

ORDINANCE NO. O-6-18

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, AMENDING 62. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH SHORES AT ARTICLE III. RIGHT OF WAY REGULATIONS. BY AMENDING THIS ENTIRE ARTICLE TO RECOGNIZE THE TOWN'S UTILITY UNDERGROUNDING PROJECT; PROVIDE UPDATED AND NEW DEFINITIONS, REGISTRATION REQUIREMENTS, AND PERMITTING REQUIREMENTS FOR PLACING AND MAINTAINING FACILITIES IN THE TOWN'S PUBLIC RIGHTS-OF-WAY; PROHIBITING ALL ABOVE GRADE FACILITIES AND LIMITING AT GRADE FACILITIES PURSUANT TO THE TOWN'S UTILITY UNDERGROUNDING PROJECT; PROVIDING FOR PASS THROUGH PROVIDERS; PROVIDING FOR EXEMPTION FROM THE FLORIDA ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT AS SET FORTH AT SEC. 337.401(7), FLORIDA STATUTES; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 18. BUSINESSES, OCCUPATIONS AND PROFESSIONS. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ENACTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, The Town Commission of the Town of Palm Beach Shores has, based on positive resident input and voter approval, proceeded with the Town's Utility Undergrounding Project, placing all above grade facilities in the Town's public rights-of-way underground, prohibiting all future above grade facilities, and restricting the placing and maintaining of at grade facilities; and

WHEREAS, the Town's Utility Undergrounding Project was approved for financing via general obligation bonds by a majority of the Town's electors in the March 14, 2017 referendum election; and

WHEREAS, the Town Commission of the Town of Palm Beach Shores now desires to updates its right-of-way regulations to prohibit above grade facilities and restrict at grade facilities in its rights-of-way, and to provide registration and permitting requirements for underground facilities and permissible at grade facilities, all in accordance with state and federal law; and

WHEREAS, the Town Commission has determined that such amendments to the Town's code are in the best interests of the citizens of the Town of Palm Beach Shores.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, THAT:

Section 1: Chapter 62. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, of the Code of Ordinances of the Town of Palm Beach Shores is hereby amended at Article III. Right of Way Regulations. Amending this entire article to recognize the Town's Utility Undergrounding Project; provide updated and new definitions, registration requirements, and permitting requirements for placing and maintaining facilities in the Town's public rights-of-way; prohibiting all above grade facilities and limiting at grade facilities pursuant to the Town's Utility Undergrounding Project; providing for pass through providers; providing for exemption from the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Sec. 337.401(7), *Florida Statutes*; providing that Chapter 62, Article III shall hereafter read as follows:

ARTICLE III. - RIGHT-OF-WAY REGULATIONS

Sec. 62-40. - Purpose.

The purpose of this article is:

- (1) To establish a competitively neutral policy for the use of the Town's Public Rights-of-way for the provision of ~~local-exchange tele~~Communications Services, Cable Television Services ~~and telephone telecommunications services~~, and other Utilities, including but not limited to, those defined in Sec. 337.401, Florida Statutes, all of which shall be located underground pursuant to the Town of Palm Beach Shores Utility Undergrounding Project;
- (2) To regulate the placement of ~~structures and~~ Facilities in the Town's Public Rights-of-way, and to require same to be Placed and Maintained underground, or as permitted herein for certain appurtenant devices, at-grade, pursuant to its governmental powers as set forth at Chapter 166, *Florida Statutes*;
- (3) To prescribe reasonable rules for such uses pursuant to Secs. 337.401, and 364.0361, and 610.113 Florida Statutes, so as to minimize disruption of services in the Town's Public Rights-of-way, regulate the use of the Town's Public Rights-of-way by ~~tele~~Communications Services

Providers, Cable Television Services Providers, Wireless Infrastructure Providers, Pass-Through Providers and other Utilities providers, and to regulate the construction, installation, maintenance, repair, removal and replacement of Facilities in the Town's Public Rights-of-way, all of which must be located underground, or as permitted herein for certain appurtenant devices, at-grade;

(4) In conformance with the above, to insure that all Facilities for providing electrical distribution, Communications Services, Cable Television Services, Video Services, internet, broadband, and similar services located within the jurisdiction of the Town shall be Placed and Maintained underground, or as permitted herein for certain appurtenant devices, at-grade.

Sec. 62-41. - Definitions.

"Antenna" means Communications Facility equipment that transmits or receives electromagnetic radio frequency signals used in providing Wireless Services.

"Cable Television Facility or System" means any tangible thing located in a Public Right-of-way that may be used to deliver Cable Television Services as further defined in Section 610.103, Florida Statutes, as same may be amended from time to time. Other than necessary appurtenant devices located at-grade, Cable Television Facilities Placed or Maintained in the Town's Public Rights-of-way must be located underground.

