall provide written notice of such rejection to the

registrant and shall make a recommendation to the mayor and City commission regarding a decision as to termination of registration. The City manager, or his or her designee, shall provide notice to registrant of any resolution or other action to be taken up at any meeting of the mayor and City commission and registrant shall be granted the opportunity to be heard at such meeting. A decision by a City to terminate a registration may only be accomplished by an action of the mayor and City commission. A registrant shall be notified by written notice of any decision by the mayor and City commission to terminate its registration. Such written notice shall be sent within seven days after the decision.

(c) In the event of termination, the former registrant shall: (1) notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or (2) provide the City with an acceptable plan for disposition of its communications facilities in 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 section 104-8 hereof, the City may exercise any remedies or rights it has at law or in equity, including but not limited to requiring the registrant within 90 days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal.

(d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.

(e) In the event of termination of a registration, this section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the 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 City, if required.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-10. Existing communications facilities in public rights-of-way.

A communications services provider, communications facility provider or other pass-through provider with an existing communications facility in the public rights-of-way of the City has 60 days from the effective date of this article to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof. The City Manager may grant reasonable extensions of time for existing facilities to come into compliance.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-11. Insurance.

(a) A registrant shall provide, pay for and maintain satisfactory to the City the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating reasonably acceptable to the City. All liability policies shall provide that the City is an additional insured as to the activities under this article. The required

coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty days advance written notice by registered, certified or regular mail or facsimile as determined by the City must be given to the City of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City.

(b) The limits of coverage of insurance required shall be not less than the following:

- (1) Worker's compensation and employer's liability insurance.

Worker's compensation—Florida statutory requirements.

- (2) Comprehensive general liability.

Bodily injury and property damage: \$1,000,000.00 combined single limit each occurrence.

- (3) Automobile liability.

Bodily injury and property damage: \$1,000,000.00 combined single limit each accident.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-12. Indemnification.

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees,

against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its communications facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The City agrees to notify the registrant, in writing, within a reasonable time of the City receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in Fla. Stat. § 768.28, as it may be amended from time to time.

(b) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-13. Construction bond.

(a) Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, a City may require a construction bond to secure proper performance under the requirements of any permits and the restoration of the public rights-of-way. Twelve months after the completion of the restoration in public rights-of-way in accordance with the bond, the registrant may eliminate the bond. However, the City may subsequently require a new bond for any subsequent work in the public rights-of-way. The construction bond shall be issued by a surety having a rating reasonably acceptable to the City; shall be subject to the approval of the City's risk manager; and 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 City, 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 City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this article, or at law or equity.

(c) The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved in this article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the City may have.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-14. Security fund.

At the time of registration, the registrant shall be required to file with the City, for City approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$25,000.00, having as a surety a company qualified to do business in the State of Florida, and acceptable to the City manager, or his or her designee, 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 communications facilities in public rights-of-way; or (b) 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 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 section 104-15 of this article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the City 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 public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the City may in its discretion not require a security fund or may accept a corporate guarantee of the registrant or its parent company.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-15. Enforcement remedies.

(a) A registrant's failure to comply with provisions of this article shall constitute a violation of this article and shall subject the registrant to the code enforcement provisions and procedures as provided in chapter 30 of this Code, including the provisions of chapter 30 that allow the City to seek relief as otherwise provided by law.

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

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-16. Abandonment of a communications facility.

(a) Upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the City within 90 days.

(b) The City 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 City 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: (1) compromises safety at any time for any public rights-of-way user or during construction or maintenance in public rights-of-way; (2) prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or (3) creates a maintenance condition that is disruptive to the public rights-of-way's use. In the event of (2) above, the City 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 City does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the City or another person at such third party's cost.

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

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-17. 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 purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of god, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within 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.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-18. Reservation of rights and remedies.

(a) The City reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.

(b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this article and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law.

(c) The adoption of this article is not intended to affect any rights or defenses of the City or a communications service provider under any existing franchise, license or other agreements with a communications services provider.

(d) Nothing in this article shall affect the remedies the City or the registrant has available under applicable law.

(e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-19. Establishment of the rate of the communications services tax.

(a) For the fiscal year of the City commencing on October 1, 2001, and ending on September 30, 2002, the City hereby establishes the rate of the communications services tax as the base rate of 5.10 percent established by Fla. Stat. §§ 202.19 and 202.20, plus 0.40 percent, as permitted by Section 13 of Chapter 2001-140 of the Laws of Florida, plus 0.12 percent, as permitted by Fla. Stat. § 337.401, for a total of 5.62 percent.

(b) On and after October 1, 2002, the City hereby establishes the rate of the communications services tax as the base rate of 5.10 percent established by Fla. Stat. § 202.20, plus 0.12 percent, as permitted by Fla. Stat. § 337.401, for a total of 5.22 percent.

(c) The City hereby instructs the Florida Department of Revenue to collect the communications services tax at the rates set forth in subsections (a) and (b) of this section.

(Ord. No. 2001-3306, § 1, 5-16-01)

Sec. 104-20. Pass-Through Provider and Communications Facility Provider Fees and Charges

(a) Pass-through providers and communications facility providers that maintain one or more communications facilities in the City's roads or rights-of-way shall pay the City the maximum annual amount allowed under Fla. Stat. § 337.401, as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a pass-through provider or communications facility provider for purposes of supporting antennas or other

over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate communications facility subject to assessment of a separate fee in the amount or ~~\$500\$~~ or the maximum amount specified in Fla. Stat. § 337.401, whichever is higher-, to the extent that Fla. Stat. §337.401 is applicable.

- (b) The annual amount referenced in subsection 104-20(a), above, shall be due and payable on November 1 of every year. Fees not paid within ten days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City 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 City may have for additional sums due and payable or authorization to install any facilities in the City's rights-or-way.