"Cable Television Services" means the one-way transmission to subscribers of video programming or any other programming service, as well as the subscriber interaction required to select or use such video programming or other programming service.

"Cable Television Services Provider" means any Person providing Cable Television Services through the Placement or Maintenance of a Cable Television Facility in the Town's Public Rights-of-way.

"Communications Facility" means any tangible thing located in a Public Right-of-way that may be used to deliver Communications Services pursuant to applicable provisions of Sec. 337.401, Florida Statutes, as same may be amended from time to time. The term includes Wireless Communications Facilities. Multiple cables, conduits, strands, or fibers located within same conduit shall be considered one Communications Facility. Other than necessary appurtenant devices located at-grade, Communications Facilities Placed or Maintained in the Town's Public Rights-of-way must be located underground.

"Communications Services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including Video Services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyances in accordance with Sec. 202.11, Florida Statutes as same may be amended from time to time. The term includes Wireless Communications Services. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Notwithstanding the foregoing, the term does not include:

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

"Communications Services Provider" means any Person providing Communications Services through the Placement or Maintenance of a Communications Facility in the Town's Public Rights-of-way.

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

"FCC" shall mean the Federal Communications Commission.

"In the Public Rights-of-way" means on or below and under the Public Rights-of-way within the Town (underground).

"Pass-Through Provider" means any Person who places or maintains a Communications Facility in the Town Public Rights-of-way and who does not remit taxes imposed by the Town

pursuant to Chapter 202, Florida Statutes as same may be amended from time to time. A Utility as defined in 47 U.S.C. Sec. 224 is not a Pass-Through Provider.

"Person" includes individuals, ~~children~~, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

"Place or Maintain" means to construct, install, extend, expand, remove, occupy, locate, relocate, or significantly alter the configuration of a Communications Facility, Cable Television Facility, Wireless Support Structure, or other Utility Facility, other than necessary appurtenant devices located at-grade, underground. A Person who owns or exercises physical control to maintain and repair is "Placing or Maintaining" the Facility. Routine and emergency maintenance does not constitute "Placing or Maintaining" a Communications Facility or other Facility in the Town's Public Rights-of-way for purposes of this definition.

"Public Rights-of-way" shall mean a ~~public right-of-way~~, public utility easement, street or alley owned by the Town, dedicated to the Town or to the public, or for which the Town holds a property interest and exercises rights of management or control. This term shall include the surface, the air space over the surface and the area below the surface of all public roads, streets, alleys, public utility easements, and all public grounds.

"Registrant" shall mean a Person ~~company~~ that has registered with the Town in accordance with the provisions of this article.

"Registration" and "Register" shall mean the process described in sections 62-42 et. seq. whereby a ~~tele~~-Communications Services Provider, Cable Television Services Provider, Wireless Infrastructure Provider, Pass-Through Provider, Utilities Provider, or other provider provides certain information to the Town.

~~"Telecommunications" shall mean the transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.~~

~~"Telecommunications facility" or "facility" shall mean the plant, equipment, and property, including but not limited to cables, wires, conduits, ducts, fiber optics, antennae and other equipment or pathway used to transmit, receive, distribute, provide or offer telecommunications services.~~

~~"Telecommunications provider" or "provider" shall mean any person or entity that provides local telephone service (hereinafter referred to as a "local service provider") as defined in § 203.012(3), Florida Statutes, as may be amended ("Local Service"), or any person or entity that provides toll telephone service (hereinafter referred to as a "toll service provider") as defined in § 203.012(7), Florida Statutes, as may be amended ("toll service"), or any person or entity that provides any other type of utility service including but not limited to those defined at § 337.401, Florida Statutes. "Telecommunications services" shall mean the offering of telecommunications for a fee to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Cable services and open video systems are expressly excluded from the definition of telecommunications services.~~

"Town" shall mean Town of Palm Beach Shores, Florida.

"Utility or "Utilities" shall refer to entities that place, or have placed prior to the Town's Utility Undergrounding Project, in the Town's Public Right-of-way any electric distribution transmission, telephone or telegraph lines, poles, ditches, services, water, sewer, heat or gas mains, pipelines, fences; or any other structures, pipes, lines or facilities. Reference to any underground Utilities or Facilities includes appurtenant at-grade devices that comply with the appropriate provider's design standards. There are no electric transmission lines within the Town, and none shall be permitted to be Placed or Maintained in the Town's Public Rights-of-way.

"Utility Undergrounding Project" means the Town's decision and action to proceed to place all existing above-grade electric Utility Facilities, Communications Facilities, Wireless Communications Facilities, Cable Television Facilities, Wireless Support Structures, and other above-grade Facilities located in the Town's Public Rights-of-way, other than necessary appurtenant devices located at-grade, underground. The Utility Undergrounding Project was approved for financing via general obligation bonds by a majority of the Town's electors in the March 14, 2017 referendum election.

"Video Service" means a Communications Service as defined at Sec. 202.11 (24), Florida Statutes, as same may be amended from time to time.

"Wireless Communications Facility" ("WCF") means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, Antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration,

and equipment associated with wireless communications. WCF within a Town Public Right-of-way shall include equipment used to provide Wireless Service, as the phrase "WCF" is further defined in Sec. 365.172, Florida Statutes as same may be amended from time to time. Other than necessary appurtenant devices located at-grade, Wireless Communications Facilities Placed or Maintained in the Town's Public Rights-of-way must be located underground.

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

"Wireless Services" means Communication Services provided by means of radiofrequency signals pursuant to an FCC license or other FCC authorization. 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. A Wireless Service is a Communications Service. The term does not include dispatch service in a more localized, non-cellular configuration; data only, one-way or stored-voice services on an interconnected basis; air-to-ground services; or public coast stations.

"Wireless Service Provider" means a person duly authorized and licensed by the FCC to deliver Wireless Service or elects to provide wireless 911 service or E-911 service in Florida. A Wireless Service Provider is a type of Communications Services Provider.

"Wireless Support Structure" means a pole or other vertical above grade structure placed in the Town's Public Rights-of-way for the purpose of supporting a Wireless Communications Facility.

Sec. 62-42. - Registration for placing or maintaining Communications Facilities, Cable Television Facilities, Wireless Facilities and telecommunications or other facilities underground in a Town Public Right-of-way.

(a) A Communications Services Provider, Cable Television Services Provider, Wireless Infrastructure Provider, Pass-Through Provider telecommunications or other Utility Provider that desires to ~~erect, construct~~, install, maintain, place, repair, extend, expand, remove, locate or relocate a permanent or temporary Communications Facility, Cable Television Facility

~~telecommunications~~ or other Utility Facility ~~underground or appurtenant devices at-grade if permitted on or in, on, under, over or across the~~ Town's Public Rights-of-way ~~in the town~~ shall first register with the Town in accordance with this article.

(b) A Provider's participation in the Town's Utility Undergrounding Project shall, by virtue of such participation, be deemed registered for purposes of this article.

(c) Subject to the terms and conditions contained in this article, a Registrant may ~~erect, construct,~~ install, place, repair, maintain, expand, remove, locate or relocate a permanent or temporary Communications Facility, Cable Television Facility ~~telecommunications~~ or other Utility Facility ~~underground or appurtenant devices at-grade if permitted on or in, on, over, under, or across the~~ Town's Public Right-of-way.

Sec. 62-43. - Nature of registration.

A Registration shall not convey title, equitable or legal, in the Town's Public Rights-of-way. Registration under this article governs the Placing and Maintaining underground Facilities or appurtenant devices at-grade if permitted ~~occupation of on or in the~~ Town's Public Rights-of-way only. Registration does not excuse a Communications Services Provider, Cable Television Services Provider, Wireless Infrastructure Provider, Pass-Through Provider ~~telecommunications~~ or other Utility provider from obtaining appropriate permits ~~access or pole attachment agreements~~ before locating its Facilities underground or its appurtenant devices at-grade on or in ~~on~~ the Town's Public Rights-of-way ~~or another person's facilities~~. Registration does not excuse any Provider from complying with all applicable Town ordinances, including this article.

Sec. 62-44. - Registration; effectiveness of registration.

(a) *Registration.* Any Communications Services Provider, Cable Television Services Provider, Wireless Infrastructure Provider, Pass-Through Provider ~~telecommunications~~ or other Utility provider desiring to use the Town's Public Rights-of-way shall file a Registration form with the Town 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;

(3) ~~Reserved~~ For telecommunications registrations submitted prior to October 1, 2001, the applicant shall state whether the applicant is or expects to provide local service or toll service or both;

(4) Evidence of the insurance coverage required under this article and acknowledgment of the indemnity and other provisions of this article; which acknowledgment shall ~~not~~ be considered an agreement to the provisions; and

(5) The number of the applicant's certificate or certificates of authorization, if any, to provide Communications Services, Cable Television Services, internet, broadband, and similar services ~~telecommunication~~ or any other type of Utility services, excluding electric transmission lines which are not permitted in the Town, issued by the Florida Public Services Commission, the Federal Communications Commission or any other applicable governing boards or commissions.

(b) *Registration application fees.* Each applicant for a Registration or renewal thereof shall submit a non-refundable application fee with the application. Fee amounts shall be established by resolution of the Town Commission but in no event shall exceed the Town's costs incurred in reviewing the application.

(c) *Review by the Town.* The Town will review the information submitted by the applicant. If the applicant submits all information in accordance with subsection 62-44(a) above, the Registration shall be effective and the Town shall notify the applicant of the effectiveness of the Registration in writing. If the Town determines that the information has not been submitted in accordance with the above-referenced subsection, the Town shall notify the applicant in writing of the non-effectiveness of Registration. The Town shall so reply to an applicant within 30 days after receipt of the Registration information from the applicant.

(d) *Cancellation of Registration.* A Registrant may cancel a Registration upon written notice to the Town that it will no longer install, maintain, place, repair, extend, expand, remove, locate or relocate a permanent or temporary Communications Facility, Cable Television Facility or other Utility Facility underground, or appurtenant devices at-grade, in the Town's Public Rights-of-way ~~place, maintain or own any telecommunications or other facilities in public right-of-way of the town~~ and will no longer need to obtain ~~pull~~ permits to perform work in the Town's Public Rights-of-way. A Registrant cannot cancel a Registration if the Registrant continues to Place, Maintain or own any Communications Facility, Cable Television Facility ~~telecommunications~~ or other type Utility Facilities in the Town's Public Rights-of-way.

(e) *No priority in Registration.* Registration does not establish any priority for the use of the Town's Public Rights-of-way; however an effective Registration is required prior to the issuance of a permit to work in the Town's Public Right-of-way. The fact that a Communications Services Provider, Cable Television Services Provider, Wireless Infrastructure Provider, Pass-Through Provider telecommunications or other Utility provider is Registered shall not establish any right or priority for the use of the Town's Public Rights-of-way.

(f) *Renewal of Registration.* A Registrant shall renew its Registration with the Town by October 1st of each year in accordance with the Registration requirements in this article. Within 30 days of any change in the information required to be submitted pursuant to subsection 62-44(a) above, a Registrant shall provide updated information to the Town. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional Town ordinances, as well as any applicable state or federal laws that may be enacted during the term of the Registration. If a Registrant fails to renew its Registration, the ~~sole consequence shall be that the~~ Town may restrict the Communications Services Provider, Cable Television Services Provider, Wireless Infrastructure Provider, Pass-Through Provider or other Provider from obtaining permits under subsection (g) below until the ~~telecommunications or other~~ Provider has complied with the Registration requirements of this article.

(g) *Permits.* A permit is hereby required of a Communications Services Provider, Cable Television Services Provider, Wireless Infrastructure Provider, Pass-Through Provider telecommunications or other Utility provider that desires to install, maintain, place, repair, extend, expand, remove, locate or relocate a permanent or temporary Communications Facility, Cable Television Facility or other Utility Facility in the Town's Public Rights-of-way ~~erect, construct, install, maintain, place, repair, extend, expand, remove, locate or relocate a permanent or temporary telecommunications or other type facility in any public right-of-way~~. An effective Registration shall be a condition of obtaining a permit. An effective Registration does not mean that applicable permitting requirements shall not apply or that such requirements have been or will be deemed to have been satisfied. Permit fees shall be paid upon the submissions of an application for same; the amount of such permit fee, if any, shall be set by resolution of the Town Commission.

Sec. 62-45. - Transfer of registration.

If the Registrant transfers or assigns its Registration incident to a sale or other transfer of the Registrant's assets located within the Town, the transferee or assignee shall be obligated to comply with the terms of this article. Written notice of any such transfer or assignment shall be provided to the Town as of the effective date of such transfer. In order for the transfer of Registration to be effective, such written notice must include the identity of the transferee or assignee, and notice of any changes to the information provided under subsection 62-44(a), including any changed evidence of insurance coverage.

Sec. 62-46. - Existing ~~telecommunications~~ Utilities and other facilities in the Town's Public Rights-of-way.

Above grade Communications Facilities, Cable Television Facilities, Wireless Facilities and Wireless Support Structures and other Utility Facilities existing within the Town as of the effective date of the adoption of the ordinance from which this article derives shall be required to be Placed and Maintained underground, with appurtenant devices being placed at-grade as permitted, pursuant to the Town's Utility Undergrounding Project. Such underground and/or at-grade Placement and Maintenance shall be pursuant to the Provider's participation in the Town's Utility Undergrounding Project, and to negotiations and agreements between the Town and the Utility or other Providers, or, if and to the extent applicable, pursuant to existing franchise agreements, or rules of the Florida Public Service Commission and the public utility's tariffs implementing those rules. Certain appurtenant devices may be permitted by the Town to be Placed and Maintained at-grade. Lines or cables of telecommunications or other facilities which have been constructed or placed in the public right-of-way prior to the effective date of this article may remain in the right-of-way provided the provider complies with the registration provisions of this article. Providers with existing lines and cables have 120 days from the effective date of this article to comply with the terms of this article, or be found in violation thereof.

Sec. 62-47. - Suspension of permits.

Subject to section 62-48 below, the Town may suspend a permit for work in the Town's Public Rights-of-way for one or more of the following reasons:

- (1) Violation of permit conditions, including conditions set forth in this article or other applicable Town codes or regulations governing use of the Town's Public Rights-of-way;

- (2) Misrepresentation or fraud by a Registrant in a Registration or permit application to the Town;
- (3) Violation of provisions in this article requiring payment of Registration or permit fees, if applicable, to the Town; or
- (4) Failure to relocate or remove Facilities, or failure to Place and Maintain Facilities underground and/or at-grade as applicable, as may be lawfully required by the Town.

Sec. 62-48. - Appeals.

Final, written decisions of the Town building official suspending a permit, denying an application for a Registration or denying an application for renewal of a Registration are subject to appeal. An appeal must be filed with the Town building official within 30 days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth herein shall be waived. The Town Commission shall consider the appeal at the next regularly scheduled meeting and shall consider whether the applicant meets the requirements for a Registration or permit based upon the provisions of this article and the applicable state and federal laws.

Sec. 62-49. - Construction in the Town's Public Rights-of-way.

(a) Poles, overhead wires and associated above grade Facilities and structures unlawful. Except as otherwise specifically provided in this article, all above grade Facilities, including poles for providing electrical power, Communications Services, Wireless Services, Cable Television Services, Video Services, internet, broadband, and similar services located within the jurisdiction of the Town shall be placed underground. Communications Facilities, Wireless Communications Facilities and Wireless Support Structures, Wireless Infrastructure, Cable Television Facilities, Utility Facilities, poles, overhead wires and all associated above grade Facilities and structures shall not be permitted. Certain appurtenant devices may be permitted by the Town to be Placed and Maintained at-grade.

This section shall apply to all Facilities for providing electrical power, Communications Services, Wireless Services, Cable Television Services, Video Services, internet, broadband and similar services, and other Utility services located or desiring to locate within Town's Public Rights-of-way, as well as in easements or on private properties, as well as to any relocation, refurbishment, reconstruction, or restoration of such facilities already located within the Town pursuant to the Town's Utility Undergrounding Project.

(b) *Permits to construct.* The Registrant may ~~construct~~ Place or Maintain Facilities for providing electrical power distribution, Communications Services, Wireless Services, Cable Television Services, Video Services, internet, broadband and similar services, and other Utility services underground, and appurtenant devices at-grade ~~the telecommunications system or other Utilities~~ in the Town's Public Right-of-way specifically identified in permits obtained in accordance with applicable provisions of this article or other applicable Town codes and regulations. The permission to Place and Maintain underground Facilities and appurtenant devices at-grade ~~use and construct~~ in the Town's Public Rights-of-way is only for those areas specifically identified in the permit.

(c) *Permit Applications.* Permit applications to Place or Maintain Facilities for providing electrical power distribution, Communications Services, Wireless Services, Cable Television Services, Video Services, internet, broadband and similar services, and other Utility services underground, and appurtenant devices at-grade in the Town's Public Rights-of-way shall contain the following information:

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

- (i) a description of the Facilities to be installed, where the Facilities are to be located, and the size, dimensions and height of the proposed Facilities that will be located in the Town's Public Rights-of-way; and,
- (ii) a statement signed and sealed by a Florida licensed professional engineer attesting that any new appurtenant device at-grade is designed to meet Florida Building Code Chapter 16 "Structural Design Requirements" specifically with respect to wind loading criteria for high velocity hurricane zones.

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

(3) *Temporary sidewalk closure plan.* A temporary sidewalk closure plan, if appropriate, signed and sealed by a Florida licensed professional engineer, given the Facility proposed, to accommodate Placement or Maintenance of the Facilities for providing electrical power distribution, Communications Services, Wireless Services, Cable Television Services, Video

Services, internet, broadband and similar services, and other Utility services underground, and appurtenant devices at-grade.

(4) Temporary modification of traffic (MOT) plan. A temporary traffic lane closure and management of traffic (MOT) plan, if appropriate, signed and sealed by a Florida licensed professional engineer, given the Facility proposed, to accommodate installation and/or modification of the Facilities for providing electrical power distribution, Communications Services, Wireless Services, Cable Television Services, Video Services, internet, broadband and similar services, and other Utility services underground, and appurtenant devices at-grade.

(5) Capacity of Town Public Rights-of-way to accommodate the cumulative impact of the proposed Facility and other Facilities within the Town's Public Rights-of-way. Information that the proposed Facility will not materially interfere with other existing and proposed Facilities, including below grade, and at-grade Facilities, in the Town's Public Rights-of-way, if available (such information shall be provided without certification as to correctness, to the extent obtained from other Persons).

(6) Restoration plan and cost of restoration of the Town's Public Right-of-way. Given the Facility proposed, a restoration plan and an estimate of the cost of restoration of the Town's Public Rights-of-way.

(7) Timetable for construction or installation and intended areas of service. The timetable for Placement or Maintenance of the proposed Facility or each phase of the Placement or Maintenance thereof, and the intended areas of the Town to be served thereby.

(8) Certification as to removal of Abandoned Facilities. The applicant shall certify that any and all of its abandoned Facilities within the Town's Public Rights-of-way has or have been removed, indicating the prior location of such abandoned Facilities.

(9) Registrant agrees to indemnification. A statement shall be included within the application for a permit that by execution of the application and by applying for the permit, the registrant agrees to be bound to the Town with respect to the indemnification provisions set forth in Town Code Section 62-50 herein as though such indemnification provisions are set forth verbatim in the permit application.

(10) Additional information as reasonably required for review of permit application. Such additional information as the Town finds reasonably necessary with respect to the Placement or Maintenance of the Facilities for providing electrical power distribution, Communications

Services, Wireless Services, Cable Television Services, Video Services, internet, broadband and similar services, and other Utility services underground, and appurtenant devices at-grade that is the subject of the permit application to review such permit application, which information may include, but is not necessarily limited to evidence satisfactory to the Town that the proposed Facility will not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive or other dangerous chemicals, and a written statement from a qualified radio frequency engineer that the construction and placement of the proposed Facility complies with FCC rules and regulations governing Communications Services including but not limited to the emergency alert system when applicable, emissions standards, and non-interference with public safety communications.

(d) *Compliance with Town codes and regulations.* Registrants agree to comply with all applicable Town codes and regulations in Placing and Maintaining underground Facilities and appurtenant devices at-grade ~~constructing any facilities~~ in the Town's Public Rights-of-way, including, but not limited to, engineering regulations, permit requirements, contractor licensing requirements, fire codes and zoning codes.

(e) *Registrants must obtain applicable permits.* Except in the case of an emergency, Registrants shall not commence any work ~~construction~~ in the Town's Public Rights-of-way until all applicable permits have been issued by the Town or other appropriate authority. The term emergency shall mean an out-of-service condition or other condition that may affect the public's health, safety and welfare. Registrants shall provide reasonable advance notice to the Town of its intent to commence work ~~construction~~ in the Town's Public Rights-of-way in the event of an emergency. Registrants acknowledges that as a ~~condition of granting such permits~~, the Town may impose conditions on the permits as necessary and reasonable for any work ~~the construction~~ in the Town's Public Rights-of-way.

(f) *Construction standards.* Registrants shall perform all permitted work ~~construct, maintain, install, remove and/or repair the telecommunications system or other utilities~~ in the Town's Public Rights-of-way in compliance with all applicable construction standards as established by all local, state or federal law and in conformance with the Town's codes and regulations. Registrants shall use and exercise due caution, care, skill and expertise in performing all permitted work in the Town's Public Rights-of-way and shall take all reasonable steps to safeguard work site areas.

(g) *Installation and construction schedule; inspections.* In the interest of the public's health, safety and welfare, Registrants shall cooperate with the Town and the Town's management actions in coordinating use of the Town's Public Rights-of-way. Upon request of the Town, a Registrant shall coordinate work under a permit with any other construction, installation or repairs that may be occurring or scheduled to occur in the subject Public Right-of-way and alter its construction schedule as necessary so as to minimize disruptions and disturbance in the Town's Public Rights-of-way.

(h) *Maintenance.* A Registrant shall maintain its Facilities in the Town's Public Rights-of-way in a safe condition.

(i) *Notice to the Town.* Prior to commencing any work ~~excavation~~ in the Town's Public Rights-of-way ~~for construction, installation, repair or maintenance~~, the Registrant must ~~call prior to construction activity to~~ locate any existing underground Facilities equipment in accordance with Chapter 556, *Florida Statutes*, as it may be amended. A Registrant must be a member of Sunshine State One Call of Florida, Inc. (1-800-432-4770) or any successor alert and warning system to protect and locate all its underground Facilities equipment.

(j) *Removal of Registrant's cables/lines in the Town's Public Rights-of-way.* Upon completion of the Town's Utility Undergrounding Project, and to the extent authorized by Sec. 337.403, Florida Statutes, the Town may require Registrants to remove or relocate, and Registrants shall, at the Town's direction, remove or relocate any cable, line, or other Facility ~~installation~~ in the Town's Public Rights-of-way when the Town building official determines that such removal or relocation is necessary to protect or preserve the public health, safety and welfare, or to protect the proper operation of the Town's traffic signals or traffic control devices or other Town facilities, or when such removal or relocation is necessary to further comply with the Town's Utility Undergrounding Project. The Town shall provide 90 days written notice to Registrants before the lines, poles or other Facilities must be relocated or removed. If a Registrant fails to commence and complete this ~~removal~~ work by the dates requested by the Town in its written notice, or within 30 days following the expiration or termination of the Registrant's valid ~~this~~ Registration, then the Town shall have the right to perform this ~~removal~~ work and charge the Registrant for the costs incurred by the Town in performing this work. Upon payment by the Registrant of the costs incurred by ~~to~~ the Town, the Town shall promptly return to the Registrant any Facilities or other equipment removed by the

Town pursuant to this provision; however, such returned Facilities or other equipment shall not be replaced in the Town's Public Rights-of-way.

(k) *Restoration of the Town's Public Rights-of-way.* Upon the completion of work each installation, construction, repair, maintenance, or removal in the Town's Public Rights-of-way, and as directed by the Town building official, a Registrants shall restore the Town's Public Rights-of-way to a safe condition and to the Town's standard specifications for its Public Rights-of-way in accordance with the requirements of the Town's Utility Undergrounding Project or any other applicable code, rule or law, at the Registrant's sole expense. Registrants shall, at their its own expense, repair or replace any other property disturbed or damaged on account of their its work activities in the Town's Public Rights-of-way.

(l) *Interference with other uses in the Town's Public Rights-of-way.* A Registrant shall ~~use reasonable efforts not to~~ disturb or otherwise disrupt the operation or Placement or Maintenance of any other Utilities or uses in the Town's Public Rights-of-way, including, but not limited to Communications Facilities, sewers, storm drains, gas or water mains, or other underground Facilities cables or conduits.

(m) *No warranties or representations by the Town.* The Town makes no warranties or representations regarding the fitness or suitability of the Town's Public Rights-of-way ~~property~~ for the Placing and Maintaining installation of a Registrant's Facilities, cables or conduits and Any performance of work undertaken or costs incurred by a Registrant ~~or provision of services~~ shall be at the Registrant's sole risk.

(n) *Maps.* Within 30 days of a request by the Town, ~~the Registrants~~ shall provide the Town with copies of maps depicting the locations of their underground and at-grade Facilities and appurtenant devices in the Town's Public Rights-of-way on disk, in a format specified by the Town building official, ~~provided such format is maintained by the registrant.~~ Any such maintained geographic data, media and information will be provided at no cost to the Town. In no event shall any proprietary confidential information be required to be disclosed pursuant to this section, except that the location of Communications Facilities, Cable Television Facilities telecommunications or electric distribution or other Utilities Facilities previously placed in the Town's Public Rights-of-way shall not be deemed proprietary confidential information.

(m) *Relocation of Facilities and reservation of the Town's rights:*

(o) The Town reserves the right to lay, and permit to be laid, sewer, gas, water, electric, storm drainage, Communications Facilities, Cable Television Facilities ~~telecommunications~~, and other pipelines or cables or conduit, and to do and to permit to be done any underground installation or improvement that may be deemed necessary or proper by the Town ~~in, across, along, over~~ in, on or under any Public Right-of-way occupied by ~~a the~~ Registrant, and to change any curb or sidewalk or the grade of any street. The Town, as well as its contractors and subcontractors, shall be required to call Sunshine State One Call of Florida, Inc. (1-800-432-4770), or successor alert and warning system, prior to excavation, in accordance with Chapter 556, Florida Statutes, as it may be amended, in order to avoid damages to any Registrant's Facilities or Town Facilities.

(p) The Town expressly reserves the right to change, or cause to be changed through exercise of its police powers, the grading, installation, relocation, or width of the Town's Public Rights-of-way ~~streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places~~ within the present limits of the Town and within said limits as same may from time to time be altered, and ~~the~~ Registrants may be required, as a result, to ~~shall~~ relocate, at their sole ~~its own~~ expense ~~where allowed by § 337.403, Florida Statutes, as it may be amended, its poles, wires, cables, anchors, manholes, conduits, and other~~ underground Facilities and at-grade appurtenant devices ~~and appurtenances~~ in order to accommodate the installation, relocation, widening or changing of the grade of any Public Right-of-way ~~public streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places, including if necessary relocating such poles, wires, cables, anchors, manholes, conduits or other facilities or appurtenances to a sufficient distance from the edge of the pavement to permit a reasonable work area for machinery and individuals engaged in installing, relocating, widening, or changing the grade of any such streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places.~~ Following the completion of the Town's Utility Undergrounding Project, and thereafter upon notice in writing from the Town that changes in the Town's Public Rights-of-way are required pursuant to the Town's police power in such a manner as will necessitate the relocation of its underground Facilities in the Town's Public Rights-of-way, the Registrant shall relocate the same at no expense to the Town, ~~where allowed by § 337.403, Florida Statutes, as it may be amended, so as to permit the construction of such improvements when ordered.~~ Should the Registrant fail to comply with such notice, the Facilities and appurtenant devices may be relocated by the Town and

the cost thereof recovered from the Registrant, ~~where allowed by § 337.403, Florida Statutes, as it may be amended.~~

Sec. 62-50. - Insurance and indemnification.

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

(b) *Insurance.* A Registrant shall maintain in full force and effect general liability insurance acceptable to the Town, which specifically covers all exposures incident to the intent and responsibilities under this article in the amounts set forth below:

(1) Workers' compensation insurance within Florida statutory limits and employers' liability insurance with minimum limits of \$~~1~~ 500,000.00 each accident.

(2) Comprehensive general liability insurance with minimum limits of \$~~3~~ 5,000,000.00 as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket liability insurance and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

(3) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by the Registrant provider, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the applicable state law, including residual liability insurance with minimum limits of \$2 5,000,000.00 as the combined single limit for each occurrence for bodily injury and property damage.

(4) Named insureds. All certificates of insurance shall name the Town of Palm Beach Shores as an additional insured.

(5) Cancellation of policies of insurance. At least 60 days prior written notice shall be given to the Town by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the Town.

Sec. 62-51. - Penalties for violation.

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

Sec. 62-52. Pass-through provider fees and charges.

(a) Pass-Through Providers shall pay to the Town on an annual basis an amount equal to Five Hundred Dollars (\$500.00) per linear mile or portion thereof of Communications Facilities placed and/or maintained in the Town's Public Rights-of-way.

(b) The amounts charged pursuant to this Section shall be based on the linear miles of Town Rights-of-way where Communications Facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers.

(c) Any annual amount charged shall be reduced for a prorated portion of any 12-month period during which the Pass-Through Provider remits taxes imposed by the Town pursuant to Chapter 202, *Florida Statutes* as same may be amended from time to time.

(d) Annual payments shall be due and payable on March 1 of each year. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the Town 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 Town may have for additional sums due and payable. All fee payments shall be subject to audit by the Town, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the Town, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.

(e) If the payments required by this Section are not made within ninety (90) days after the due date, the Town building official may withhold the issuance of any permits to the Registrant until the amount past due is paid in full.

Sec. 62-53. Town Exempt from Florida Advanced Wireless Infrastructure Deployment Act.

As a result of the Town's Utility Undergrounding Project, as well as the Town's geographic size and population, the Town is exempt from the requirements of the Florida Advanced Wireless Infrastructure Deployment Act as set forth at Sec. 337.401(7), *Florida Statutes*, as same may be amended from time to time.

Secs. 62-54 52—62-60. - Reserved.

Section 2: Each and every other article, section and subsection of Chapter 62. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, of the Code of Ordinances of the Town of Palm Beach Shores, shall remain in full force and effect as previously enacted.

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

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

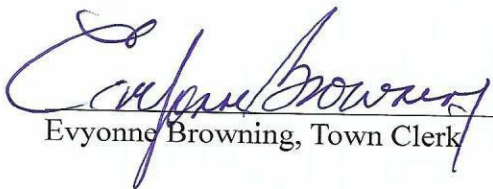
Section 5: Specific authority is hereby granted to codify and incorporate this ordinance into the existing Code of Ordinances of the Town of Palm Beach Shores.

FIRST READING this 18 day of September 2018.

SECOND AND FINAL READING this 19 day of November 2018.


Approved this 19th day of November 2018

ATTEST:


Evyonne Browning, Town Clerk


Myra Koutzen, Mayor

Approved as to legal sufficiency:


Keith Davis, Town Attorney

(Seal)

